

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1898 of 1991

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1(a) Ram Swarath Singh
1(b) Ram Nek Singh
1(c) Ramasharay Singh
All sons of Late Khub Lall Singh
2(i) Mahendra Singh
2(ii) Upendra Singh, both sons of Late Parmeshwar Singh
3 Dineshwar Singh son of Late Jagdeo Singh
4(i) Nagendra Singh
4(ii) Devendra Singh
4(iii) Surendra Singh
4(iv) Rama Kant Singh
All sons of Late Sidheshwar Singh
5. Yogendra Singh S/o Late Ram Bahadur Singh
6. Ram Kumari Devi wife of Late Yugeshwar Singh,
All residents of Village-Rupauli Rupahara, P.S.-Bathnaha, District-Sitamarhi

.... Petitioners

Versus

1. The State of Bihar
2. Joint Director of Consolidation (Muzaffarpur) Bihar at Patna
3. Deputy Director of Consolidation, Sitamarhi
4. Consolidation Officer, Bathnaha, P.S. Bathnaha, District-Sitamarhi
5.(a) Ganesh Singh
(b) Dinesh Singh, both sons of Late Jagdish Singh
6. Yugal Singh, son of Nathuni Singh,
Respondent nos. 5 and 6 are residents of Village Sirauli Tola Ram Nagar, P.S.
Riga, District-Sitamarhi

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rabindra Nath Kanth, Adv.

For the Respondent

Nos. 5 & 6 : Mr. Vikas Ratan Bhasti, Adv.
Mr. Ashish Giri, Adv.

For the State : Mr. Mahboob Ashraf A.C. to S.C.-27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 23-06-2015

The petitioners have challenged the order dated
28.11.1990 passed by the Joint Director of Consolidation



(Muzaffarpur) in Revision Case No. 1338 of 1987, whereby he has set aside the order dated 14.05.1987 passed by the Deputy Director of Consolidation, Sitamarhi in Consolidation Appeal No. 277 of 1986. The Deputy Director of Consolidation, Sitamarhi by the said order dated 14.05.1987 had reversed the order dated 17.06.1986 passed by the Consolidation Officer, Bathanaha, Sitamarhi in Consolidation Case No. 07 of 1986.

2. I have heard learned counsel for the petitioners as well as learned counsel appearing on behalf of the State of Bihar and the private respondents. The dispute relates to land appertaining to Kheshra Nos. 2994, 2940 and 2958, having total area of 74 decimal of Thana No. 186 situate in village Rupauli Ruphara, Anchal-Bathanaha.

3. It is the claim of the petitioners that the aforesaid land was purchased by their ancestors in the name of Nathuni Singh in the year 1956 through a registered sale deed, who was the common ancestor of the private respondent nos. 5(a and b) and 6. They remained in cultivating possession over the land without any interruption. Thereafter their names were mutated in Register-II of the State Government whereafter they started paying rent and no objection was ever raised at any point of time. The said Nathuni Singh died in the year 1980. In course of the revisional survey also, upon finding the actual possession of the petitioners, their names were

recorded in revisional record of rights and no objection was ever raised on behalf of the descendant of said Nathuni Singh, who are private respondents in the present writ application.

4. The private respondents, in the year 1986 filed a petition before the Deputy Director, Consolidation, Sitamarhi for recording their names and for creation of Chak with respect to the said land on the ground that the land was purchased in the name of their father Nathuni Singh and Kewala stood in the name of Nathuni Singh. On the basis of their application, a case was registered being Consolidation Case No. 07 of 1986, where they took a plea that they were not in possession of original sale deed as it was handed over to the ancestors of these petitioners and they were looking after the said property, in view of the advanced age of said Nathuni Singh and his ailments. The Assistant Consolidation Officer, Bathanaha recommended after enquiry recommended for entry of the name of respondent nos. 5 and 6 with respect to lands in question and opening a Chak i.e. Chak No. 156. On the basis of the recommendation of the Assistant Consolidation Officer, the Consolidation Officer under order dated 17.06.1986 ordered for carving out of the said disputed land, admeasuring 74 decimals from the said Revisional Survey Khata No. 56, which was earlier registered in the name of the petitioners. The petitioners thereafter preferred an appeal before the Assistant



Director of Consolidation, Sitamarhi in Consolidation Appeal No. 07 of 1986 under Section 10(6) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act). The petitioners took a plea before the Assistant Director, Consolidation that the Consolidation Officer passed the order in favour of respondent nos. 5 and 6 without holding spot verification with regard to the possession of the parties over the land in dispute, which was required to be done.

5. The Appellate Authority thereafter appears to have himself held spot inspection to ascertain as to who was in actual possession and after taking into account other materials, came to a finding that execution of sale deed in the year 1956 in the name of Nathuni Singh was as a matter of fact and a benami transaction, inasmuch as the vendor of the said land himself, is said to have stated that purchase money was paid by Jaideo Singh, the father of original Petitioners No. 1 to 4.

6. The respondent nos. 5 and 6 preferred revision petition under Section 35 of the Act before the Director of Consolidation, Bihar in Revision Case No. 1338 of 1987. The Director, Consolidation by the impugned order dated 28.11.1990, set aside the order of the Assistant Director, Consolidation dated 14.05.1987 mainly relying upon a certified copy of the sale deed executed in

favour of said Nathuni Singh in the year 1956 and other documents including affidavits sworn by nine persons and Chaukidari receipts.

7. Learned counsel appearing on behalf of the petitioners challenging the impugned order dated 28.11.1990 passed by the Joint Director of Consolidation in Revision Case No. 1338 of 1987 has submitted that the Joint Director, Consolidation acted beyond his jurisdiction, by taking into consideration new facts, which were neither available either before the authority of first instance i.e. the Consolidation Officer nor before the appellate authority i.e. the Assistant Director, Consolidation. He submits that it was not within the scope of revisional jurisdiction of the Joint Director, Consolidation, exercising power under Section 35 of the Act to have considered new facts which included statements on affidavits of some of the villagers, Chaukidari receipts. In this connection, he has placed reliance upon the decision of this Court in the case of **Suresh Pd. Singh vs. The State of Bihar & Ors. reported in 2007(3) PLJR 519** and in the case of **Dudheshwar Giri & Ors. vs. The State of Bihar & Ors. 1998(3) PLJR 86.**

8. Mr. Ashish Giri appearing on behalf of the private respondent nos. 5 and 6 on the other hand contended that there is no illegality in order of the Consolidation Officer the impugned order as there is no dispute about the fact that though the sale deed executed in



1956, the land in dispute was transferred in the name of Nathuni Singh, father of respondent nos. 5 and 6, which was rightly affirmed, subsequently by the order of the revisional authority i.e. the Joint Director, Consolidation, which is impugned in the present writ application. He has submitted that the petitioners took undue advantage of physical incapacity of their father, because of his ailments, in whose name the land in dispute was transferred in the year 1956 itself, and got their names illegally mutated and entered in Register II of records of rights.

9. From perusal of the orders passed by the Consolidation Officer, I find that before the Consolidation Officer, admittedly no document was produced by the petitioners, in support of their claim that the transfer of the disputed land through the registered sale deed executed in the year 1956, was in fact a benami transaction. It also appears that the Assistant Director, Consolidation did not hold any spot verification. In appeal, the Assistant Director, Consolidation apparently went beyond records available before the Consolidation Officer and held physical verification and on that basis came to his conclusion that the land was in possession of the petitioner. In my opinion, if he was satisfied that spot verification was required, he ought to have referred the matter back to the Consolidation Officer for decision afresh.

10. Learned counsel for the petitioners, Mr. Kanth appears to be right in his submission that the revisional court i.e. the court of Joint Director, Consolidation could not have considered new facts, while exercising his revisional jurisdiction under Section 25 of the Act.

11. Learned counsel appearing on behalf of the State of Bihar has submitted that the village in question appears to have been denotified by notification under Section 26(a) of the Act. There is no affidavit in this regard on record. Upon perusal of the orders passed by all the Consolidation Authorities, I am of the view that none of them can be sustained. I accordingly, set aside the order dated 28.11.1990 passed in Consolidation Revision Case No. 1338 of 1987 by the Joint Director of Consolidation, order dated 14.05.1987 passed by the Assistant Director of Consolidation, Sitamarhi in Consolidation Appeal No. 227 of 1986 as well as the order of the Consolidation Officer, Bathanaha dated 17.06.1986 passed in Consolidation Case No. 07 of 1986.

12. In view of the nature of dispute between the parties, the matter stands remitted back to the Consolidation Officer, Bathanaha, Sitamarhi, if no notification under Section 26(a) of the Act has been issued with respect to the village in question. If, however, such notification has already been issued with respect to the village in

question, in view of the fact that the dispute relates to question of title, the petitioners will be at liberty to take recourse to remedy under ordinary law by filing suit before a court of competent jurisdiction.

13. The writ application is, accordingly, disposed of.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

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