

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3525 of 1996

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**In the matter of an application under Articles 226 and 227 of the
Constitution of India**

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1. Shivjee Rai , son of Late Jagdeep Rai
2. Saryug Rai, son of Late Shankar Rai

Both residents of village and P.O.Chack Pahar, P.S. Tajpur, Dist. Samastipur
..... Petitioners

Versus

1. The State of Bihar through Collector, Samastipur
2. The Joint Director, Consolidation, Muzaffarpur
3. The Deputy Director, Consolidation, Samastipur
4. The Consolidation Officer, Tajpur, P.S. Tajpur, Dist. Samastipur
5. (i) Bishundeo Rai, son of Late Dawarik Rai (ii) Raso Devi, daughter of Late Dawarik Rai (iii) Mostt. Sumitra Devi, daughter of Late Dwarik Rai
6. Siya Saran Rai, son of Girwal Rai, resident of village and P.O. Chack Pahar, P.S. Tajpur, Dist. Samastipur

..... Respondents

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate
For Respondents
5(i), (ii) (iii) and 6 : Mr. Manish, Advocate
For the State : Mr. Mahtab Alam, AC to SC 3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL JUDGMENT
Date: 25-06-2015

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel for private respondent Nos. 5(i),
5(ii), 5(iii) and 6.

2. The petitioners seek quashing of the order dated
18.12.1995 passed by the Joint Director, Consolidation, Muzaffarpur
in Revision Case No. 425 of 1993 by which he has affirmed the order
dated 20.8.1993 passed in appeal by the Deputy Director of



Consolidation, Muzaffarpur, who, in turn, had upheld the order dated 30.10.1989 passed by the Consolidation Officer, Tajpur, Samastipur by which the Consolidation Officer had directed that Khesra No. 3341 would continue to remain recorded in the name of Government of Bihar.

3. The facts of the case are that cadastral survey plot No.1551, bearing khata No. 232, Thana 114, P.S. Tajpur having an area of 6 decimals was recorded in the name of Rupa Mahto, ancestor of the petitioners, which fact is not in dispute by any of the parties. In the revisional survey the same plot was converted into three plots and khesra No.3340, 3341 and 3342 were created. Khesra Nos. 3341 and 3342 having area of one decimals and four decimals respectively were recorded in the name of the State of Bihar. The name of the petitioners were nowhere recorded in the revisional survey record with regard to the plots in question and having no knowledge about the same they remained in possession over the plots of land but upon learning about the same at the time of consolidation proceedings they made their claim before the Consolidation Officer, who issued notice to the revenue authorities of the State. In their written reply the revenue authorities accepted that the land was raiyati in nature and they have no objection to the opening of the khata in the name of the petitioners. The said fact was recorded in the order dated 30.10.1989 of the Consolidation Officer. Thereafter objection was filed by the private



respondents claiming that if the khata was opened in the name of the petitioners with regard to the plots in question their passage would be closed and they prayed for a local inspection to be made before passing final orders. A local inspection was made by the Consolidation Officer on 24.10.1989 and thereafter he passed the impugned order dated 30.10.1989 directing that so far as khesra No.3341 is concerned, in view of the changed nature of the said plot it would continue to be recorded in the name of the Government of Bihar, after finding that there was Rasta and a well on the said plot of land and both the road and the well were being used as public road and well. The order of the Consolidation Officer was upheld by the Deputy Director, Consolidation by his order dated 6.9.1993 in appeal filed by the petitioners. The revisions filed by the petitioners were also dismissed for the same reasons. Accordingly the petitioners are before this Court.

4. Learned counsel for the petitioners submits that apart from the other infirmities in the orders of the authorities in directing khesra No. 3341 to be continued in the name of the State of Bihar when the State itself has not made any claim in that regard, the orders stand vitiated in view of the mandatory provisions of Section 10(7) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act'). It is submitted that the local inspection was not made by the Consolidation Officer after



giving notice to the Village Advisory Committee and in the presence of the Village Advisory Committee and accordingly wrong facts have been recorded in the inspection, contrary to the facts with regard to the Rasta and well which would not have normally happened if the Village Advisory Committee was present at the time of inspection. It is further submitted that the Deputy Director, Consolidation did not make any inspection at all which fact was placed by the petitioners at the stage of revision itself and even the order of the Deputy Director, Consolidation does not show that the Village Advisory Committee was noticed at the time when he allegedly made a local inspection as claimed by him.

5. Learned counsel for the private respondents, on the other hand, reiterates the stand taken by them before the Consolidation authorities. He, however, is unable to satisfy this Court that the local inspection had been carried out after due notice and in the presence of the Village Advisory Committee.

6. Learned counsel for the State also supports the stand of the petitioners and is unable to justify the order to the extent the provisions of Section 10(7) of the Act regarding the notice to the Village Advisory Committee before making local inspection having not been complied with.

7. On a consideration of the facts and circumstances of the case, this Court is of the view that prima facie all the documentary

evidences are in the support of the petitioners and the only reason for rejecting the claim of the petitioners with regard to khesra No. 3341 was the local inspection made by the Consolidation Officer and thereafter allegedly made by the Deputy Director, Consolidation. From the order-sheets on the record it is evident that no notice was issued to the Village Advisory Committee before local inspection was made.

8. In the above circumstances, there is clear violation of the provisions of Section 10(7) of the Act in the present case. The impugned order dated 18.12.1995 passed by the Joint Director, Consolidation, the order dated 20.8.1993 passed by the Deputy Director, Consolidation and the order dated 19.10.1989 passed by the Consolidation Officer thus cannot be allowed to stand and they are, accordingly, quashed and set aside. The matter is remanded to the Consolidation Officer to proceed afresh in accordance with law.

9. The writ application is, accordingly, allowed.

(Ramesh Kumar Datta, J)

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