

(1996) 11 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 8601 of 1992

Suraj Prasad Singh

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 19-11-1996

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 4A

Bihar Tenancy Act, 1885 — Section 103, 108A

Citation : (1997) 1 BLJR 914 : (1997) 1 PLJR 67

Hon'ble Judges : D.P. Wadhwa, C.J; Radha Mohan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition the petitioner has prayed for quashing of the order dated 12.6.1992 passed by the Joint Director, Muzaffarpur in Revision case No. 2424 of 1996, contained in Annexure-4 and, further, has sought for issuance of a direction against the respondents not to give effect to the said order. By the said impugned order the Joint Director (respondent No. 1) has set aside the order passed by the Asst. Director, Consolidation (respondent No. 2) in appeal No. 14 of 1986 and the order passed by the Consolidation Officer (respondent No. 3) in objection case No. 54 of 1985.

2. The dispute is in respect of land appertaining to Khata No. 316 measuring 9.86 acres of village Dharampur Madan alias Chaurahiya. Khata No. 316 comprises altogether 18 plots.

3. In short, the case of the petitioner, is that one Jagdish Singh had five sons, namely, Kasturi Singh, Ganaur Singh, Laljee Singh, Khobhari Singh and Khaderan Singh. Laljee Singh died issueless. The petitioner is from the branch of Kasturi Singh, whereas respondent No. 4 represents the branch of Khaderan Singh and respondent Nos. 5 to 9 are from the branch of Khobhari Singh. The geneological table has been given in Annexure-1. According to the petitioner the entire land

falling to the 1/4th share of Khaderan Singh was sold before 1960. Bir Bahadur Singh, father of respondent No. 4 sold almost the entire land except about 8 kathas, which was also sold by respondent No. 4. Similarly, the entire lands falling in the 1/4th share of Khobhari Singh was also sold by his descendants before 1.6.1968.

4. It is further stated that in the year 1986 respondent Nos. 10 to 13 purchased 1.12 acres of land of the aforementioned Khata from respondent Nos. 4, 6 and 7, which according to the petitioner belonged to him and none of the respondent Nos. 4 to 9 has any right, title or interest over these lands. The said purchase is stated to have been made by respondent Nos. 10 to 13 during the pendency of appeal No. 14/86 filed by respondent Nos. 4 to 9 before the Asst. Director of Consolidation, Sitamarhi.

5. Further, the case of the petitioner is that the ancestor of the petitioner and respondent Nos. 4 to 9 had altogether 20.25 acres of land. There was a partition in the family in 1912 through registered partition deed, according to which all the four branches got 1/4th share in the property. Subsequently, Ganaur Singh one of the Co-sharers sold his share to the father of the petitioner. As such, the petitioner became owner of 1/2 share of the total property. At the time of survey operation Purcha of the land in question were prepared in the name of the petitioner only, but Khatian was wrongly prepared in the name of all the co-sharers in respect of 16 plots and plot Nos. 400 and 401 were recorded in the name of State of Bihar. The petitioner, being aggrieved by and dissatisfied with the aforesaid alleged wrong entry filed case No. 686 of 1966 u/s 108 A of the Bihar Tenancy Act (in short "B.T. Act") for necessary correction, in which the ancestors of respondent Nos. 4 to 9 were parties. It is stated that respondent Nos. 4 to 9 or their ancestors had not filed any objection u/s 103 of the B.T. Act against the issuance of Purcha in favour of the petitioner only. By order dated 15.4.1968 passed in case No. 686 of 1966, the entry in R.S. Khatian was corrected in favour of the petitioner. Further, it is stated that by filing separate case u/s 103 of the B.T. Act against the State of Bihar, the petitioner got his name corrected in the revisional survey in respect of the aforementioned two plots also.

6. The Consolidation operation started in the village and the petitioner filed cast No. 54 of 1985 before the Consolidation Officer, Majorganj for necessary correction in the Chak Khatian in respect of the land in question, which was allowed vide order dated 9.2.96. Against the said order of the Consolidation Officer, respondent Nos. 4 to 9 filed appeal case No. 14 of 1986 before the Asst. Director, Consolidation, Sitamarhi (respondent No. 2), during the pendency of which respondent Nos. 10 to 13 who purchased lands of Khata No. 316 measuring 1.12 acres from respondent Nos. 4 to 9, about which a mention has already been made above, were also made parties at the appellate stage. The Asst. Director of Consolidation, Sitamarhi by his order dated 7.9.1987 dismissed the appeal and confirmed the order passed by the Consolidation officer, which is

contained in Annexure-3.

7. Respondent Nos. 4 to 13 being aggrieved and dissatisfied by the order of the Asst. Director, Consolidation Sitamarhi (respondent No. 2) filed revision case No. 2424 of 1987 before the Director, Consolidation, which was finally heard and disposed of by the Joint Director (respondent No. 1) vide impugned order dated 12.6.92 (Annexure 4), allowing the revision application and setting aside the order passed by the Consolidation Officer and the Asst. Director of Consolidation.

8. By an order dated 6th May, 1993 a Division Bench of this Court admitted this writ petition for being heard by a Division Bench and issued notice to respondent Nos. 4 to 13. The Division Bench has mentioned in the said order that "one of the questions which arises for consideration is as to whether the Joint Director, Consolidation while exercising his revisional power u/s 35 of the Act should have set aside the order passed by the Collector in terms of Section 108 A of the Bihar Tenancy Act and that too without any legal evidence having been adduced before him".

9. Respondent Nos. 10 to 13 only have filed counter affidavit. No counter" affidavit has been filed on behalf of respondent Nos. 4 to 9. In the said counter affidavit of respondent Nos. 10 to 13 it is contended that the present writ petition has become infructuous in view of notification No. 1166 dated 2.11.93 under which the State Government in exercise of the power u/s 4A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the act") has cancelled the notification issued u/s 3 of the Act operating the Consolidation Scheme, the result being that the Consolidation scheme is not in force in the area in which the disputed lands are situated. Thus, according to the said respondents the petitioner may seek his remedy in civil court in view of his own admission in paragraph 22 of the writ petition that pure question of title is involved in the case. Apart from this, it is also mentioned in paragraph 7 of the said counter affidavit that partition suit No. 65/91 has been filed in the court of Sub-Judge, Sitamarhi for partition of the land and also for a declaration that the order passed u/s 108 A of the B.T. Act as well as the order passed by the Consolidation Officer (Annexure-2) and the order of Asst. Director, Consolidation (Annexure-3) are illegal, void and not binding upon them. In the said suit the present petitioner is one of the parties and the summons etc. have been issued against him. It is also stated that another Title suit No. 55/91 in the court of Subordinate Judge, Sitamarhi has been filed against this petitioner for declaration of title and confirmation of possession and for other reliefs which is pending. In such a situation, according to the said respondents, the present writ petition is neither maintainable, nor the petitioner is entitled to get any relief from thus Court.

10. On merit the said respondents have denied the statement made in para 6 of the writ petition that the other co-sharers had sold away the entire share prior to 1960 or 1968, which according to them, is maliciously false and mischievously lie and the petitioner may be put to strict proof thereof. It is stated that the

statement made in para 7 of the writ petition that the land in dispute exclusively belong to the petitioner is maliciously false. It is further stated that the land of Khata No. 316 is of joint family and as such, names of all the co-shares were recorded in the revisional survey Khatian and the answering respondents purchased the disputed land from the original owner According to the said respondents, there is presumption of correctness of survey entry and respondent Nos. 4 to 9 who are their vendors and who had share in the land were rightly recorded in the revisional survey. In para 14 it is stated that the survey authority acted wholly without jurisdiction in reversing the survey entries behind the back of respondent Nos. 4 to 9 without giving them any opportunity of hearing. Their further case is that since no opportunity was provided, the order passed u/s 108 A of the B.T. Act is void and without jurisdiction and that such order could not have been passed u/s 108 A of the B.T. Act as the remedy if any, for the petitioner was u/s 106 of the B.T. Act. which was not availed. In para 15 it is contended that respondent Nos. 2 and 3 mechanically passed order on the basis of the order passed u/s 108 A of the B.T. Act without examining whether or not such orders are binding upon respondent Nos. 4 to 9. It is further stated in para 17 that respondent No. 1 having considered the materials placed before him came to the conclusion that the order passed by the survey authorities in purported exercise of powers u/s 108A or 103A of the B.T. Act were void as they had been passed behind the back of the parties concerned without giving opportunity of hearing in the matter. As such, according to them, the order contained in Annexure-4 does not suffer from any infirmity.

11. Mr. Singh, learned Counsel appearing for the petitioner submitted that the order passed by the revisional Court is completely erroneous, inasmuch as, the Joint Director Consolidation, while exercising the revisional power u/s 35 of the Act had no authority to set aside the order passed by the Collector in terms of Section 108A of the B. T. Act and that too without there being legal evidence adduced before him. It was also submitted by Mr. Singh that the Joint Director has completely failed to appreciate that there was a partition between the ancestors of the petition between the ancestors of the petitioner as well as the respondent Nos. 4 to 9 long back in the year 1912 and the parties had come in possession pursuant thereto over the land in question, on consideration of which the entry made in the R.S. Khatian, were ordered to be corrected in the proceeding u/s 108A of the B.T. Act. In this connection, he has placed reliance on the decision of this Court in case of Baso Mahto v. Hari Mahto reported in 1972 B.L.J.R. 884. According to the learned Counsel, the ancestors of respondent Nos. 4 to 9 were parties to the said proceeding, but they never filed any objection either in the said proceeding or u/s 103 of the B.T. Act against the issuance of Purcha in favour of the petitioner, on consideration of which the Consolidation officer as well as the appellate authority, vide Annexure 1 and 2 respectively had allowed the claim of the petitioner.

12. On the other hand, learned Counsel appearing for the respondents submitted that in view of the changed circumstances, as has been mentioned in the counter

affidavit filed on behalf of the respondent Nos. 10 to 13 and particularly when the aforementioned suit are pending in the court of learned subordinate Judge, Sitamarhi, the writ petition is fit to be dismissed on this ground alone. Besides this, it was contended by Mr. Mishra, learned Counsel appearing for the respondents that there is no infirmity in the order of the revisional authority, namely. Joint Director of Consolidation, Muzaffarpur inasmuch as, according to him, the entire claim of the petitioner was decided on the basis of the order passed u/s 108A of the B.T. Act which was ab initio void in the absence of any notice to the petitioner.

13. I find substance in the submission of Mr. Mishra, learned Counsel for the respondents. Section 108A of the B.T. Act empowers the Collector or Revenue Officer for discovery of bona fide or material error in record of rights within a period of five years from the date of the certificate of its final publication under Sub-section (2) of Section 103A. In Sub-clause (i) to its proviso provides that no such correction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter. In this regard the only averment made in the writ petition is that the ancestors of respondent Nos. 4 to 9 were parties to the proceeding u/s 108A of the B.T. Act. It is nowhere stated that they were ever served with any notice to appear and/or for hearing in the said matter. The revisional authority in the impugned order has in fact, not set aside the said order. From bare perusal of the impugned order of the revisional authority it is evident that the Joint Director has simply held that the said order would not be binding on the said respondents as they were never given notice in the said proceeding u/s 108A of the B.T. Act. In the case of Baso Mahto v. Hari Mahto, (supra) relied upon by the learned Counsel for the petitioner, the facts were completely different. The petitioner of the said case had filed objection u/s 103A of the B.T. Act when the record of rights in respect of the land in question was being prepared as per Section 8 of the Act and the same name of respondent was entered with respect to 3 plots. The Consolidation Officer who was acting as the Revenue Officer while preparing the draft record of rights allowed the objection by his order dated 2nd August, 1964, against which the concerned respondent went up in appeal to the Addl. Collector of Patna, but the Addl. Collector finding that the appeal directly could not be taken to him from the order of the Revenue Officer, directed the matter to go to the specially empowered Revenue Officer under Sub-section (3) of the Section 103A of the B.T. Act. By a notification dated 15th June, 1964 the Dy. Collector, Land Reforms was specially empowered to be the Revenue Officer for the purpose of Sub-section (3) of Section 103A. The order of the Additional Collector, transferring the case to the Dy. Collector, Land Reforms was dated 10th September, 1964. The D.C.L.R. allowed the appeal, which, in fact, was allowing the revision u/s 103 A (3) by his order dated 15th October, 1965. Against this order the matter was taken by the petitioner to the Additional Collector in appeal under Sub-section (4) of Section 103A of the B.T. Act as it stood at the relevant time. The Additional Collector, who was the prescribed appellate authority by a notification dated 26th

August, 1964, by his order dated 8th October, 1969 allowed the appeal. The concerned respondent took up the matter in further appeal to the Commissioner of the Patna Division, but the Commissioner, by his order dated 25th August, 1970 held that the appeal before him was not maintainable. Thereafter the respondent Invoked the State Government's power u/s 35 of the Act. The Additional Secretary of the State Government by his order dated 24th October, 1970 interfered with the order of the Addl. Collector and set aside the same, against which the petitioner filed the writ petition in this Court. this Court in the said circumstances held that in a matter like this, the State Government had no authority to call for and examine the record of the Additional Collector or Revenue Officer in exercise of the power u/s 35 of the Act. The preparation of the record of rights is a preparation u/s 8 of the Act but that section refers to the preparation of the record of rights in accordance with Chapter X of the B.T. Act. The order of the Revenue Officer or the Additional Collector under the various sub-sections of Section 103 A of the B.T. Act cannot be an order under the Act to enable the State Government to interfere with it.

14. In the instant case neither the revisional authority called for and examined the records of the proceedings u/s 108A, nor has he interfered with that order in exercise of the revisional power. In fact, while considering the claim of the respective parties the revisional Court examined the photo copies of the records filed before him and from the said records he came to the conclusion that the order u/s 108A of the B.T. Act was passed without notice and hearing the concerned respondents of the writ case. As such, it was held by him that the said order was not binding on them. Even in the present writ petition it is not disputed that no notice/opportunity of hearing was given to the respondent Nos. 4 to 9 before the order u/s 108A of the B.T. Act was passed. As such, I do not find any infirmity in the impugned order in this regard.

15. As regards the other question raised on behalf of the petitioner that there was a partition between the ancestors of the concerned parties in the year 1912, it is difficult to accept the same. Neither any finding has been recorded in this regard by the Consolidation Officer or the appellate authority except that the appellate court has only noticed the submission of the petitioner in this regard, nor the petitioner has produced any evidence even in this writ petition. From the order passed by the Joint Director, I find that he has discussed the materials on record in detail and has accordingly, interfered with the order of the appellate authority.

16. However, Mr. Mishra, learned Counsel for the respondents fairly submitted that as in the instant case the question of title is involved, for which the suits have been filed and are pending before the Subordinate Judge, any finding recorded by this Court may prejudice either parties. As such, he submitted that in view of the stand taken by the respondents in the counter affidavit that notification issued u/s 3 of the Act operating the consolidation scheme in the area has been cancelled, the petitioner may seek his remedy in civil court. In this

regard, he also referred to the Full Bench decision of this Court in the case of Sheoratan Chamar and Others Vs. Ram Murat Singh and Others, and also to the decision in the case of Kalika Knar alias Kalika v. State of Bihar and Ors. reported in wherein this Court held that the jurisdiction of the civil court is not completely outset for such disputes.

17. The learned Counsel, appearing for the petitioner on the other hand, submitted that the matter may be remanded to the Joint Director for fresh consideration on the question as to whether there was partition in the year 1912 and what was its effect, in my opinion, there is no substance in this submission of the learned Counsel. If the notification u/s 3 of the Act initiating consolidation scheme in the area itself has been cancelled, then the Joint Director cannot now consider the matter. Besides, it will not be in the interest of the parties including trn petitioner, who will have ample opportunity before the civil court to lead evidence and present their cases in support of their claim relating to right, title and interest over the lands in question.

18. Accordingly, I do not find any merit in the writ petition and the same is dismissed, but without costs. It is however, made clear that the parties will be at liberty to get the dispute decided by the Civil Court.

D.P. Wadhwa, C.J.

19. I agree.