

(1988) 04 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 1408 of 1982

Smt. Leela Devi and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 26A, 26A(1), 26A(2), 36

Citation : AIR 1989 Patna 58 : (1989) PLJR 170

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

Bench : Single Bench

Advocate : Binod Kumar Roy, K.P. Singh and Harihar Roy, for the Appellant;
Nirmal Kumar, Jr. Counsel to Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.P. Sinha, J.—This writ petition is directed against an order dated 15-1-1982 passed by Sri K. D. Sinha, Director of Consolidation, Patna (respondent 2) whereby and whereunder he refused to exercise his revisional jurisdiction u/s 36 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter called the Act) on the ground that the village was de-notified u/s 26-A thereof.

2. In view of the question of law that arises for consideration in this case, it is not necessary to state the facts of the case at all.

3. From a perusal of the impugned order as contained in Annexure-6 to the writ petition, it appears that a revision application was filed by the petitioners against the respondent 5 some time in the year, 1979. The petitioners have annexed a copy of the notification which was published in terms of Section 26A of the Act in the gazette on 1st Dec., 1980. The said notification is contained in Annexure "A" to the counter-affidavit. In view of the fact that the aforementioned notification was issued on 1-12-1980, there cannot be any doubt that the aforementioned proceeding was pending on the day when the said

notification came into force.

4. For the purpose of appreciating the points involved in this case, Section 26A of the Act may be noted, which reads as follows : --

"Close of the consolidation operations : --(1) As soon as may be, after fresh maps and records have been prepared and certificates of transfer have been issued to the raiyats under the scheme, the State Government shall issue notification in the Official Gazette. stating that the consolidation operations have been closed in the unit :

Provided that the issue of notification under this section shall not affect the powers of the State Government to fix, distribute and recover the cost of operation under this Act.

(2) Notwithstanding anything contained in Sub-section (1), any order passed by a Court of competent jurisdiction in cases or writ filed under the provisions of the Constitution, or in cases or proceedings pending under this Act on the date of issue of the notification under Sub-section (1), shall be given effect to by such authorities as may be prescribed and the consolidation operations shall for that purpose be deemed to have not been closed."

5. From a bare perusal of the aforementioned provision, it is evident that Sub-section (2) of Section 26A of the Act provides for a non obstante clause. Sub-section (2) of Section 26A, therefore, overrides the provision contained Sub-section (1) of Section 26A of the Act.

Further, in terms of the provisions as contained in Sub-section (2) of Section 26 A of the Act the cases which come within the purview thereof the consolidation operation for the purpose of giving effect to the order passed by the authorities concerned would be deemed to have not closed. The legislature, therefore, in its wisdom, created a legal fiction as a result whereof the proceeding would be deemed to be continuing.

6. It is now well settled that legal fiction created by reason of the provisions of the Act must be given its full effect. In this view of the matter, there is absolutely no doubt that despite the publication of the notification under Sub-section (1) of Section 26A of the Act, the respondent 2 had the jurisdiction to pass orders on the revision application filed by the petitioners, in view of the provisions contained in Sub-section (2) of Section 26A of the Act.

7. As the respondent No. 2 has refused to exercise his jurisdiction on an erroneous construction of Section 26A of the Act, the same would amount to misdirection in law.

8. The learned counsel appearing on behalf of the respondent 5, however, submitted that the civil suit filed by the respondent 5 will now proceed in view of the notification issued u/s 26A of the Act.

In my opinion, the contention of the learned counsel is misconceived, in view of

Sub-section (2) of Section 26A of the Act. As the revisional application filed by the petitioner was pending on 1-12-1980 when the notification u/s 26A of the Act was issued, the proceeding would be deemed to continue and in that view of the matter the proceeding in the civil suit must remain stayed.

9. In the result, this writ petition is allowed and the order dt. 15-1-1982 passed by the respondent 2 is quashed and the respondent 2 is hereby directed to proceed with the case after giving due notice to the parties concerned and after giving an opportunity of hearing and in accordance with law.

10. In the facts and circumstances of the case, there will, however, be no order as to costs.