

(1998) 05 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 5931 of 1987

Dudheshwar Giri and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 14-05-1998

Acts Referred:

Consolidation Act, 1948 — Section 10(2), 10A, 35

Citation : (1998) 3 PLJR 86

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Ganga Prasad Roy and Ras Bihari Thakur, for the Appellant; K.N. Choubey and Tuhin Shankar, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The Petitioners have challenged the revisional order dated 10th September, 1987, passed In Revision Case No. 1911/85, whereby and where under the revision application preferred by the Respondent No. 5 was allowed giving declaration of right and title in his favour.

2. The dispute relates to right, title and possession over the land appertaining to R.S. Khata Nos. 43 and 44 corresponds to old C.S. Khata Nos. 44, 45, 46 and 49 situated in mouza-Makuria, Thana No. 59, Rajpur Anchal in the district of Bhojpur.

3. The case of the Petitioners, in brief, is that the land appertaining to R.S. Khata Nos. 44 and 46 belonged to Milkidar, Devan Gosai and others, as was recorded in the records of rights. Babu Bhawani Shanker Tiwary was the landlord. The land appertaining to C.S. Plot No. 45 was recorded in the name of Mithu Tiwary, whereas the land appertaining to C.S. Khata No. 49 belonged to landlord Jawahar Lohar.

So far as lands appertaining to C.S. Khata Nos. 45 and 49 are concerned, the Petitioners obtained the same from heirs of recorded landlord I.e. heirs of Mithu Tiwary and Jawahar Lohar respectively. With respect to land appertaining to Khata No. 44, it is stated that it was auction sold in pursuance of Execution Case

No. 280 of 1938 when it was purchased by Ram Rekha @ Gosai Ghanshyam Gosai. After death of said Ram Rekha Gosai @ Ghanshyam Gosai his widow Chandradipta Kuer executed a sale deed on January, 1944 in the name of four sons of Devi Gosai, namely, Ram Keshwar Gosai, Ram Billash Gosai, Ram Singer Gosai and Ram Bichar Gosai, ancestors of Petitioners.

After revisional survey, the records with respect to aforesaid C.S. Khata Nos. 44, 45 and 49 were prepared in the name of Petitioners. Thereafter, no objection was raised by any person against the records of right finally published in the year 1969 after revisional survey. When operation of consolidation proceeding started in the area, no person including the contesting Respondents preferred any objection u/s 10(2) of the Consolidation Act. Draft Chak was published on 8th December, 1973 and on final publications and creation of Chaks, certificates of transfers were issued on 8th April, 1976, Delivery of possession and confirmation of possession were also given. Even at that stage, no objection was preferred by any person including Respondent No. 5.

5. The grievance of the Petitioners is that after 12 years, the Respondent No. 5 straightway preferred an application u/s 35 before the Director of Consolidation wherein impugned order was passed on 10th September, 1987 giving declaration of right and title in favour of Respondent No. 5. He was declared as a co-sharer of the land in dispute.

6. The stand of the Respondent No. 5 is that he had no knowledge relating to revisional survey or consolidation operation started in the area, he being out of station. After return to the village, when the Respondent No. 5 came to know of the aforesaid fact, the mouza having confirmed by that time, the petition u/s 35 was preferred.

According to the counsel for Respondent No. 5, there being no bar to prefer an application u/s 35 of the Act straightway and the bar u/s 10A of the Act being not applicable at that stage, the revisional authority, being well within jurisdiction, decided the claim on merit, after hearing the parties.

7. Section 35 of the Consolidation Act fell for consideration before this Court in different cases. In the case of Sheo Kumar Thakur v. State of Bihar and Ors. 1985 P.L.J.R. 986 the learned Single Judge while held that the bar u/s 10A is not applicable in a proceeding u/s 35, it observed that the revisional authority can decide a case on merit if there is irregularity in the proceeding or illegality, impropriety in any order passed by subordinate authority.

8. A Division Bench in the case of Hari Narayan Singh and Ors. v. State of Bihar and Ors. 1997 I All P.L.R. 302 held that there being non obstinate clause in Section 35, it cannot be, presumed that the Legislature purported to give a wide power to the Director of Consolidation to ignore any bar of limitation provided for filing objection, appeal etc. at different stages and to give it an overriding effect even on Section 10A providing bar from raising any objection at any subsequent stage of proceeding, if not raised within the stipulated time.

9. In the case of Subedar Mahto v. The Joint Director of Consolidation and Ors. in C.W.J.C. No. 5447/87, disposed of on 13th May, 1998 (unreported), [now reported in 1998 (3) PUR 47] this Court taking into consideration the aforesaid decisions and provisions laid down u/s 35 held that the Director can interfere in a matter u/s 35 only if there is irregularity in a proceeding or the order passed by subordinate authority is incorrect, illegal or improper. In absence of such illegality in a proceeding or illegality or impropriety of any order, the Director cannot exercise his power to pass an order, as he thinks fit and proper u/s 35 of the Act.

10. In the present case, the objection was not preferred any time and was so preferred after more than 12 years directly before the Director u/s 35 of the Act. The Petitioners neither explained the delay nor the revisional authority decided the issue as to whether the application was liable to be entertained after such delay or not. It is not the case of Respondent No. 5 that there was any irregularity in the proceeding. There was no order passed by any subordinate authority and thereby there was no occasion for the Director to look into the legality or propriety of such order.

11. In the aforesaid circumstances, I hold that the Director had no jurisdiction u/s 35 of the Act to entertain an application straightaway to decide a case on merit relating to right and title, de novo, on appraisal of evidences on record. Such order is completely without jurisdiction.

12. Accordingly, I set aside the impugned revisional order dated 10th September, 1987 with liberty to the aggrieved person to move before a Civil Court of competent jurisdiction for appropriate relief, if permissible under the law.

13. The writ petition stands disposed of with the aforesaid observations. However, there shall be no order, as to costs.