

(2012) 12 PAT CK 0058
In the Patna High Court
Case No : CWJC No. 4544 of 1992

Yogendra Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(2), 35
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2013) 2 PLJR 410

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Advocate : Surendra Kr. Singh, Kamala Prasad, Amarendra Kumar and Praveen Prakash, for the Appellant; Ranjan Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Kishore K. Mandal, J.—Present application filed under Article 226 of the Constitution of India seeks issuance of appropriate writ in the nature of certiorari or any other appropriate writ/order to quash the order dated 26.3.1992 passed by the Joint Director of Consolidation in Revision Case No. 169 of 1988 (Annexure-1) whereby the revision preferred by respondent nos. 5 and 6 was allowed and the order of the appellate court/authority dated 30.11.1987 (Annexure-9) was quashed and set aside. Relevant facts, in brief, are as under:--

The petitioners claim to be the descendants of late Narsing Narayan Singh who was father of Bhuneshwar Singh, Yogendra Singh (Petitioner No. 1) and late Mathura Singh (father of Petitioner Nos. 2 and 3). The subject land(s) in dispute appertain to C.S. Khata No. 18, C.S. Plot No. 84 corresponding to R.S. Plot No. 136 (0.86 acres), C.S. Plot No. 110 corresponding to R.S. Plot No. 146 (0.57 acres), C.S. Plot No. 47 corresponding to R.S. Plot No. 242 (0.12 acres), C.S. Plot No. 61 corresponding to R.S. Plot No. 251 (0.15 acres) and C.S. Plot No. 320 (1.27 acres) in all 2.97 acres of the aforesaid description situate in Village-

Kendua within Gurua Police Station in the district of Gaya. According to the petitioners, the aforesaid land was recorded in the name of one Faggu Gope. He was unable to pay the land rent and, therefore, surrendered the subject land in favour of the ex-intermediaries. By the time such surrender was made by the aforesaid Faggu Gope, there was a collectorate partition amongst the ex-intermediaries. The subject land, however, was wrongly shown in the name of one Bihari Gope. Let it be recorded that the respondents herein are the grandsons of aforesaid Bihari Gope. According to the writ petition, aforesaid Bihari Gope executed a sada bazidava in respect of the subject land admitting therein that the same belonged to the ex-intermediary. According to the writ petition, the value of the land was less than Rs. 100/- and, as such, the aforesaid Bihari Gope had executed a sada (unregistered) bazidava in relation to the subject land admitting therein that the same did not belong to him. The subject land thereafter stood settled in favour of the ancestors of the writ petitioners. The settle was recognized as the tenant by the ex-landlord and rent receipts were issued against payment of rent by the ex-intermediary. At the time of vesting of intermediary rights, return was also filed by the ex-intermediary treating the ancestor of the petitioners as raiyat of the subject land(s). It is asserted that the petitioners approached the authority seeking issuance of certified copy thereof but it was revealed by endorsement on requisition that the same was not available with the Revenue Authority. It is the case of the petitioners that their ancestor was thereafter recorded in the Revenue records as the tenant and the land rent was being paid continuously to the State of Bihar against the receipts. Some of the rent receipts have been enclosed alongwith the writ petition. The petitioners have also filed diverse documents such as canal purcha to show that the subject land was continuously in their possession as the raiyat of the land. In the year 1975, a proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was initiated against late Bhuneshwar Singh and some of his family members vide L.C. Case No. 435/15 of 1973-74. A verification report (Annexure-5) was submitted by the Anchal Adhikari revealing therein that the subject land was the land of the proceede under the Act. The said matter was thereafter considered by the Deputy Collector, Land Reforms and by an order dated 20.10.1975 (Annexure-6), the ceiling proceeding was dropped in view of the fact that the land held by the family was far less than the entitlement. During Revisional Survey Operation, the subject land, in the light of the aforesaid facts as well as order passed in the land ceiling proceeding, was recorded in the name of Bhuneshwar Prasad Singh and others (ancestors of the petitioners). An objection u/s 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 was filed for the first time by the respondent Nos. 5 and 6 against recording of the name of the ancestor of the petitioner in the draft documents in line with the Revisional Survey records which gave rise to Case No. 4 of 1986. The petitioner, on notice, appeared and contested the same. All relevant documents were produced before the Consolidation Officer. Upon consideration of those documents and after hearing the parties, the Consolidation Officer by an order dated 30.6.1987

(Annexure-8) rejected the objection filed by the respondent Nos. 5 and 6. Aggrieved thereby, the private respondents filed an appeal before the Appellate Court/forum vide Appeal No. 539 of 1987. The said appeal was contested by the petitioners. The Appellate Authority by an order dated 30.11.1987 (Annexure-9) rejected the said appeal preferred by the private respondents. Feeling aggrieved, the private respondents (respondent Nos. 5 and 6) filed a revision application before the revisional authority vide Revision No. 169 of 1988. The petitioners appeared thereat and presented all documents which were produced in the Court below relying whereon concurrent finding(s) were recorded by the two Courts below that the subject land was rightly recorded in the name of the ancestor of the petitioner. The Revisional Court by an order dated 26.3.1992 (Annexure-1) allowed the revision application and set aside the appellate as well as original order (Annexures-8 and 9 respectively) leading to the filing of the present writ petition.

2. Heard Mr. Surendra Kr. Singh, learned Sr. Counsel for the petitioners and A.C. to AAG-13 for the State.

3. Nobody appears on behalf of respondent nos. 5 and 6. No counter affidavit has been filed either on behalf of the State or the private respondent nos. 5 and 6.

4. Learned counsel for the petitioners submits that under the scheme of the Bihar Consolidation of Holdings (Prevention of Fragmentation) Act, 1956 (for short "the Act") the revisional jurisdiction has been conferred on the revisional authority to oversee the correctness, propriety, legality or otherwise of the order passed by the authority under him. The scope and ambit of jurisdiction conferred u/s 35 of the Act fell for consideration before this Court in Jagu Mallah and Others Vs. The State of Bihar and Others . A learned single Judge of this Court relying on the ratio laid down by the Apex Court in Ram Dular Vs. Dy. Director of Consolidation, Jaunpur and Others, held as under in paragraph 6 of the report:--

6. Respondent No. 1 while deciding the revision of respondent no. 4 u/s 35 of the Act has reversed the findings of fact recorded by respondent no. 2, in favour of the petitioners. Respondent No. 1, in his revisional jurisdiction had no power to set aside the findings of fact recorded by respondent no. 2 in favour of the petitioners, after considering the entire materials on record. My this view, finds support from a decision of the Supreme Court in Ram Dular Vs. Dy. Director of Consolidation, Jaunpur and Others, in which the Supreme Court while interpreting a similar provision of U.P. Consolidation of Holdings Act held:--

It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by

appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root (six root) of the matter, had been committed in recording the order or finding.

5. Learned counsel submits that the provision of law appearing in Section 35 of the Act and the corresponding provision in U.P. Consolidation of Holdings Act is in pari materia. It is contended that on going through the impugned order (Annexure-1) it would appear that respondent-revisional authority has reappraised the materials on record and substituted its own finding de novo. In the submissions of the counsel, such jurisdiction is not conferred on the revisional authority particularly when it is not the case that any document/evidence was not taken note of by the appellate authority or a wrong conclusion was derived relying thereon while concurring with the view of the original authority (Annexure-8). Mr. Singh argued that the respondent revisional court while reappraising the materials on record has committed an error of record in treating the case of the petitioners that Faggu Gope had abandoned the land or the village. Referring to the order of the appellate authority and the pleadings made in the writ petition it has been submitted that, in fact, the case of the petitioners consistently was that aforesaid Faggu Gope had surrendered the land in favour of the ex-intermediary whereafter the subject land was settled with the ancestor of the petitioners by issuing a Sada Hukumnama executed on 26th Jeth 1343 Fasli (Annexure-4). He also criticized the view taken by the revisional court in the impugned order that aforesaid Hukumnama cannot be referred to and relied upon since the same was unregistered. He submits that from the materials on record including the averments made in para 25 of the writ petition it would appear that valuation of the land was less than Rs. 45/- only on the date of execution of Bazidava in favour of ex-intermediary by Bihari Gope (grandfather of private respondent) and as such there was absolutely no need of registration thereof. Learned counsel submits that while reappraising the case of the parties the revisional court committed a serious error which has vitiated the impugned order. It appears from the impugned order that while relying on the case of the petitioners the revisional authority has relied on the order passed by the Executive Magistrate u/s 144 of Cr.P.C. vide Case No. 767/90 which was passed on 5.10.1990. Learned counsel for the petitioners has rightly criticized the aforesaid part of the revisional order since any proceeding u/s 144 Cr.P.C. has a limited life. That apart, even if the said order is taken into consideration it has to be kept in mind that the same was passed during the pendency of the revision application. The original authority in the present case has decided the dispute by order dated 30.6.1987 (Annexure-8) and the appellate order by order dated 30.11.1987 (Annexure-9).

6. Learned counsel for the State on the other hand simply supported the impugned order.

7. The extent of the jurisdiction conferred on the revisional court has been considered by this Court in the case of Jagu Mallah (supra). The enquiry or consideration by the revisional court has to be confined to examining the legality/propriety and/or correctness of the order passed by the court below. The findings of fact recorded by the two courts below on appraisal of the materials on record should not normally be interfered with by the revisional court until and unless the same is/are shown to be wholly erroneous and/or contrary to the provision of law. Learned counsel for the petitioners has rightly pointed out that while reappreciating the materials on record the revisional court committed error of record in treating the case of the petitioners that there was abandonment of the subject land by Faggu Gope. In fact, the case of the petitioners consistently has been that the aforesaid Faggu Gope had surrendered the land in favour of ex-landlord/intermediary. The revisional court has not found that the appellate order suffered from error of jurisdiction or is vitiated on account of non consideration of any relevant fact or evidence. This Court in view of aforesaid is satisfied that the order passed by the revisional court dated 26.3.1992 (Annexure-1) merits interference.

8. The application is allowed. The order impugned dated 26.3.1992 (Annexure-1) is quashed and set aside. No order as to cost(s).