

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8837 of 1995

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1. HARIHAR SINGH @ HARIHAR YADAV
2. ANGRAHIT SINGH
3. DEVAKI SINGH ALL SONS OF SURAJ YADAV @ SURAJ SINGH, DECD.
4. MOST.BUDHIA WIFE OF DASAI SINGH, DECD.
5. SINGASHAN SINGH SON OF DASSI SINGH, DECD.
6. BUGA MINOR SON OF DASAI SINGH, DECD. MINOR SON UNDER GUARDIANSHIP OF HIS MOTHER MOST BUDHIA, ALL RESIDENT OF VILLAGE KHAIRA BHUTAHA, POST OFFICE NATWAR, POLICE STATION SANJHAWALI, DISTRICT ROHTAS **Petitioners**

Versus

1. STATE OF BIHAR
2. JOINT DIRECTOR OF CONSOLIDATION, BIHAR, PATNA
3. DEPUTY DIRECTOR OF CONSOLIDATION, ROHTAS, SASARAM
4. THE CONSOLIDATION OFFICER, BIKRAMGANJ, ROHTAS
5. DURGUN SINGH @ DKURGAN SINGH YADAV SON OF DEOKI SINGH @ DEVALAL SINGH, DECD. RESIDENTS OF VILLAGE KHAIRA BHUTAHA, POST OFFICE NATWAR, POLICE STATION SANCHAWALI, DISTRICT ROHTAS **Respondents**

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Appearance :

For the Petitioners : Mr. Brij Mohan Kumar Singh, Advocate and
Mr. Atul Kumar Pandey, Advocate
For the State : Mr. Mithilesh Kr.Upadhyay, AC to GP 10.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

8 09-04-2015 The petitioners submit that while admitting the writ application on 11.8.1997, this Court had issued notice to respondent no.5 observing that '*during pendency of this application, operation of the order, contained in Annexure 7, shall remain stayed*'. They submit that they had filed an application before the Consolidation authorities for entry of their name in the records of right which was allowed by the Consolidation officer, Bikramganj vide order dated 5.9.1988, passed in Consolidation case no. 10 of 1988-89. They further submit that respondent no.5, who was stranger to the family, straightway filed Revision case no. 829 of 1990 before the

Director of Consolidation, Bihar, Patna against order dated 5.9.1988 in stead of filing a regular appeal before the concerned Deputy Director, Consolidation. It appears from the order of the revisional court that the case was dismissed on 14.4.1992 but was subsequently restored on 14.3.1993. The petitioners submit that the case was again dismissed on 4.8.1993.

Grievance of the petitioners is that without notice to them though they were opposite party, the revision application was allowed by the Director of Consolidation, Bihar. In any view of the matter, no notice was issued to them after dismissal of the case on default. It appears that respondent no.5 has not filed appearance in spite of valid service of notice. In such circumstances, the submission of the petitioners has to be accepted. Once the case is dismissed for default, then at least without a notice to the other side, the case ought not to have been heard and disposed of finally, which is the situation in the instant case. As such, the impugned order dated 11.7.1994, passed by the Joint Director, Consolidation (respondent no.2) is not sustainable and is accordingly set aside with liberty to the parties to take resort to remedy available under the law.

The writ petition is allowed to the extent mentioned above.

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(Samarendra Pratap Singh, J)