
(2006) 10 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 989 of 2006

Ram Pratap Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 2(4), 26A, 35

Citation : (2007) 1 PLJR 57

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Jitendra Pd. Singh, for the Appellant; Maruth Nath Roy For the State, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. Jitendra Prasad Singh, learned counsel for the petitioners and the learned J.C. to S.C. XI for the State. The petitioners seek quashing the impugned order dated 26.10.200 passed by the Deputy Director, Consolidation (Headquarter), respondent No. 3, in Appeal Case No. 7/2001-02 while exercising the power u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. By the said order, the Deputy Director directed to allot separate plots in favour of respondent Nos. 5 to 8 after preparing map/Khatiyani.

2. Learned Counsel for the petitioners assails the said order on various points.

3. It is firstly submitted that the revisional power u/s 35 of the Act has been granted to the Director of Consolidation and the same could not have been exercised by the Deputy Director and for the said reason the impugned order is without jurisdiction and illegal. This proposition of law also finds support from the decision of this court in the case of Ramotar Yadav and Others and Ajaz Haider Vs. The State of Bihar and Others, .

4. From consideration of section 35 of the Act it is evident that it has been provided therein that the Director of Consolidation may, of his own motion or on the application of any party or on reference being made by any subordinate authority, revise the orders passed by authorities under the Act.

5. Section 2(4) of the Act provides that the Director of Consolidation means the officer appointed as such by the State Government to exercise the power and perform the duties of Director of Consolidation under this Act or the rules made thereunder and shall include an Additional Director of Consolidation and a joint Director of Consolidation. From the said definition, it is evident that the Deputy Director of Consolidation is not included within the term Director of Consolidation used in the Act. Further as has been pointed out by this Court, the power u/s 35 is a wide power and such power cannot be exercised by a subordinate authority like the Deputy Director of Consolidation even if such power is delegated to him as has been done in the present case by the Director of Consolidation transferring the case for disposal by the Deputy Director of Consolidation.

6. In that view of the matter, the impugned order dated 26.10.04 is wholly without jurisdiction and fit to be quashed and is accordingly set aside.

7. Learned Counsel has further submitted that the power u/s 35 could not have been exercised after more than 25 years since the record of rights was prepared and Mouza was confirmed in the year 1974-75 itself. The delivery of possession was ordered on 9.5.81 and final Notification u/s 26A of the Act was also published on 29.1.1991. It is stated that under the said circumstance it was not open to even consider the said application u/s 35 after such long period of delay. It is further submitted that no limitation petition was filed and without condoning the limitation the matter could not have been heard. From a consideration of section 35 of the Act, although no period of limitation has been prescribed but as it has been held by the Courts any power conferred upon any authority must be exercised within a reasonable period of time. Exercise of power after a delay of nearly 25 years or even 13 years after the notification u/s 26A, cannot be considered a valid exercise of power, without first recording the extraordinary circumstances and reasons for interfering in the matter. The same having not been done before exercise of the revisional power, it is contrary to law. For the said reason also the impugned order is fit to be set aside. In view of the aforesaid facts and circumstances, the writ petition is allowed and the order dated 26.10.04 passed in Appeal Case No. 7/2001-02 is quashed. However, in the facts and circumstances of the case there shall be no order as to cost.