

(1988) 09 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2473 of 1982

Gauri Shanker Singh and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 10A, 35

Citation : (1988) PLJR 673

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : Deogovind Pd., Bisheshwari Prasad and Bijay Kumar Sinha, for the Appellant;

Judgement

S.B. Sanyal, J.—It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable to remove injustice and is expected to do so." Thus, observed Thakkar, J. in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . In this case the petitioners have knocked the door of Civil Court, Revenue Court as also Consolidation Court and the learned counsel submits that the petitioner has been denied justice on some pretext or the other. The petitioners want Annexure-1, the order of the Consolidation Officer, and Annexure-2, the order of the Joint Director, should be quashed and the land which they have purchased by registered document on 8.7.1963 be held to be in their possession with perfect title and not of State of Bihar in whose name the land has come to be recorded in the recent survey.

2. An area of 1.65 acres comprising plots no. 113, 115 and 154 appertaining to C.S. Khata no. 9 and R. S. Khata no. 51 with R. S. Plots no. 151, 142 and 159, was purchased by registered deed on 8.7.1953 from the heirs of the recorded tenant and by such purchase the names of the petitioners were mutated in the Sherishta office and they have been granted rent receipt therefor. Unfortunately,

during the course of recent survey the petitioners could not appear but subsequently initiated a proceeding u/s 109 of the Bihar Tenancy Act which section however, being repealed the proceeding had to be dropped. The petitioners thereafter instituted suit against the State Government after service of notice u/s 80 being Title Suit no. 132 of 1975 but it abated because of the Consolidation proceeding. The petitioners, however, had filed an application on 3.3.1975 before the Consolidation Officer u/s 10 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 which was registered as Case no. 8/649 of 1975-76. The Consolidation Officer noticed that the title suit between the parties is pending and the prayer that he should held up the proceeding is impermissible. Instead of going into the merit of the case the Consolidation Officer held that as per the Government direction his decision cannot await the decision of the civil court as such the entry in the name of the State Government should be maintained. It is true that the petitioners did not prefer an appeal but seem to have pursued the civil suit and when civil suit ultimately abated they filed an application u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

3. The Joint Director noticed the registered sale deed. He also noticed the documents filed by the petitioners, namely, Register-II, the old Khatian, which would be apparent from paragraph 4 of his order. He, however, held that since no appeal was preferred and the scheme has been confirmed in view of the provisions of section 10A , the petitioners are not entitled to any relief.

4. Learned counsel argued that everything said and done how can the land vest in the State of Bihar. It is not the case of the State that the land belonged to the ex-landlord and on vesting of the State in the State of Bihar, it came in exclusive possession of the State. This argument, if it would have been put forward, would have been belied by the old survey records since it was in possession of the vendors of the petitioners the raiyats from whom the petitioners are said to have purchased and are in possession. It is not the case of the State that the recorded tenant having died without leaving any heir the property vested in the State by way of escheat. No court really decided the merit of the case and each Court defeated the claim of the petitioners on some technical ground. Thus injustice was legalised.

5. I would, in this connection, draw the attention of the Joint Director to the decision to the case of S. B. Upadhyay v. The State of Bihar (1985 BBCJ 176 : 1985 PLJR 43). In this case the Court held that section 10A is not a bar on the power of the Director u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. He is vested with the supervisory power. At one place their lordships have said "It is well known that in many cases for some reasons entries in respect of plots are made in favour of persons who have neither title nor possession over such plots and the rightful owner who is in possession might not have filed objection within the time prescribed due to some unfortunate and compelling reasons. In such cases, if it is held that the Director

cannot interfere it will amount to perpetuating a wrong done to a person". In my opinion it is exactly what has happened in this case and, therefore, the Joint Director is directed to reconsider the case bearing in view the judicial principles indicated above. The case is remanded back to the Joint Director to dispose it of in accordance with law preferably within six months from the date of receipt of this order. The impugned Annexures 1 and 2 are quashed. There will be no order as to costs.