

(2009) 09 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 15848 of 2006

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

Date of Decision : 14-09-2009

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 10(6), 12, 12A, 13

Citation : (2009) 4 PLJR 908

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : K.N. Choubey, Ambuj Nayan Choubey and Siddharth Harsh, for the Appellant; Ray Shivaji Nath, Ranjan Kumar for the State, M/s Anjani Kumar Sinha, Bishnu Shankar and Achal Kumar Sinha for Respondent Nos. 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.—The petitioners, by filing this writ application, seek quashing of order dated 23.8.1994 passed by the Joint Director (Headquarters), Bihar, Patna, in purported exercise of powers u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter to be referred to as "the Act"), as contained in Annexure-7, which has been communicated to the Deputy Director, Consolidation, Rohtas as well as Sasaram by memo No. 144 dated 13.2.2007 (Annexure-8), whereby he has set aside the whole confirmed consolidation scheme with respect to village (Mouza) Pathera (Tilouthu), Sasaram on the ground of major irregularities having been committed by the authorities in Chak formation. The petitioners further seek a direction commanding the respondents to publish the notification u/s 26A of the Act.

2. Bereft of unnecessary details, short facts of this case are portrayed as follows:-

Pursuant to the publication of the notification u/s 3 of the Act, Village Advisory Committee was constituted on 29.3.1972 with respect to the aforesaid village

and draft statements were prepared and made under Sections 9 and 10 of the Act and all the objections filed were disposed of in accordance with law. The chak scheme was prepared and published u/s 12 of the Act on 27.6.1977. All the objections were duly considered and appeals, preferred thereof under the Act, were also finally heard and disposed of. Finally, the chak scheme was confirmed with the approval of the Deputy Director of Consolidation on 31.12.1980, which would be manifest from the order dated 31.12.1980 passed by the Deputy Director of Consolidation, as contained in Annexure-1. The case of the petitioners is that thereafter chak khatians were distributed on 8.6.1981 and all raiyats, according to the petitioners, were delivered possession of the respective chaks in the year 1981 itself, which would be evident from the letter No. 34 dated 13.10.2006 of the Chakbandi Padadhikari, Rohtas, addressed to the Deputy Director, Consolidation, Rohtas, Sasaram, brought on record as Annexure-3. However, 13 years thereafter, some persons including respondent Nos. 8 and 9 filed Revision Case No. 307/ 94 u/s 35 of the Act and the Joint Director, Consolidation (Headquarters), Bihar, Patna, respondent No. 3, on the basis of further meeting of the Village Advisory Committee and the raiyats of the village and also upon the report of the Chakbandi Padadhikari as well as the petition of the villagers, came to the conclusion that confirmed consolidation scheme suffered from major irregularities and thus, had set aside the confirmed consolidation scheme and gave a direction for fresh commencement of the proceeding from the stage of Section 7 of the Act. However, the aforesaid order dated 23.8.1994, as contained in Annexure-7, could be communicated to the concerned Consolidation Officer and the Deputy Director, Consolidation, on 13.2.2007 only during the pendency of this writ application. The aforesaid communication has been brought on record by the petitioners by appending the same as Annexure-8 to the supplementary affidavit.

3. This writ application is being disposed of at this stage with the consent of the parties.

4. Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for respondent Nos. 8 and 9.

5. It was contended on behalf of the petitioners that the chak scheme was confirmed u/s 13 of the Act as back as in the year 1980 itself and the certificate of transfer as well as distribution of chak khatian were completed in the year 1981 followed by delivery of possession of the raiyats upon their respective chaks. Learned Counsel drew attention of this Court towards Section 16 of the Act. It is envisaged therein that after grant of certificate of transfer u/s 15, the scheme confirmed u/s 13 shall, in supersession of the up-to-date record of right prepared u/s 8, be deemed to be record prepared and finally published under Chapter-X of the Bihar Tenancy Act, 1885. It would also be evident from Section 15(1) of the Act that the transfer of certificate issued under the provision shall be conclusive proof of title of the raiyat upon such holding. However, without giving any opportunity of hearing to the petitioners and other raiyats, the entire

confirmed scheme had been cancelled by the Joint Director of Consolidation concerned, which, apart from being in complete violation of the Principle of Natural Justice, was highly unjustified, undesirable and arbitrary action. It was further submitted that the impugned order canceling the consolidation scheme and directing fresh commencement of the proceedings from the stage of Section 7 of the Act could not be communicated to the concerned Deputy Director of Consolidation as well as Consolidation Officer, and, thus, remained ineffective. In support of the aforesaid submission, learned counsel placed reliance upon Annexure-3, which is a letter of the Consolidation Officer, Sasaram, Rohtas, addressed to the Deputy Director, Rohtas, Sasaram. In the aforesaid letter, the Consolidation Officer had written about each and every step regarding different stages of the proceeding and had categorically stated that from the year 1981, when the delivery of possession was effected upon the concerned raiyats, all of them are coming in possession thereof. It had also been stated that in the year 2001 itself, recommendation for a Notification u/s 26A of the Act declaring closure of the scheme on its completion had already been made and the chak map had also been sent to the concerned press for its publication. Thus, he had once again recommended for Notification u/s 26A of the Act. Conspicuously, the impugned order dated 23.8.1994 did not find a reference in the aforesaid letter written after about 25-26 years after the confirmation of the scheme. Irrespective of the fact that the order dated 23.8.1994 had already been passed, respondent Nos. 8 and 9 alongwith 49 persons again filed Revision Case No. 26 of 2005 before the Director, Consolidation, for grant of selfsame relief, which was again transferred to the Joint Director, Consolidation (Headquarters), Patna. The Joint Director issued notice upon the opposite parties. However, records of earlier Revision Case No. 307/94 were called for and subsequently the respondents aforesaid were allowed to withdraw the Revision Case No. 26/2005, as obviously the matter already stood decided in the year 1994. The petitioners claimed that they could know about the earlier Revision only when the aforesaid Revision Case No. 26/2005 was allowed to be withdrawn by order dated 24.11.2006 by the Director, Consolidation, Bihar, which is contained in Annexure-B to the counter affidavit filed by respondent Nos. 8 and 9. Thereafter only this writ application was filed. Subsequently, the earlier order dated 23.8.1994 passed in Revision Case No. 307/1994 (which is under challenge) was communicated to the authorities vide Annexure-8 on 13.2.2007. It had further been contended that the bare reference of certain provisions of the Act, for example, Sections 6(4), 10(6) and 12A(2) of the Act, would indicate that under these provisions the orders passed by the authorities were final and if the aggrieved party failed to challenge the orders at the proper stage they are estopped from challenging such decisions specially after confirmation of the scheme etc. It was also indicated that as per the provisions u/s 4(b) and (c) of the Act, upon publication of Notification under sub-section (1) of Section 3 of the Act, no suit or legal proceeding could be entertained by any court and the pending suits with regard to right, title and interest would also abate to be decided by consolidation authorities. Thus, the contention was that the finality achieved after completion

of the scheme and distribution of chak khatians etc. the Joint Director concerned erred in cancelling the entire scheme without giving opportunity of hearing to the raiyats including the petitioners as the aforesaid subsequent action had affected their right, title and interest. Further contention was that the revisional authority had not been vested with any power to cancel the entire scheme itself, though it would be open to it to look into the individual's cases either suo motu or on a petition filed by a party u/s 35 of the Act. Thus, the decision of the revisional authority cancelling the entire scheme, apart from being illegal and arbitrary, was without jurisdiction. Learned counsel for the petitioners had placed reliance upon two decisions of this Court—first in Kunj Behari Singh and Others vs. The Director of Consolidation, Bihar and Others (C.W.J.C. No. 12048 of 1993), disposed of on 23rd December, 1994, by a Single Bench of this Court, as well as in Shiv Shankar Prasad Singh and Others vs. The State of Bihar and Others (C.W.J.C. No. 6149 of 1985), disposed of by a Division Bench of this Court on 24th of September, 1996. In both the cases this Court had held that though, power of the Director u/s 35 of the Act is very wide and not subject to any limitation, but the same could only be exercised with regard to testing the correctness, legality or propriety of a proceeding or order. However, the revisional authority is not competent to cancel the entire scheme even without hearing the affected raiyats.

6. The State has filed counter affidavit, wherein it has been stated that the consolidation scheme in the State remained suspended from July 1992 on account of Notification No. 996 dated 16.7.1992 of the Department of Revenue and Land Reforms and again in view of Notification No. 186 dated 15.3.2004 of the Government of Bihar, Department of Revenue and Land Reforms. Thus, it is the stand of the State that due to the aforesaid reasons the order under challenge could not be communicated to the concerned officers for necessary action.

7. However, it had been submitted on behalf of the petitioners that the aforesaid Notification dated 16.7.1992 was set aside by a decision of a Division Bench of this Court in Bihar Rajya Adhivakta Sangh and Another vs. The State of Bihar and Others, reported in 1993 BBCJ 444, whereas in a decision in Bihar Rajya Adhivakta Sangh and Another Vs. State of Bihar and Others, a Division Bench of this Court had clarified that the notification u/s 4A of the Act would have no effect over the final orders passed at different stages by the authorities, therefore, the remedy of appeal or revision provided under the Act could not be made ineffective or inoperative. In view of the aforesaid, it had been urged that the stand taken by the State is ambiguous and misleading.

8. Respondent Nos. 8 and 9 have also filed counter affidavit. It has been urged on their behalf that, as would be apparent from the impugned order itself, the scheme confirmed suffered from various major irregularities and as per the scheme of the Act and the provisions, as contained in Section 35, the Director, Consolidation, being a revisional authority, was fully empowered and competent to take a justified stand and cancelling the erroneous scheme. It was also

submitted that no restriction could be imposed upon the Director in exercise of his power under that provision. However, learned counsel for the aforesaid respondents could not lay hand upon any authoritative pronouncement or provision of law in support of his submission. That apart, it had also been urged that the revision was filed jointly by many persons, but only two of them (the respondent Nos. 8 and 9) have been impleaded by the petitioners in this case. On that account also, this application would be liable to be dismissed.

9. Learned counsel for the petitioners, however, submitted that though the concerned revision was shown to be filed by many persons but actually vakalatnama had been shown to be filed on behalf of only five persons and even that vakalatnama was executed merely by respondent Nos. 8 and 9. In that event, since Revision No. 307/94 was filed by the respondent Nos. 8 and 9 only (who only had executed vakalatnama), only they had been impleaded as respondents herein. In support of their submission, the petitioners have brought the copy of vakalatnama aforesaid as Annexure-9.

10. In view of that, it is apparent that respondent Nos. 8 and 9 being the necessary party having been already impleaded, this application does not suffer from the defect of non-joinder of necessary parties.

11. Having heard the rival submissions of the parties, I find substance in the submissions made on behalf of the petitioners. Of course, the power of Director u/s 35 of the Act is very wide and he can examine the correctness, legality or propriety of any proceeding or order either suo motu or on an application filed by the affected party and can interfere thereafter and pass appropriate order in the interest of justice. But the question here would be as to whether the Director, Consolidation, was competent enough to nullify the entire final scheme of a particular village without considering the correctness, legality or propriety of the orders passed in individual cases or correctness of the proceedings, which would definitely touch the right, title and interest of individual raiyat? The second question would be as to whether that could have been done even without giving opportunity of hearing to such persons, who were going to be affected on cancellation of the scheme? It would be apt to quote Section 35 of the Act itself as under:

"Section 35. Revision and reference.-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, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality, or propriety of any order passed by such authority in the case or proceedings, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit."

12. On a bare perusal of Section 35 of the Act, it would appear that the Director can exercise his jurisdiction even suo motu or even on an application by a party.

It has been consistently held by this Court that u/s 35 of the Act, the Director can examine with respect to the proceedings and orders passed by the consolidation authorities for satisfying himself as to the correctness, legality or propriety of the orders or proceedings. However, the question would be whether that could be done without giving notice to the affected raiyat in whose favour such orders were passed? The answer to the aforesaid question will have to be in negative, otherwise it would strike at the root of the fundamental principle of audi alteram partem. It is well settled principle of law hallowed by time and quantified by decisions that no person should be condemned unheard. There are plethora of authoritative pronouncements by the courts including the Apex Court on several occasions that the Principle of Natural Justice has to be followed, while deciding a controversy between the parties or if the proceeding or order is going to affect any person, by granting him/them opportunity of being heard. Thus, that not, admittedly, having been followed, the impugned order as contained in Annexure-7, is held to have been passed without following the Principle of Natural Justice, and, thus, is arbitrary.

13. The second question for consideration would be as to whether the Joint Director, Consolidation, in purported exercise of powers u/s 35 of the Act, was competent to cancel the entire confirmed scheme even after grant of transfer certificate u/s 15 of the Act as well as distribution of chak khatians to the concerned raiyats? Upon consideration of the earlier decisions of this Court in Kunj Behari Singh and Others (supra) (Single Bench) as well as Shiv Sharan Prasad Singh and Others (supra) (Division Bench), again the answer has to be in negative. In Kunj Behari Singh and Others (supra) a Bench of this Court has held that the Director is only empowered to look into the correctness of a case or proceeding in particular, but he cannot nullify the entire scheme without looking into the individual's record or noticing the affected raiyats. A Division Bench of this Court in Shiv Sharan Prasad Singh and Others (supra) has also held that the revisional authority has not been vested with any power to cancel the scheme itself, though it would always be open to it to look into the individual cases either suo motu or on a petition filed by the parties u/s 35 of the Act. It would be apt here to quote the relevant passages from the aforesaid decision of this Court as under:-

"4. According to the counsel for the respondents, there were various irregularities that were committed by the Consolidation Officer, Ekangarsarai. The same having been come to the notice of the revisional authority, by the impugned order the revisional authority has set aside the same.

5. x x x x

6. From a bare perusal of the aforesaid section it is evident that the revisional authority has not been vested with any power to cancel the scheme itself. This has also been accepted by the counsel for the respondents. However, it is always open to the revisional authority to look into the individual cases suo motu or on a petition filed by a party u/s 35 of the Consolidation Act. Accordingly, the

impugned revisional order dated 4th of November, 1981 passed in Revision Case No. 1021 of 1980 is set aside, so far as it relates to the petitioners."

14. In view of the aforesaid discussions. I am of the considered opinion that the impugned order dated 23.8.1994, as contained in Annexure-7, canceling the entire confirmed scheme is arbitrary on account of having been passed in complete violation of the Principle of Natural Justice and on having been passed by a forum non competens, for taking such decision, as the revisional authority was not competent and empowered u/s 35 of the Act to cancel the entire scheme without looking into the correctness of individual records, as has been held by the Division Bench of this Court in Shiv Sharan Prasad Singh (supra).

15. Accordingly, I set aside the impugned order dated 23.8.1994, as contained in Annexure-7.

16. It is manifest from Annexures-2 and 3 that there had already been recommendation/forwarding by the consolidation authorities for publishing a notification u/s 26A of the Act and the matter was pending before the Director, Consolidation. Thus, the petitioners would be at liberty to raise this issue before the respondent No. 2 (Director, Consolidation, Bihar). As a result, this writ application is allowed. However, there would be no order as to costs.