
(1996) 09 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 6218 of 1985

Jagu Mallah and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Citation : (1996) 09 PAT CK 0033

Final Decision : Allowed

Judgement

J.N. Dubey, J.—This writ petition is directed against the order dated 30.4.1985 of the Respondent No. 1, the Joint Director of Consolidation (Purnia), Patna.

2. It appears that the land in dispute was recorded in the names of the Petitioners in the statement of principles prepared u/s 9A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short "the Act"). The father of Respondent No. 4, Dudhraj Mallah filed objection u/s 10(2) of the Act, claiming that the land in dispute was settled by the ex-landlord in his favour by means of a sada Parwangi long ago and since then, he has been in possession thereof but his name was wrongly omitted from the revenue records. The Petitioners contested the objection claiming that in the Cadestral Survey Old Khata No. 161 was recorded in the names of Gaina Gorhi, Gujal Gorhi, Chaman Gorhi, Bhoodan Gorhi, Lalji Gorhi and Dhanu Gorhi, ancestors of the Petitioners. The land was neither abandoned, surrendered nor auction sold and, as such, the ancestors of the Petitioners continued in possession thereof as occupancy raiyats.

3. The Consolidation Officer, Tribeniganj, who heard the objection, allowed it vide his order dated 4.5.1982. The Petitioners filed appeal which was allowed by Respondent No. 2, the Deputy Director of Consolidation, Saharsa on 16.11.1984. Respondent No. 4 filed revision which was allowed by Respondent No. 1 on 30.4.1985. Feeling aggrieved the Petitioners have filed this writ petition.

4. Heard the learned Counsel for the parties and perused the record.

5. Learned Counsel for the Petitioners raised several points during argument but it is not necessary for me to consider all of them as the writ petition deserves to be allowed on a short point viz. Respondent No. 1 was not legally justified in setting aside the findings of fact recorded by Respondent No. 2. Respondent No. 2, after considering the entire facts and materials on record, had come to the conclusion that the Petitioners were land holders in possession of the land in dispute and were rightly recorded in the statement of principles prepared u/s 9A of the Act. It was further held that as ancestors of the Petitioners were tenure holder of the land in dispute, unless it was proved by father of Respondent No. 4 that the land was reverted back to the ex-landlord at any point of time, his claim that the same was settled by him in his favour by a sada Parwangi, cannot be accepted. In other words, according to Respondent No. 2, it was proved from the evidence on record that the ancestors of the Petitioners were tenure holder of the land in dispute and there was no material on record to show that the land in dispute reverted back to the ex-landlord at any point of time and, therefore, the claim of the father of Respondent No. 4, that the same was settled in his favour by ex-landlord by means of a sada Parwangi, cannot be accepted.

6. Respondent No. 1 while deciding the revision of Respondent No. 4 u/s 35 of the Act has reversed the findings of fact recorded by Respondent No. 2 in favour of the Petitioners. Respondent No. 1, in his revisional jurisdiction, had no power to set aside the findings of fact recorded by Respondent No. 2 in favour of the Petitioners, after considering the entire materials on record. My this view, finds support from a decision of the Supreme Court in Ram Dular Vs. Dy. Director of Consolidation, Jaunpur and Others, in which the Supreme Court while interpreting a similar provision of U.P. Consolidation of Holdings Act held:

It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root (sic root) of the matter, had been committed in recording the order or finding.

7. The Respondent No. 1 has traveled beyond his jurisdiction in setting aside the findings of fact recorded by the Respondent No. 2 and substituting his own finding de novo assessing the evidence on record.

8. In the result the writ petition succeeds and is allowed. The order dated 30.4.1985 of the Respondent No. 1, the Joint Director of Consolidation, Bihar (Annexure 1 to the writ petition) is quashed.

No order as to costs.