

(1990) 11 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 98 of 1987

Ram Bilas Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10B, 26A, 35

Constitution of India, 1950 — Article 226, 227

Citation : (1992) 2 PLJR 355

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : R.S. Pradhan, Rafat Alam and Asha Sinha, for the Appellant; Kishori Singh and Chakravarti Singh for Respondent Nos. 5 to 7., for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application under Articles 226 and 227 of the Constitution of India has been filed by the Petitioners for quashing the order dated 30.10.1986 (Annexure-9) passed by Respondent No. 2 purporting to exercise the powers u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter to be referred to as "the Act").

2. Petitioners No. 1, 2 and 3 (hereinafter to be referred to as the vendees) had purchased certain plots of land from one Smt. Bachkali Kunwar, mother of Petitioners No. 4 and 5. The sale-deed is dated 21.2.1981 and has been filed as Annexure-1 to this application. After the execution of the said Sale Deed, the vendees filed an application before the Consolidation Officer u/s 10-B of the Act for recording of their names in the revenue records. The Consolidation Officer by his order dated 27.5.1981 (Annexure-6) allowed their prayer. The proceeding was numbered as Objection case No. 2/1980-81. Subsequently, Respondents No. 5, 6 and 7 filed Anr. application u/s 10-B of the Act objecting the mutation of the names of the vendees in the revenue records on the ground that the vendor

Smt. Bachkali Kunwar had no right and title over the lands, which have been sold by the Sale-deed (Annexure-1). This proceeding was registered as Objection Case No. 4 1981-82. The Consolidate Officer, on a detailed consideration of the matter, rejected the Objection by his order dated 16.6.1982 (Annexure-7). Thereafter the said Respondents preferred an appeal viz Appeal No. 261 of 1982-83 but the same failed. Thereafter Respondents No. 5 to 7 filed Revision Application vide. Revision case No. 1556 of 1982 before Respondent No. 2, who by his order dated 30.10.1986 (Annexure-9) purporting to exercise powers u/s 35 of the Act, has set aside the order dated 27.5.1981 (Annexure-6) passed by the Consolidation Officer in Objection case No. 2 1980-81.

3. Learned Counsel appearing for the Petitioners has submitted that the Respondent No. 2 has erred in setting aside the order dated 27.5.1981 (Annexure 6) passed in Objection case No. 2 of 1980-81 inasmuch as the said order was not the subject matter of either the appeal preferred by the private Respondents nor of revision application filed by them. On the other hand, it has been submitted on behalf of the private Respondents that since the Respondent No. 2 was exercising the revisional powers u/s 35 of the Act, which is wide enough for interfering with any order passed under the Act by any authority. Therefore the impugned order does not suffer from any illegality.

4. After hearing the contesting parties, I am of the view that the impugned order as contained in Annexure-9 by which the order as contained in Annexure-6 has been set aside is not in accordance with the law and it must be quashed. Even if the revisional authority has power to interfere with any order passed by the Consolidation authority under the Act even then before passing any such order it is incumbent upon the revisional authority to give due notice in this regard to the parties who are likely to be affected so that they may have an effective opportunity of ventilating their stand but admittedly this has not been done in this case. Therefore, the order is bad on this count as well.

5. Before parting with the judgment, it will be relevant to state here that the private Respondents had filed a Title Suit No. 15 of 1981 wherein one of the reliefs is that the Sale Deed in question (Annexure-1) be declared as illegal and inoperative. But since the provisions of the Consolidation Act have been applied in the area, the suit was held to have been abated. But immediately after the close of the consolidation operation in the area and after the issuance of notification to this effect u/s 26-A of the Act, the suit will get revived and it will be open for the parties to get the issues determined by a Civil Court of competent jurisdiction, This aspect has also been clarified by a Full Bench decision of this Court in the case of Kalika Kuar alias Kalika Singh v. The State of Bihar and Ors. reported in 1989 PLJR 1203.

6. Accordingly, the writ application is allowed. The order contained in Annexure-9 is quashed. There shall be no order as to costs.