
(1997) 01 PAT CK 0056
In the Patna High Court
Case No : C.W.J.C. No. 5942 of 1985

Mohd. Muslim and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 13-01-1997

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(6), 12(2)

Citation : (1998) 1 BLJR 738

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Jha, J.—This writ petition arises out of proceeding relating to the preparation of register of land under the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956. The facts of the case shorn of unnecessary details are as follows.

Predecessor-in-interest of respondents 5 to 8 claiming sikmi rights in the lands in dispute filed an objection u/s 10(2) of the said Act registered as Case No. 19 of 1976 before the Consolidation Officer, Amarpur which was rejected on 2.7.76. The respondents did not prefer any appeal as provided u/s 10(6) of the Act. Instead, after long gap they filed fresh application u/s 12(2) of the Act before the Consolidation Officer. The Consolidation Officer observed that the dispute between the parties had already been decided and if the respondents were not satisfied they should have preferred an appeal. The present application u/s 12(2) was not maintainable. Accordingly, he rejected the application. Respondents thereafter moved the Deputy Director of Consolidation in appeal (Appeal No. 346 of 1978.79). The Deputy Director upheld the order of the Consolidation Officer and rejected the appeal. The Director in his impugned order however has allowed the respondents' claim. The petitioner have accordingly come to this Court challenging the said order (Annexure-4) in the present writ petition.

2. A perusal of the impugned order shows that the Joint Director did not approve the findings of the Consolidation Officer and Deputy Director rejecting the application/appeal preferred by the respondents without going into the merit. On merits, he held that there was no material to support the petitioners' case to the effect that the sikmi rights being claimed by the respondents had been surrendered by them. He also held that the disputed lands are in possession of the respondents. On these findings he allowed their claim.

3. Shri Ram Chandra Jha, Learned Counsel for the petitioners submitted that the claim of the respondents was barred by *res judicata*. He submitted that Section 35 of the Act no doubt confers plenary power on the revisional authority to decide disputes of the case notwithstanding the stage of the consolidation proceeding and the bar created u/s 10A of the Act is not applicable. But where the parties have litigated their respective claims and the aggrieved party has chosen not to appeal against adverse order/decision he cannot be allowed to raise the claim over and over again. Such an exercise would not only be barred by *res judicata* but also contrary to public policy. He pointed out that if this discretion were to be conceded to the revisional authority, he may be passing orders which would take away the effect of the previous adjudication resulting in anomalous and uncertain situations for the litigants. He submitted that the judgment of this Court, dwelling upon the power of the revisional authority u/s 35 of the Act in the case of *Shyam Bihari Upadhaya v. State of Bihar* 1985 PLJR 43. has no application.

4. None has appeared on behalf of the respondents to oppose the writ petition. Having considered the submissions of the Counsel for the petitioners I find sufficient substance in the same. From perusal of the different provisions of the Act so far as relevant for this case, it would appear that Section 10 provides for publication of register of lands and statement of principle, and disposal of objection as may be filed by the aggrieved land-holders thereto. It provides *inter alia* for appeal before the prescribed appellate authority. Section 11 lays down that after the objections, if any, u/s 10(2) of the Act have been disposed of the Assistant Consolidation Officer shall visit the village concerned after due notice and prepare a draft scheme for consolidation of holdings in accordance with the advice of the Village Advisory Committee and such raiyats as may be available for the purpose. Section 12 provides for publication of the draft scheme prepared u/s 11. It would thus appear that publication of register of lands and statement of principle u/s 10 and publication of draft consolidation scheme u/s 12 not only contemplate two different stages of proceedings but also relate to two different subject matters. While the former contemplates the stage of adjudication of claims with respect to the lands lying within notified area, the latter contemplates the stage when after objection filed against the entries in the register of lands have been disposed of and a draft consolidation scheme has been prepared. Section 12 enables an aggrieved person to file objection against the draft consolidation scheme. Any objection relating to the claim of right, title and interest in the lands, as such, is not supposed to be gone into once again at

that stage. It is only such objection which may be preferred against the "consolidation scheme" that can be filed u/s 12(2). Statute contemplates that any kind of claim/objection relating to right, title an interest in the lands should be decided at the earlier stage u/s 10.

5. Section 10A of the Act bars adjudication of any claim/objection "which might or ought to have been raised u/s 10" but has not been raised. It is while considering the import and scope of Section 10A that their lordships in the case of Shyam Bihari Upadhaya (Supra) held that the provision as contained thereunder did not override the powers of the revisional authority u/s 35. The present case however stands on different footing. As stated above, the respondents did make objection which was rejected on merit. If the revisional authority is conceded the power in such case to reopen the dispute so it would amount to conferring upon him power which may be also arbitrarily even where the dispute has become final between the parties. This would be contrary to public policy.

6. The impugned order of the Joint Director of Consolidation dated 18.4.85 (Annexure-4) is accordingly set-aside and the application is allowed. No cost.