

(1979) 08 PAT CK 0002

In the Patna High Court

Case No : Criminal W.J.C. No. 134 of 1978

Hirdayanand Singh @ Hirdya Singh

APPELLANT

Vs

Ramnagina Singh and Others

RESPONDENT

Date of Decision : 02-08-1979

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 15, 26A, 3, 3(1), 4
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 145, 146, 146
General Clauses Act, 1897 — Section 8, 8(1)

Citation : (1980) PLJR 103

Hon'ble Judges : Uday Sinha, J;S.K. Choudhuri, J

Bench : Division Bench

Advocate : Pranab Chatterji and Bibhuti Pandey, for the Appellant; K.D. Chatterji, Ganga Prasad Roy for the State, Janesewar Singh and Arun Kumar Singh for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Choudhuri, J.—In this writ application filed under Article 227 of the Constitution of India the petitioner challenges the order passed by the Sub-divisional Officer (respondent no. 2) dated 6-7-78 contained in Annexure 1 Initiating a proceeding u/s 147 the Code of Criminal Procedure, show cause notice issued to the petitioner dated 17-2-72 (Annexure 2) and the order contained in Annexure 4 passed by respondent no. 2 dated 18-8-78 rejecting the preliminary objection raised by the petitioner that in view of Section 4(b) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act XXII of 1956) (hereinafter called the Consolidation Act) the initiation of the proceeding u/s 147 was without jurisdiction and could not proceed. The dispute related to a portion of plot no. 355 appertaining to R.S. Khata No. 134 in village Ghataya, Police Station Kudra, District Rohtas over which a right of user as rasta has been claimed by respondent no. 1. According to respondent no. 1 the

petitioner began interfering with the exercise of such right and therefore, an application was filed by respondent no. 1 before the Sub-divisional Officer for taking action u/s 147 of the Code of Criminal Procedure. It appears that in pursuance of the said application the present proceeding was initiated on 6-7-78 in which show cause notice contained in Annexure 2 was issued to the petitioner. The petitioner accordingly filed his show cause. A preliminary objection was raised by the petitioner before the Sub-divisional Officer challenging his jurisdiction to initiate the present proceeding and also to continue with the same. The aforesaid preliminary objection having been rejected by an order contained in Annexure 4 the petitioner has come up to this Court.

2. It has been stated in the writ application that Awadh Bihari Singh, father of respondent no. 1, who was a member of the Advisory Committee constituted u/s 7 of the Consolidation Act, raised an objection claiming that a pathway may be constructed through plot no. 355 so as to connect plot no. 358 with plot no. 213. It has been further stated that the consolidation officer, Kudra after hearing the parties rejected the claim of the father of respondent no. 1 by order dated 29-7-77, a copy of which has been made Annexure 3 to the writ petition. Annexure 3 shows that the authorities found that plot no. 355 is situated in between the two plots viz. plot no. 353 and 354 over which houses stand and plot no. 355 which has been claimed to be petitioner's Sehan Land which according to the petitioner may be required for extension of his house. In that view of the matter the claim of the father of respondent no. 1 for construction of a pathway through plot no. 355 was rejected. As to what is the present stage of the consolidation proceeding has not been disclosed in the counter affidavit.

3. Mr. Pranab Chatterji, in support of this writ application contended that in view of the order contained in Annexure 3 passed under the Consolidation Act by the consolidation officer, the initiation of the present proceeding u/s 147 Cr.P.C. was without jurisdiction. Learned counsel drew our attention to Clauses (b) and (c) of Section 4 of the Consolidation Act. Consequences which would ensue upon the publication of the notification under Sub-section (1) of Section 3 have been enumerated in Clauses (a), (b) and (c) of Section 4, Clause (a) is not relevant and therefore I quote Section 4 leaving the said clause as also the first four provisions to Clause (c).

4. Effect of notification u/s 3(1) of the Act upon the publication of the notification under Sub-section (1) of Section 3 in the official gazette the consequences, as hereinafter set forth, shall subject to the provisions of the Act, from the date specified in the notification till the close of the consolidation operation; ensue in the area to which the notification relates namely;

(a) x x x

(b) no suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted:

Provided that nothing in this clause shall apply to any proceeding u/s 48(E) of the Bihar Tenancy Act, 1885 (Act. 8, 1885) and to the proceedings relating to recording the titles of Bataldars:

(c) every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated:

x x x

Provided further that nothing in this section shall apply to any proceedings under Chapters XI and XII of the Code of Criminal Procedure 1898 (Act V of 1898) Section 48E of the Bihar Tenancy Act (Act VIII of 1885) and the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).

(Emphasis supplied).

Clause (b) bars filing of any suit or legal proceedings in respect of any land during the pendency of the consolidation proceedings, whereas Clause (c) abates a pending suit or proceedings filed in relation to matters stated therein. Learned counsel contended that the last proviso to Clause (c) quoted above will have reference only to that clause and not to Clause (b). This argument has merely to be stated to be rejected. On plain reading of the relevant portion of Section 4 quoted above; it appears clear that the legislature has used the words "this clause" in the proviso to Clause (b) meaning thereby that the proviso is with reference to that clause alone and not to the whole section. In the last proviso to Clause (c) which has been quoted above; the words "this section" have been used making it clear that the said proviso is a proviso to Section 4 as a whole which contains Clauses (a), (b) and (c). This last proviso makes it abundantly clear that Section 4 has no application to a proceeding under Chapter XI and XII of the Criminal Procedure Code, 1898 (Act V of 1898). Thus this proviso excludes any proceeding under the aforesaid two chapters of the Criminal Procedure Code from being affected by the consequence enumerated in the different clauses of Section 4 which would ensue on the publication of the notification under Sub-section (1) of Section 3. It may be stated here that Section 147 is included in Chapter XII of the Criminal Procedure Code 1898. In that view of the matter it is difficult to hold that the Subdivisional Offices had no jurisdiction to initiate a proceeding u/s 147 Cr.P.C. In view of Clauses (b) and (c) of Section 4 of the Consolidation Act.

However, I may point out that u/s 15 of the Consolidation Act the provision for grant of a certificate by the Consolidation Officer to every raiyat in the prescribed form containing, the prescribed particulars have been made and that section

further makes the grant of such certificate as conclusive proof of title of such raiyat to such holding. Section 26A makes a provision for issue of a notification in the official gazette by the State Government stating that the consolidation operation have been closed in the unit. In a recent Full Bench decision of this court in (1) C.W.J.C. 1361 of 1977 (Ramkrit Singh and others versus the State of Bihar disposed of on the 9th March, 1979) in which the vires of the Consolidation Act was challenged, while upholding the Consolidation Act it has been held with reference to Section 4 and 26A as follows:

When the section says that the ensuing consequences are till the close of the consolidation operation we cannot nullify the words aforesaid by saying that the consequences are for all times to come. It is obvious therefore, that on the close of consolidation operation in a village or area the abated suits would revive. But the revival of those suits would not create any problems as suits will have to be decided in conformity with the decisions arrived at in the consolidation proceedings in so far as the rights or interest in any and covered by the consolidation proceedings is concerned. If this interpretation is accepted it would be seen that the suggested harshness or injustice disappears.

The Argument of the learned counsel for the petitioner that there may be inconsistent order, viz. one in the consolidation proceeding and the other in 147 Cr.P.C. proceeding, therefore, has no merit as the full Bench decision referred to above has clarified the anomaly. According to the said clarification, effect has to be given in a suit or proceeding the right or interest which has already been decided in the consolidation proceeding for which a certificate has been granted u/s 15 of the Consolidation Act and in conformity with the same a suit or proceeding has to be disposed of. But unfortunately for the petitioner the last proviso quoted above expressly excludes the applicability of Section 4 of the Consolidation Act in any proceedings under Chapter XI and XII of the Code of Criminal Procedure 1898. That being so the present proceeding initiated u/s 147 of the new Code (which corresponds to the same section of the old Code) is neither affected by Sub-section (b) or (c) of Section 4 of the Consolidation Act.

However this position does not create any difficulty as a suit can always be filed by the party aggrieved by an order passed u/s 145 or 146 or 147 of the Code. I have already pointed out above that such a suit as per the Full Bench decision aforesaid "will have to be decided in conformity with the decision arrived at the consolidation proceedings in so far as the right or interest in any land covered by the consolidation proceeding is concerned".

4. Now I come to the next question argued by Mr. Pranab Chatterji that the last proviso to Clause (c) of Section 4 refers to Chapter XI and XII of the Code of Criminal Procedure 1898. Learned counsel pointed out that this was inserted by way of amendment by the Bihar Act 27 of 1965 when the new Criminal Procedure Code of the year 1973 had already come into force on 1-4-74. Learned counsel therefore, contended that the Code of Criminal Procedure 1973 not having been mentioned in the said proviso, the present proceeding u/s 147

Cr.P.C., which has been initiated under the new Code, cannot proceed.

The learned Advocate General who was called upon to assist us in this regard pointed out that when the bill was prepared the old Code was in force and by the time it was published in the gazette and became an Act, the new Code had come into force. He contended and in my opinion, rightly, that mention of the repealed Criminal Procedure Code 1898 does not affect the position as u/s 8 of the General Clauses Act, in the last proviso aforesaid in place of the Chapter XI and XII of the Code of Criminal Procedure 1898 (Act V of 1898) corresponding Chapters of the Code of Criminal Procedure 1973 (Act II of 1974) have to be read. I may read Sub-section (1) of Section 8 of the General Clauses Act 1897 which runs thus:

8(1) Where this Act or any (Central Act) or Regulation made after the commencement of the Act repeals and re-enacts, with or without modification any provision of a former enactment, then reference in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

It is needless to cite any authority in support of the contention of the learned Advocate General. I may only mention that the argument of the learned counsel for the petitioner over looked the basic distinction between incorporation of one statute in another and a mere reference to or citation of one statute in another. In the former the repeal or amendment or re-enactment does not affect the provision which has been incorporated in the statute, whereas in the later case Section 8(1) of the General Clauses Act applies. The present case being of the later type, Section 8(1) applies. The said contention, of the learned Advocate General in view of the aforesaid Section 8(1) of the General Clauses Act, has therefore, to be accepted.

5. Apart from pointing out Section 8 of the General Clauses Act the learned Advocate General's argument was that the present proceeding would not come u/s 4(c) of the Consolidation Act as in a proceeding u/s 147 Cr.P.C. declaration--of any right, title and interest in any land, which is within the exclusive domain of the Consolidation Officer in view of Clause (c) of Section 4, is not necessary. According to him the two proceedings are completely different in nature. Similarly he pointed out that under Clause (b) of Section 4(a) suit or proceeding shall not be entertained by any court in respect of any land covered by the consolidation proceeding. The learned Advocate General argued that a bar of temporary abatement of a suit or proceeding has been made in respect of legal proceedings being entertained with reference to declaration of any right or interest in any land Covered by the consolidation proceedings but a proceeding u/s 147 Cr.P.C. has been excluded expressly under the last proviso to Section 4(c) from being attracted under it. He referred to Chapter XI and XII of the old Code as also the corresponding chapter of the new Code. Chapter XI of the old Code contains only one section, namely, Section 144, whereas Chapter XII contains Section 145 to 148. In the new Code these sections beginning from Section 144

to Section 148 have been included in part C and D of Chapter X which deals with the maintenance of public order and tranquility. This Chapter X is divided into four parts. Part A deals with unlawful assembly, while part B deals with public nuisance; part C contains only Section 144 and part D contains Section 145 to 148. According to the learned Advocate General a proceeding under part C, which contains Section 144, cannot in the true sense be said to be a proceeding as contemplated in Clause (b) and (c) of Section 4 of the Consolidation Act. Section 4(b) and 4(c) deal with declaration of right or interest in any land. Section 144 Cr.P.C. does not determine such a right. Similarly it was argued by the learned Advocate General that a proceeding initiated under part D which deals with dispute in immoveable property and contains Section 145 to 148 cannot be said to be a proceeding like the one covered under Clauses (b) and (c) of Section 4 of the Consolidation Act. Learned Advocate General pointed out that the provision in Chapter X of the new Code are provisions for maintenance of public order and tranquility. He may be right in his aforesaid submissions but in my opinion, it is not necessary to go into the intention of insertion of the proviso aforesaid as the language of the said proviso is very clear and in unambiguous language excludes proceedings under Chapters XI and XII of the Code of 1898 and proceedings under some other acts mentioned therein from being affected by the main Section 4 of the Consolidation Act. In view of the discussions made above it cannot be said that initiation of proceeding u/s 145 or Section 146 or 147 would be without jurisdiction during the pendency of a consolidation proceeding or after its termination. These provisions are provisions of emergent nature to avoid any breach of peace which is imminent.

6. I may discuss a decision of this Court, which was referred to by the learned counsel for the petitioner, in (2) Jai Prakash Rai and Another Vs. Bans Lal and Others, . Relying upon this decision it was contended by learned counsel for the petitioner that initiation of the present proceeding u/s 147 Cr.P.C. was without jurisdiction. In the reported case, a proceeding u/s 144 Cr.P.C. was initiated which was later on converted into a proceeding u/s 145 and the lands were ordered to be attached under Sub-section (4) of Section 145. At that time a bataldari case between same parties in respect of the disputed land was pending before the competent authority. The said bataldari case was obviously u/s 48(E) of the Bihar Tenancy Act. Reliance was placed on behalf of the petitioner of that case to Sub-section (13) of Section 48 (E) of the Act in support of the contention that initiation of a proceeding u/s 145 Cr.P.C. was without jurisdiction. The said provision is quoted in paragraph 6 of the reported judgment which reads thus:

Save as expressly provided in this Act; no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under Sub-section (1) by the Collector, provided that nothing in this sub-section shall be deemed to affect the powers of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.

The decision has been given on the interpretation of the aforesaid provision and it was held in the interpretation of the said provision that drawing up of a proceeding u/s 145 Cr.P.C. was illegal and without jurisdiction. The reported case has, in my opinion; no application to the present case, because here we are concerned with the interpretation of Section 4 of the Consolidation Act specially the last proviso to Clause (c) which I have quoted above. There is no similarity in the language used in Sub-section 13 of Section 48 (E) of the Bihar Tenancy Act and the proviso under consideration. The decision in Jai Prakash Rai's case does not, therefore, help the petitioner.

In the result there is no merit in this application and it is accordingly dismissed but in the circumstances of the case there will be no order as to costs.

Uday Sinha, J.

I agree.