

(2006) 10 PAT CK 0051

In the Patna High Court

Case No : Letters Patent Appeal No. 595 of 1997

Jagdish Mandal and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Limitation Act, 1963 — Section 10, 5, 9

Citation : (2007) 1 PLJR 19

Hon'ble Judges : Barin Ghosh, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Advocate : Yogendra Mishra, for the Appellant; Shashi Bhushan Singh for the Respondents No. 5, 8 to 11, for the Respondent

Judgement

Barin Ghosh & Ajay Kr. Tripathi, JJ.—On 12th August, 1975 a notice was sent to the raiyat acknowledged in the register of land prepared u/s 9 of the Act. Five years thereafter the appellants filed an objection thereto. An application for condonation of delay in filing the said objection was also filed which was allowed and the delay was condoned. The Assistant Consolidation Officer thereupon considered the objection and allowed the same. An appeal preferred before the Assistant Director of consolidation was dismissed. The revision application filed before the Director of Consolidation also failed. Thereupon the aggrieved party filed a writ petition which was allowed principally on two grounds, namely when the statute did not permit the Assistant Consolidation Officer to condone the delay in preferring the objection, the Assistant Consolidation Officer having no authority to condone could not condone the delay in filing the objection. The next ground as was urged and accepted was that in view of Section 10A of the Act, while the objection was not entertainable by the Assistant Consolidation Officer and the appeal was also not competent before the Assistant Director of Consolidation, the revision before the Director of Consolidation was also not competent in as much as such a revision is a step in consolidation which is barred by Section 10A of the Act. It is true that when the statute fixes a time-limit for a thing to be done within such time-limit, it must be done within such

time-limit and cannot be done beyond the same. The power to condone delay is a statutory power. Unless Section 5 of the Limitation Act by its own force is applicable and unless the statute authorizes user of power to condone the delay, the delay cannot be condoned. It appears to us that the proceeding before the Assistant Consolidation Officer was a proceeding before the Court in terms of Section 37A of the Act and accordingly Section 5 of the Limitation Act applied. In such view of the matter, the one and the only conclusion would be that the Assistant Consolidation Officer had power to condone the delay in filing the objection and to that extent the Court below was incorrect. Moreover, the obligation to file objection accrues only after the notice as directed by sub-section (1) of Section 10 of the Act has been published. Sub-section (1) of Section 10 directs publication of the notice in the manner prescribed with a further direction that the published notice shall remain published for not less than 30 days. The mode prescribed by Rule 6(d) of the Bihar Consolidation of Holdings Rules, 1958 directs that such notice is required to be published for a period of 30 days by beat of drum. There is no assertion in any of the records before us that any such publication had been made and accordingly time to file an objection did not start running at any point of time until before filing of the objection.

2. It has now been held by a Full Bench of this Court and thus the law stands settled that Section 10A does not stand in the way of a person aggrieved to prefer a revision application even without filing an objection u/s 10 of the Act. One can directly prefer a revision application. The reason as given by the Full Bench is that steps taken as mentioned in Section 10A are steps required to be taken to complete the consolidation proceedings and the power granted to the Director of Consolidation u/s 35 to entertain revision is not a step to conclude the consolidation proceeding, but to correct errors and miscarriage of justice crept in such proceeding.

3. In those circumstances we are of the view that the order under appeal is not sustainable and we set aside the same.

4. However, we have gone through the writ petition where it was the categoric assertion on the part of the writ petitioners that their ancestors got the property in question and the same is evidenced by documents of title relied upon by the writ petitioners. Similarly, in the objection filed by the appellants, their contention was that they acquired the property by purchase and the same is evidenced by conveyance. However, it does not appear that there is any finding by any of the authorities that, in fact, it is the objector who purchased but not the writ petitioners. The Director of Consolidation, as the revisional authority, proceeded on the basis that the objector is in possession in as much as the revenue records are in his name. The Act describes the raiyat not as the person obliged to pay rent and taxes to the Government for the land in question but as the person entitled to hold the land in question. There is no finding by any of the authorities that either the writ petitioners or the appellants had acquired right to

hold the land in question, and accordingly in the fitness of things, while we allow the appeal in the manner indicated above, we quash the orders passed by the Consolidation Officer, Appellate Authority as well as Revisional Authority and remit back the matter to the Director of Consolidation with a request to him to remit the matter down to the Assistant Consolidation Officer, if he is available, and, if not, to decide the matter in accordance with law and come to a conclusion with a definite finding that either the writ petitioners or the appellants were entitled to hold the land and not to be swayed by the revenue records.

5. In the event the matter is ultimately decided by the first authority under the Act, it goes without saying that it shall be open to the person aggrieved to approach the appellate authority as well as the revisional authority. This disposes of the letters patent appeal.