

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2589 of 1994

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1. Basudeo Gope Son of Late Hamraj Gope
 2. Fuliya Devi Wife of Late Hemraj Gope.
 3. Suresh Gope alias Suren Gope, son of Basudeo Gope.
- All are residents of village Baira, Baira, P.O. Kochara,
P.S. Khodaganj, District Nalanda.

.... Petitioners

Versus

1. The State of Bihar.
2. The Joint Director Consolidation-cum- Research Officer,
Consolidation, Patna, Bihar
3. Deputy Director, Consolidation, Nalanda.
4. Consolidation Officer, Nalanda.
5. Mostt. Chandeshwari Devi Wife of Late Shyam Lal Gope
6. Sabita Devi wife of Ram Naresh Singh (daughter of Late
Shayam Lal Gope), residents of village Makhdampur,
P.S. Khodaganj, District Nalanda.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ravi Nath Verma, Adv.
Mr. Mallika Majumdar, Adv.

For the Respondent/s : Mr. (SC9)
Mr. Dinbandhu Singh, Adv.
Mr. Nagendra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 24-07-2015

This is an application seeking quashing of the
order dated 06.02.1994 passed by the Research Officer,
Directorate of Consolidation, Bihar, Patna whereby he
has set aside the order dated 11.05.1992 passed by the
Deputy Director, Consolidation, Nalanda in Appeal Case
No. 17 of 1990 and has restored the order of the

Consolidation Officer dated 15.12.1989 passed in Consolidation Case No. 53 of 1989.

2. Notices were issued to the Respondents no. 5 and 6, which have validly been served on them and they also entered appearance by way of Vakalatnama but have not filed any counter affidavit.

3. From the pleadings and the Annexures brought on record, it appears that Respondents no. 5 and 6 filed an application under Section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as “the Act”) in the Year 1989, claiming half share in the movable and immovable property belonging to one Hemraj Gope who had died in the Year 1988. Ten years before filing of the said application under Section 10(B) of the Act, they had filed Partition Suit No. 140 of 1979 in the Court of the Subordinate Judge, Bihar Sharif, Nalanda. The Respondent no. 5 is the widow of one of the two sons of said Hemraj Gope, whereas Respondent no.6, who is the daughter of Respondent no. 5. Hemraj Gope, is said to have died leaving behind one son and three daughters and, widow Fuliya Devi (the petitioner no. 2 in the

present case and heirs of his pre-deceased son (Respondents No. 5 and 6 herein). The eldest son of Hemraj Gope, Basudeo Gope is petitioner no. 1 herein whereas petitioner no. 3 is son of the said Basudeo Gope.

4. The petitioners were noticed by the Consolidation Officer. They raised an objection over maintainability of the petition filed by Respondents no. 5 and 6 under Section 10(B) of the Act on the ground that Chaks in the concerned Mouza had already been confirmed and therefore the Consolidation Officer or any other authority under the Act, did not have any jurisdiction to entertain such application. The Consolidation Officer rejected the claim of Respondents no. 5 and 6 with regard to some of the Chaks. However, with respect to other Chaks, he ordered that name of Respondent no. 5 should be entered as half co-sharer, along with Basudeo Gope. Respondents no. 5 and 6 filed appeal before the Deputy Director of Consolidation, giving rise to Consolidation Appeal No. 17 of 1990. Petitioners also filed appeal before the Deputy Director, bearing Appeal No. 04 of 1990. The Deputy Director, Consolidation set aside the order of the Consolidation



Officer dated 15.12.1989 by two separate orders dated 11.05.1992 on the ground that after Chaks having been confirmed, Section 10(B) of the Act could have been invoked. Aggrieved by the appellate order passed by the Deputy Director, the Respondent no. 6 filed revision petition before the Director of Consolidation, which was finally decided by the Research Officer, Directorate, Consolidation, Bihar vide impugned order dated 06.02.1994. The revisional authority held that the appellate court ought not to have rejected the claim of Respondents no. 5 and 6 only with reference to bar under Section 10(A) of the Act, as according to him, by operation of said bar under Section 10(A), right title of raiyat, cannot be adversely affected.

5. Learned counsel appearing on behalf of the petitioners has contended that there being statutory bar under Section 10(A) of the Act, the Deputy Director, Consolidation had rightly set aside the order of the Consolidation Officer. She contends that the order of the Consolidation Officer was totally beyond jurisdiction because of the bar under Section 10(A) of the Act. She has submitted that the revisional authority miserably

failed to address on this aspect of the matter. She contends that in the absence of jurisdiction, no authority can decide right, title of a party in any proceeding though such party may be having such right title or interest.

6. Learned counsel for the petitioners has placed reliance upon a Division Bench decision of this Court reported in **1984 BBCJ 140 (Jagarnath Thakur & Ors. State of Bihar & Anr.)** in support of the said contention.

7. Learned counsel appears to be right in her submission that the revisional authority has not at all gone into the question of bar under Section 10(A) of the Act, which was the basis for the appellate authority for setting aside the order passed by the Consolidation Officer. The impugned order dated 06.02.1994 passed by the Joint Director-cum-Research Officer, Consolidation, Patna in Revision Case No. 273 of 1992 can, therefore, be not sustained and is accordingly set aside.

8. Learned counsel for the petitioners is not in a position to inform this Court as regards status of notification under Section 26A of the Act with respect to the mauza in question. It goes without saying that if

notification under Section 26A of the Act has been issued, the suit preferred by Respondents no. 5 and 6 would automatically stand revived. The *inter se* disputes between the parties as regards title can be decided, in the facts and circumstances of this case by a Civil Court of competent jurisdiction.

9. This application is allowed with observation, as above.

10. There shall, however, be no orders as to costs.

(Chakradhari Sharan Singh, J.)

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