

(2010) 08 PAT CK 0118
In the Patna High Court
Case No : CWJC No. 10411 of 1989

Navonath Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(3), 12, 9

Citation : (2011) 1 PLJR 105A

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—The Petitioners have challenged the orders, dated 5.11.1976 passed by the Assistant Consolidation Officer, Pupari, Sitamarhi in Consolidation Case No. 402 of 1976 (Annexure-1), order dated 28.2.1984 passed by the Consolidation Officer in Case No. 137 of 1983 (Annexure-2), order dated 17.2.1988 passed by the Assistant Director of Consolidation, Sitamarhi in Appeal No. 99 of 1984 (Annexure-3) and order dated 20.11.1989 passed by the Joint Director of Consolidation, Bihar, Patna in Revision Case No. 831 of 1988 (Annexure-5).

2. The plots in question which are the subject matter of dispute have been described in paragraph 3 of this writ application. The lands originally belonged to Bharat Kurmi, the heirs of Bharat Kurmi are the Respondents in this case. The name of Bharat Kurmi was recorded in the cadastral survey, subsequently in the revisional survey, the names of the Petitioners came to be recorded which has led to this dispute. One of the heirs of Bharat Kurmi, namely, Ram Bilash Rai filed an application u/s 9 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act). On 7.10.1976, a general notice was issued. On the next date i.e. 23.10.1976, the matter was heard by the Assistant Consolidation Officer and the Respondents claim, that since the lands are the ancestral lands and the cadastral survey was in their names, chaks should be created in the names of the Respondents. Notices were

issued to Shiv Nandan Thakur and the matter was fixed for hearing on 5.11.1976. In the order dated 5.11.1976, it has been noted that the notices were duly received and it is further recorded that no documents were produced on behalf of the Respondents, and as such it was ordered that the name of Ram Bilash Rai should be recorded in the revenue records.

3. The case of the Petitioners is that they had purchased some of the lands which are subject matter of dispute, from the ancestors of the recorded tenant, in the year 1928. It is also stated that notices in fact were not received by the Petitioners, the case was decided behind their backs and the order passed by the Assistant Consolidation Officer, within a period of twelve days indicates that in fact it was passed in a hurry without actually following the principles of natural justice. It is also the submission on behalf of the Petitioners, that the Assistant Consolidation Officer should not have passed the order as contained in Annexure-1, as he was bound to hear the objections of the parties and try to settle the matter between them amicably, and pass orders on a compromise being reached between the parties. The exact language of Section 10(3) of the Act is as follows:

10(3) The Assistant Consolidation Officer shall, after hearing the person interested and after such enquiries as may be necessary, decide the objection, settle the dispute 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.

4. It is apparent that no such efforts have been made by the Assistant Consolidation Officer and in fact, this Court on perusal of the order concludes, that there was no notice to the Petitioners.

5. In view of the aforesaid facts and the judgment rendered in the case of Kailash Rai and Ors. v. The Joint Director of Consolidation, Bihar, Patna and Ors., reported in 1997 BBCJ 41 : 1996 (2) PLJR 890, the Assistant Consolidation Officer could not have passed any orders since there is no order of compromise recorded in this case. I thus set aside the order contained in Annexure-1.

6. The Petitioners had no knowledge of the orders passed by the Assistant Consolidation Officer, filed an application u/s 12 of the Act before the Consolidation Officer, praying therein that a chak may be carved out in their names with respect to plot Nos. 1703, area 56 decimals and 1707, area 57 decimals. The Consolidation Officer on considering the sale deeds produced on behalf of the Petitioners and after hearing the parties, allowed the application. Against the order of the Consolidation Officer, an appeal was filed by the Respondents which was disposed of on 12.1.1988 by the Assistant Director of Consolidation, Sitamarhi in favour of the Respondents. The Petitioners then preferred revision before the Joint Director, Consolidation being Revision Case No. 831 of 1988. The Revisional Court dismissed the revision application on two grounds. It was held by the Revisional Court that the sale deeds dated 3.5.1928,

4.6.1951, 1.7.1966, 29.1.1978 and 7.1.1985 have been executed without taking permission of the Consolidation Officer. The effect of such sale deeds being executed, purportedly by the Petitioners, during the consolidation proceedings ought to have been examined by the Director, Consolidation. The parties have not brought on record the plots with respect to which the sale deeds have been executed, the name of the executors, which would in fact demonstrate, whether they were executed by the person who is a duly recorded raiyat under the cadastral survey. These lacunae should be removed by reconsideration of the matter by the Director, Consolidation. The Director, Consolidation will also consider ordering a spot enquiry/verification with respect to the sale deeds to ascertain the possession of the parties after noticing them.

7. The other ground on which the revision application was dismissed is that the Director, Consolidation came to the conclusion that the order of the Assistant Consolidation Officer had not been challenged by the Petitioners and as such the applications filed subsequently u/s 12 of the Act are not maintainable. This finding of the Director, Consolidation is obviously in teeth of the judgment referred to above, and therefore, is unwarranted.

8. Accordingly, this matter is remanded back to the Director, Consolidation to reconsider the matter after hearing the parties with respect to their respective claims of title and possession in accordance with what has been observed above with respect to the sale deeds in question.

9. The Petitioners would be at liberty to file an application and bring the matter to the notice of the Director, Consolidation within a period of two months from the date of receipt of a copy of this order.

10. The orders as contained in Annexures-3 and 5, dated 17.2.1988 and 10.11.1981 are also hereby quashed in view of the order of remand of this case.

11. This application is allowed in the terms stated aforesaid.