

(1983) 11 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 902 of 1980

Jagarnath Thakur and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-1983

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(1), 11(1)
Bihar Tenancy Act, 1885 — Section 112A

Citation : (1984) PLJR 310

Hon'ble Judges : R.N. Prasad, J; Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Lakshman Saran Sinha, Damodar Prasad Tiwary and Gopal Chandra Prasad, for the Appellant; Ram Balak Mahto (Addl. A.G.) and Mr. S.K.P. Sinha (J.C. to Addl. A.G.) for respondents 1 to 3 and Mr. Surajdeo Singh for respondents 5 and Mr. Harendra Prasad Singh No. 1 for respondents 6, 9 and 10, for the Respondent

Judgement

Nagendra Prasad Singh, J.—This writ application has been filed on behalf of the petitioners for quashing the order dated the 25th July, 1978, passed by the Deputy Director of Consolidation, a copy whereof is Annexure "7" to the writ application. The revision filed against the aforesaid order before the Director of Consolidation was dismissed on the 27th December, 1979, a copy whereof is Annexure "8" to the petition. The dispute is in respect of revisional survey plot No. 677 of khata No. 36 measuring 55 dec. The corresponding cadastral survey No. was 414 of khata No. 53. According to the petitioners, as early as on 23rd February, 1928, the then landlords settled the aforesaid land with one Gopal. As Gopal died issueless, his brother Nema came in possession of the said plot. On the 14th August, 1935, Nema Sao executed a registered sale deed in favour of one Kashi who came in possession. On the 14th December, 1939, an order u/s 112A of the Bihar Tenancy Act was passed in respect of the said plot in the name of kashi. A copy of that order is Annexure "5". Thereafter Bachan and Lochan, sons of Kashi, transferred the plot in question by a registered sale deed dated

the 14th April, 1949, in favour of Kunj Behari Thakur, the father of the petitioners. Since then, the case of the petitioners is that their father and they are in possession thereof. During the revisional survey the plot has been entered in the name of the petitioners. The revisional survey was finally published on the 10th June, 1970. Rent receipts are also being granted to the family of the petitioners by the then ex-landlords as well as the State of Bihar after vesting of the estates.

2. With the object of effecting consolidation of holdings the State Government issued a notification declaring its intention to make a scheme for consolidation of holdings in the village in question. In the year 1974 a notice under sub-section (1) of Section 10 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, (hereinafter referred to as "the Act") was published saying that the register prepared under sub-section (2) of section 9 and the statement of principles prepared u/s 9A shall remain published between the 9th January, 1974 and the 8th February, 1974, and, any person could file an objection in respect of the said publication. A copy of the notice in respect of the plot in dispute along with other plots is Annexure "3". It has been stated that no objection was filed and thereafter by a notice u/s 11(1) of the Act, the draft scheme for consolidation of the holdings, was notified. In that notice again it was stated that the aforesaid draft scheme for consolidation shall be available for inspection between the 12th January, 1976, and the 11th February, 1976, and any person can file objection in respect of the said draft scheme. A copy of this notice is Annexure "4". From the aforesaid notice it appears that Chak No. 359 was made consisting of plot Nos. 677 and 255. No objection was filed to that draft scheme within the period prescribed before the Assistant Consolidation Officer.

3. On the 17th May, 1977, an objection was filed on behalf of respondents 5 to 13 before the Deputy Director of Consolidation, a copy whereof is Annexure "C-6" to the counter affidavit filed on behalf of respondent Nos. 6, 9 and 10. In that petition it was stated that in the village in question there was ghairmazarua Pokhar in which the villagers used to take their cattle for washing and cleaning. It was further stated that for the last two years the father of the petitioners had cultivated the said Pokhar and had got it entered in his name in the records. A prayer was made that necessary orders be passed directing the petitioners from not interfering with the right of the people. On the basis of that petition the Deputy Director has passed the impugned order dated the 25th July, 1978, saying that plot No. 677 was a public land which could not have been settled by the ex-landlords. He further gave a direction that plot No. 677 should be excluded from the Chak of the petitioners and be included in the ghairmazarua-am-Khata.

4. On behalf of the petitioners it was submitted that the Deputy Director had no authority to pass the impugned order and it was without jurisdiction and as such liable to be quashed by this Court.

5. Section 3 of the Act vests power in the State Government to declare its intention to make a scheme for consolidation of holdings in any particular area with an object of effecting consolidation of holdings for the purpose of better cultivation of lands. Section 8 of the Act requires that soon after publication of the notification u/s 3 of the Act an up to date record of rights in respect of all lands comprised in the notified area be prepared. Section 9 is a provision regarding preparation of the record of rights and the map of the village. Sub-section (2) of section 9 is in two parts. Section 9(2)(i) of the Act requires a register of lands belonging to raiyats to contain details mentioned therein whereas section 9(2)(ii) requires a register of lands to be prepared in respect of the lands which are for public purposes. Section 9A of the Act requires the Assistant Consolidation Officer to prepare a statement in the prescribed manner setting forth the principles to be followed in carrying out the consolidation operation in the unit. In view of section 10(1) the register prepared under sub-section (2) of section 9 and statement of the principles prepared u/s 9A have to be published in the manner prescribed and have to remain published for not less than thirty days. Sub-section (2) of Section 10 is as follows:--

Any person may, within 45 days of the date of the publication of the register under sub-section (1), file before the Assistant Consolidation Officer, objection in respect thereof, disputing the correctness and nature of entries in the records or in the statement of principles.

Thereafter in view of sub-section (3) the Assistant Consolidation Officer has to hear the persons interested and to decide the objection. In view of sub-section (6) of section 10 any person aggrieved by the order of the Assistant Consolidation Officer or the Consolidation Officer may, within thirty days of such order, file an appeal before the Assistant Director of Consolidation, whose decision, "except as otherwise provided by or under this Act, shall be final." Section 10A, which is relevant for the present case, is as follows:--

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 be raised or heard at any subsequent stage of the Consolidation proceeding.

On a plain reading of section 10A no question in respect of any entry made in the map or the register prepared u/s 9 or statement of principles prepared u/s 9A, which might or ought to have been raised u/s 10 but has not been raised, can be raised or heard at any subsequent stage of the consolidation proceeding.

6. While challenging the validity of the impugned order of the Deputy Director it was submitted on behalf of the petitioners that none of the respondents had filed any objection under sub-section (2) of section 10 to the register prepared under sub-section (2) of section 9 showing the plot in dispute as raiyati land of the petitioners, in view of the bar placed by section 10A they were not entitled to raise the same objection before the Deputy Director of Consolidation.

7. In the present case, as I have already mentioned above, it is an admitted position that the register was prepared under sub section (2) of section 9; objection was invited under sub section (2) of section 10 but no objection was filed in respect of the entry of plot No. 677 in the name of the petitioners, and, as such the provision of section 10A attracted in the facts and the circumstances of the case.

8. Learned Additional Advocate General and the counsel appearing for respondent Nos. 6, 9 and 10, however, submitted that in view of the provision of section 10-D the Deputy Director, under the" circumstances mentioned in that section, can direct republication of the register of lands giving opportunity to the persons concerned to file objection. Section 10-D is as follows:--

On being satisfied that in the register of lands published under subsection (1) or corrected under subsections (3), (4), (5), or (6) of section 10, a substantial number of raiyats or under raiyats for sufficient and unavoidable reasons could not avail of the opportunity to place their claims under sub-section (2) of section 10 the Deputy Director of Consolidation, for reasons to be recorded in writing, may order the re publication of the register of lands or the statement of principles or both again in the manner prescribed. Any person may within twenty days of such republication file before the Assistant Consolidation Officer objections in respect thereof disputing the correctness and nature of entries in the register of lands or in the statement of principles or in both, notwithstanding the provisions of section 10A.

I may point out that this section was introduced by the Amending Act 35 of 1982 and it was not in the Act on the relevant date, that is, on the 25th July, 1978, when the Deputy Director passed the impugned order. Apart from that, on a plain reading section 10-D is not applicable where the grievance is made in respect of any particular entry. That section, in my view, is applicable to cases where substantial number of raiyats or under-raiyats for sufficient and unavoidable reasons could not avail of the opportunity to place their claim under sub-section (2) of section 10, then the Deputy Director, for reasons to be recorded in writing, may order republication of the register of lands giving opportunity to persons concerned to file objection. It is remarkable that the Deputy Director has exercised the power in the manner which cannot be held to be within the scope of section 10-D of the Act. u/s 10-D of the Act the Deputy Director could have ordered republication of the register of lands relegating the position of consolidation to the stage of Sec. 10(2), but, in the instant case he has himself passed an order Saying that plot No. 677 be entered as ghairmazarua Khata. Although section 10-D was not in force on the date the impugned order was passed, I have considered the scope of section 10-D because at one stage I was of the view to set aside the impugned order and direct the Deputy Director to exercise his power u/s 10-D which is admittedly in force today. But, as I have pointed out, that power u/s 10-D cannot be exercised when the grievance is made in respect of an entry. In such a situation there is no escape from the

conclusion, in the facts and the circumstances of the case, that the bar u/s 10-A shall operate and the Deputy Director could not have entertained an objection on behalf of the respondents aforesaid when no such objection was filed under sub-section (2) of section 10 of the Act.

9. Similar view has been expressed by the Supreme Court in the case of Gafoora and Another Vs. Deputy Director of Consolidation, Meerut and Others, in connection with the U.P. Consolidation of Holdings Act. In that Act section 11-A is more or less akin to section 10-A of the Bihar Act which bars objection in respect of the claim to land which has not been raised u/s 10 or which might or ought to have been raised under that section but has not been so raised.

10. It was then submitted by the learned Additional Advocate-General that in view of section 35 of the Act the Director of Consolidation could have passed an order as the one passed by the Deputy Director. Section 35 of the Act is as follows:--

The Director of Consolidation may of his own motion or on the application of any party or on reference being made by any subordinate authority, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceeding; or, as to the correctness, legality or propriety of any order passed by such authority in the case or proceeding, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

Section 35 vests supervisory power in the Director of Consolidation, who may of his own motion or on the application of any party call for and examine the record of any case for the purpose of satisfying himself as to the regularity, correctness, legality or propriety of any order and can pass an order as he thinks fit. No doubt, the power u/s 35 is very wide which has to be exercised under the conditions mentioned therein by the Director of Consolidation, but, in the instant case, the power has been exercised by the Deputy Director and not the Director u/s 35 of the Act.

10. Apart from that, section 35 does not have a non obstante clause. As such, it is not easy to answer as to whether the provision of section 35 shall override section 10A of the Act. The matter would have been different if section 35 contained a clause saying "notwithstanding anything contained in the Act." I may point out that u/s 10-D, which has been introduced in the year 1982, the words "notwithstanding the provisions of section 10-A " are there.

11. Learned Additional Advocate-General, however, urged that there is no necessity of deciding in this case whether the bar u/s 10-A operates even on the power of the Director of Consolidation u/s 35, which might be considered in some other appropriate case. This attitude was taken by the learned Additional Advocate-General because the impugned order has not been passed by the Director of Consolidation in exercise of the powers u/s 35 of the Act. He has

simply refused to interfere with the order of the Deputy Director.

12. In the impugned order the Deputy Director has made a reference to sub-section (3) of section 34 saying that under that section he can pass the order in question. Subsection (3) of section 34 is as follows:--

Where powers are to be exercised or duties are to be performed by any authority under this Act or the rules made thereunder, such powers or duties may also be exercised or performed by any authority superior to it.

By the aforesaid sub section perhaps he meant that he could perform the duty of the Assistant Consolidation Officer being his superior authority. The Deputy Director overlooked the fact that even the Assistant Consolidation Officer after expiry of the period, in view of section 10A, could not have entertained an objection. That bar was applicable to his superior authority as well, including the Deputy Director.

13. In view of my finding that no objection having been raised by any person, including respondents 5 to 13, under sub-section (2) of section 10, the bar u/s 10A is applicable, the irresistible conclusion is that the Deputy Director could not have entertained the objection filed on their behalf and could not have passed the impugned order as contained in Annexure "7".

14. I may point out that the learned counsel appearing for the petitioners has submitted that the very objection of the respondents aforesaid was without any merit, inasmuch as the land in question had been settled as early as in the year 1928 and thereafter it has been transferred through registered sale deeds from time to time. He further pointed that the revisional survey was published in the year 1970 showing this plot as raiyati land of the petitioners and as such it was too late to urge that it is a pokhar merely on the ground that in the cadastral survey of the year 1895 there is a mention that on this plot there was a Chavacha. Although I have not discussed this aspect of the matter in detail, there is substance in the contention advanced on behalf of the petitioners in this respect as well. Accordingly, this writ application is allowed and the impugned orders, as contained in Annexures "7" and "8" are quashed. The parties shall bear their own costs.