
(1993) 02 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 2981 of 1983

Ram Naresh Dubey and Others APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 16-02-1993

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(2), 35, 9

Citation : (1994) 42 BLJR 46

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—This application is against an order dated 30-12-1980 passed by the Assistant Consolidation Officer, Respondent No. 4 in Consolidation case No. 752/1980, the order dated 26-7-1982 passed by the Deputy Director Consolidation, Respondent No. 3 in consolidation Appeal No. 170/1982 and the order dated 19-4-1983 passed by the Joint Director, Consolidation, Bihar, Patna, Respondent No. 2 in Revision Case No. 1244/1982 as contained in Annexures 3, 4 & 5 respectively to the writ application.

2. In view of the points involved in this application, it is not necessary to state the fact of the matter in details.

3. Suffice it to say that the lands in question were recorded in the cadestral survey records of right of Raj Kumar Dubey. He died leaving behind his son Chatur Dubey, father of the petitioner, who came in possession of the lands. However, according to the petitioner, Chatur Dubey suffered a paralytic attack in the year 1962 and he remained confined to bed.

4. The petitioner Nos. 1 and 2 were minor at that time and the petitioner No. 3 Smt. Ramjyoti Kuwar was a pardanashin lady. The said Chatur Dubey died in the year 1973. In the meantime, one Ambika Singh who is predecessor in interest of the respondent Nos. 5 to 11 allegedly got his name recorded fraudulently in the survey records of right u/s 9 of the Bihar Consolidation of Holdings and

Prevention of Fragmentation Act, 1956 (hereinafter to be referred for the sake of brevity as "the said Act").

5. According to the petitioners, they are still in possession of the lands in question. However, their possession was disturbed in the year 1980 by Respondent Nos. 5 to 11 whereupon they came to learn that the Consolidation Officer has recorded the name of one Ambika Singh on the basis of the land survey in his order passed u/s 9 of the said Act. There after, the petitioners filed an objection u/s 10(2) of the said Act. The said application was also dismissed. The petitioners preferred an appeal against the said order which was also dismissed. The revision application filed by the petitioners was also dismissed. The appeal and the revision were dismissed on the grounds that the same were barred under the law of limitation.

6. Mr. Mangal Prasad Mishra, learned Counsel appearing on behalf of the petitioners submitted that in the, peculiar facts and circumstances of the case, Respondent Nos. 2 and 4 ought to have decided the cases on merits.

7. In my view, however, even if the application filed u/s 10(2) of the said Act was barred by limitation, the Director, Consolidation could have exercised his suo moto power of revision.

8. Rule 28 of the said Act provides that the Director, Consolidation should exercise his power of supervision and superintendence. Such power of supervision and superintendence may be exercised by the Director, Consolidation at any point of time.

9. Further, Section 35 of the said Act empowers the Director not only to entertain a revision application on the basis of an application filed by a party aggrieved by an order but also he can do it suo moto.

10. Although, the petitioners filed a revision application but the said application was directed against an appellate order.

11. In the peculiar facts and circumstances of the case, in my opinion, the Director, Consolidation should have exercised his supervisory jurisdiction so as to consider whether the entry of the name of Ambika Singh in the survey records of right was legal or not.

12. For exercising the suo moto power u/s 35 of the said Act read with Section 27 thereof no prescribed period of limitation exists

13. In this view of the matter, this application is allowed and the orders passed in Annexures-3, 4 and 5 to the writ application are quashed.

14. The Director, Consolidation is hereby directed to consider the petitioners application u/s 10(2) of the Act on its own merits in exercise of his suo moto power in the revision application. The said revision application may be disposed of by the Director, Consolidation after giving notices to Respondent Nos. 5 to 11.

15. The Director, Consolidation shall also intimate the-respondent Nos. 5 to 11 that he would be exercising his suo moto power to entertain a revision application against an order of respondent No. 2, Joint Director, Consolidation, dated 19-4-1983 as contained in Annexure-5 to the writ application.

16. This application is, thus disposed of with the aforementioned observations.