
(2010) 09 PAT CK 0054
In the Patna High Court
Case No : CWJC No. 9230 of 1995

Most. Anuragia Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Consolidation Act, 1948 — Section 10(3), 10(4), 35

Citation : (2011) 1 PLJR 582

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—Petitioners are aggrieved by the order of the Deputy Director of Consolidation dated 28.7.1990 by which he has set aside the order passed by the Assistant Consolidation Officer on 11.12.1979. From the pleadings in the writ application and the counter affidavit filed on behalf of heirs of Respondent Nos. 5 to 11 it is apparent that Plot Nos. 2148 and 2152 in Village-Majrohi, was allotted to the share of Hriday Rai ancestors of the Respondents in Title Suit No. 40 of 1955 in the year 1966. In the said Title Suit, the Petitioners' vendor Lakhpata Devi alongwith her minor children were also parties. A compromise decree was filed in the suit. According to the Petitioners the suit was decided ex-parte against Lakhpata Devi and she was not signatory on the compromise decree, whereas according to the Respondents Lakhpata Devi had signed on the compromise decree on her own behalf and on behalf of her minor children. The claim of the Respondents is that Lakhpata Devi did not have any right to sell the lands in question during the pendency of the suit and the principles of lis pendens would apply to the sale by Lakhpata Devi.

2. The dispute arose when the Petitioners-vendors from Lakhpata Devi filed an application for entering her name in the village records before the Assistant Consolidation Officer vide Case No. 342 of 1974. The Assistant Consolidation Officer entered the name of the vendees of the sale deed purportedly after issuing notice to the concerned parties. The Respondents filed an appeal which

was dismissed on 28.7.1990 on the ground that it was time barred and not maintainable u/s 10(3) of the Consolidation Act. Against the order of the Deputy Director, Consolidation the Respondents filed an application u/s 35 of the Consolidation Act before the Joint Director, Consolidation, Muzaffarpur. The Joint Director after considering the compromise decree and recording that Lakhpata Devi had signed on the compromise petition, which was part of the decree set aside the order of the Assistant Consolidation Officer. The signature/thumb impression of Lakhpata Devi, if any, is hotly disputed by the Petitioners.

3. Learned Counsel for the Petitioners submits that the Joint Director, Consolidation could not have interfered with the order of the Deputy Director for the reason that the Respondents had not filed a limitation petition at the time of filing an appeal nor had they given an explanation for the delay before the Joint Director, Consolidation. For the purpose of supporting this contention aforesaid, learned Counsel for the Petitioners relies on two judgments of this Court in the case of Anant Sah and Others Vs. The State of Bihar and Others, and the judgment passed in the case of Dudheshwar Giri and Others Vs. The State of Bihar and Others, . In both the aforesaid cases, the Court while dealing with the issues as to whether the Joint Director could have interfered with the order passed by the Joint Director/Director, Consolidation u/s 35 of the Consolidation Act, held that the Director has to consider whether the order impugned is illegal or improper and take into account the delay in filing the application u/s 35 of the Consolidation Act. Both the courts have held that an order passed without taking into account, this aspect of the matter has to be set aside and remanded back on this issue alone.

4. It is true that the Joint Director, Consolidation has not considered or framed an issue with respect to the delay in filing the appeal against which the Respondents had moved the Joint Director, rather the Joint Director has passed an order on merits. However, this stand of the Petitioners, in my opinion, would be nullified by the fact that Section 35 of the Consolidation Act gives the power to the Director of Consolidation to call for and examine the records of the case or proceedings taken by any authority with respect to the correctness and legality or impropriety of any order. In the present case, the Joint Director has decided the case on merits without addressing himself to the impropriety or correctness of the order passed by the Assistant Consolidation Officer. It would be proper for this Court to refer to the argument by the counsel for the Respondents in this case.

5. The order dated 11.12.1977 passed by the Assistant Consolidation Officer indicates that he has considered the application of the Petitioners and ordered for entering their name in the Chak records. The question is whether the Assistant Consolidation Officer has the power to pass such an order? Sub-Section 3 of Section 10 reads as follows:

The Assistant Consolidation Officer shall, after hearing the person interested and after such enquiries as may be necessary, decide the objection, settle the

disputes or correct the mistakes, as far as may be, by way of compromise between the parties appearing before him and pass orders on the basis of such compromise.

6. The provisions of this Section envisage that the Assistant Consolidation Officer has to hear both the parties and pass an order with respect to the compromise reached between the parties. Obviously, the Assistant Consolidation Officer could not pass an order on merits of the case, rather he would have to refer the matter to the Consolidation Officer as provided under Sub-Section 4 of Section 10 of the Consolidation Act. Another aspect of the matter is that it would appear from the order sheet that the Assistant Settlement Officer has not recorded that notice was issued in this case. The Petitioners have not brought on record the entire order sheet to indicate that notices were issued to the Respondents and that they deliberately refused to accept it or did not appear in lieu of notices issued. This aspect of the matter has also not been raised before the Joint Director, Consolidation.

7. Since this Court finds that the Assistant Settlement Officer has passed an order beyond the powers given to him by the statute, this Court finds that the order of the Assistant Settlement Officer cannot be justified on any ground whatsoever. In the circumstances, this Court remands the matter back to the Joint Director, Consolidation to examine on merits the case of the respective parties and also consider whether it would be appropriate to conduct an enquiry with respect to the possession of the parties, as it is the specific claim of the Petitioners that they are in possession since the date of the sale of the lands. There is also a dispute regarding the claim of the Respondents that Lakhpatia Devi had signed on the compromise decree. The case of the Petitioners is that the decree is ex-parte. The matter is remitted with the aforesaid observations and directions.

8. This writ application is disposed of with the aforesaid observations and directions.