

(1993) 02 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2317 of 1982

Devendra Kumar Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-1993

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 10(2), 10A, 10B, 12(A)(1)

Citation : (1993) 2 PLJR 219

Hon'ble Judges : R.M. Prasad, J;N. Pandey, J

Bench : Division Bench

Advocate : Umesh Prasad Singh and Rajendra Kumar, for the Appellant; None for the State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The present writ application is directed against the order dated 13.1.1982 passed by the Director of Consolidation, Bihar, Patna (Respondent No. 2) whereby he has remanded Consolidation Case No. 548/78-79 to the Consolidation Officer, Simri (Respondent No. 4) with a direction to hear and dispose of the same on merit. In short, the case of the petitioner is that one Uma Shankar Prasad had filed an objection before the Consolidation Officer, Simri, which was registered as Objection Case No. 306 of 1977 u/s 12(A) (1) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act"). In the objection the said Uma Shankar Prasad contended that R. S. Plot Nos. 217 and 287 belonged to him and his nephew has also claimed one quarter share in R.S. Plot Nos. 280 and 288. As such he prayed that his Chak should be based on his major Plot No. 217 and further for adjustment of other plots around it. On 21.6.1976, the Consolidation Officer as per aforementioned objection made some re-adjustment. On the same day, the petitioner appeared and submitted that the said Uma Shankar Prasad had nothing to do with the land apperaining to Khata No. 91. The matter was finally heard on merit on 26.6.1976 and the Consolidation Officer withdrew his

earlier order dated 21.6.1976 and dismissed the objection of said Uma Shankar Prasad.

2. An appeal was preferred by said Uma Shankar Prasad against the aforementioned order before the Deputy Director of Consolidation, Arrah (Respondent No. 3), who, after hearing on merit, dismissed the same on 15.10.1976. Against this Uma Shankar Prasad preferred Revision Case No. 679 of 1976 before the Director of Consolidation, Bihar, Patna (Respondent No. 2), who, after hearing the parties concerned, disposed of the same by order dated 26.7.1978 giving liberty to said Uma Shankar Prasad to file a suitable objection before the appropriate authority under the appropriate provisions of law to press his claim and the same shall be considered on merit.

3. The further case of the petitioner is that the respondent no. 5 herein never agitated any grievance before the Consolidation Courts at any point of time earlier. For the first time, he appeared before the Director of Consolidation and filed a petition at the time when aforesaid Uma Shankar Prasad preferred his aforesaid revision case only with the intention to get some undue advantage from the orders which might be passed in Rev. Case No. 679 of 1976 of Uma Shankar Prasad. Though his petition was not at all entertained by the Director of Consolidation in the case of Uma Shankar Prasad, he still filed a petition on 7.8.1978 purporting to be u/s 10(2) read with section 10B of the Act before the Consolidation Officer, Simri (Respondent No. 4) being Case No. 548 of 1978-79 misrepresenting and misleading the court that the respondent no. 2 had remanded his case also to hear on merit.

4. On 7.9.1979, the Consolidation Officer declined to pass any order on merit as the Scheme was confirmed and delivery of possession was effected. Thereafter, the respondent no. 5 moved the Deputy Director of Consolidation, Bhojpur, who also, after hearing the parties, rejected the prayer by order dated 24.9.1979 passed in Appeal Case No. 38 of 1979. Being aggrieved with the said order, the respondent no. 5 preferred a revision before the respondent no. 2 which was registered as Revision Case No. 1355 of 1979. The respondent no. 2, after hearing the parties, passed the impugned order on 13.1.1982, remanding the case to the Consolidation Officer, Simri to hear the parties and decide the case on merit.

5. Although, it appears, the respondent no. 5 has put in appearance through his Counsel in this case but has not filed any counter affidavit. No counter affidavit has also been filed on behalf of the State in this case.

6. Mr. Umesh Prasad Singh, the Learned Counsel appearing for the petitioner submitted that from the reading of the impugned order, which is contained in Annexure 3 to the writ application, it would appear that the Director of Consolidation had acted erroneously in issuing direction to the Consolidation Officer to hear the petition of the respondent no. 5 and dispose it of on merit under a misapprehension of fact that the aforementioned Revision Case No. 679

or 1976 was filed by the respondent no. 5 and that in the said case he was given liberty to file a suitable objection before the appropriate authority with a direction to consider the same on merit. The Director of Consolidation (Respondent No. 2) has ignored this fact that Scheme was confirmed and delivery of possession was given on the assumption that by the earlier order passed in Revision Case No. 679 of 1976 the petitioner could have obtained relief u/s 10B of the Act after abatement of the suit filed u/s 106 of the Bihar Tenancy Act. According to the Learned Counsel, he also acted illegally in issuing the impugned direction to the Consolidation Officer on the assumption that he had power to act so u/s 35 of the Act even after confirmation of the Scheme and delivery of possession.

7. Mr. Singh further submitted that in view of the bar u/s 10A of the Act, the petition filed by the respondent no. 5 was not maintainable and the same was fit to be rejected. According to him, the respondent no. 5 could not have availed the benefit of the aforementioned order of remand, passed by the Director in favour of Uma Shankar Prasad inasmuch as the objection of Uma Shankar Prasad was u/s 12(A)(a) of the Act, whereas the application filed by the respondent no. 5 was u/s 10(2) and (4) of the Act. Section 10-A of the Act reads as follows :

10-A. Bar to objection. - No question in respect of any entry made in the map or registers prepared u/s 9 or the statement of principles prepared u/s 9A relating to the Consolidation area, which might or ought to have been raised u/s 10 but has not been raised, shall not be raised or heard at any subsequent stage of the Consolidation proceeding.

8. Lastly, it was submitted that even assuming that, in the facts and circumstances of the present case, the Director (Respondent No. 2) in exercise of the power of revision and reference, as prescribed u/s 35 of the Act, had power to entertain the application of the respondent no. 5, even in that case he alone could exercise that power and decide the matter. He had no power to remit it back to the Consolidation Officer for a decision on merit. In support of his submission the Learned Counsel has referred to two Division Bench judgments of this Court reported in 1984 BBCJ 140 : 1984 PLJR 310 (Jagarnath Thukur and anr. Vs. The State of Bihar and ors.) and Shyam Bihari Upadhyay and Others Vs. State of Bihar and Others,

9. This matter has been placed before a Division Bench pursuant to an order dated 3.12.1987 for adjudication whether the Director of Consolidation can exercise his power u/s 35 of the Act, after confirmation of the scheme, delivery of possession and grant of certificate of transfer u/s 15 of the Act. From a bare reference to the facts and ratio laid down in the aforementioned judgments it is apparent that this point has already been decided.

10. In that view of the matter and, particularly, in the facts and circumstances of the present case, do not feel any necessity of deciding the said question afresh in this case as this writ application can be allowed on the sole ground that the

Director of Consolidation (Respondent No. 2) has proceeded completely on misconception of the fact in passing the impugned order on the assumption that there was already an earlier order passed by him giving the respondent no. 5 a liberty to file a suitable objection before the appropriate authority, which is not a correct position. The liberty was given vide an order in Revision Case No. 679 of 1976 which was filed by Uma Shankar Prasad and not Fateh Bahadur Sinha (Respondent No. 5). In that view of the matter, the impugned order is fit to be quashed on this ground alone. Accordingly, the writ application is allowed and the impugned order dated 13.1.1982, as contained in annexure 3 to the writ application, is hereby quashed. But, in the circumstances, there will be no order as to costs.

N. Pandey, J.

I agree.