

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8699 of 1998

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1. Munilal Gupta @ Sah son of Hari Prasad Sah
2. Haridwar Choudhary Mallah son of Lalji Mallah
Both residents of village Dian, Police Station Mohania, P.O. Ramgarh,
District-Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. The State of Bihar
2. Director Consolidation, Bihar, Patna
3. Bidyadhar Singh
4. Ramesh Prasad Singh
Both sons of Bikrama Singh, residents of village-Dian, P.O. Ramgarh,
Police Station-Mohania, District-Kaimur (Bhabhua)

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rewti Kant Raman, Advocate

Mr. Mahesh Prasad 2, Advocate

For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2

Mr. Nagendra Dubey, Advocate

Mr. Dhananjay Kumar, Advocate

Mr. Ambuj Nayan Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-07-2015

None appears on behalf of the petitioner.

Mr. Rajeev Kumar Singh, G.P.-2 appears for the State and

Mr. Ashok Kumar Garg appears for the private respondents.

Perused the records and heard the counsel for the respondents.

The petitioners have questioned the order dated 29.11.1997 passed by the Director Consolidation, Bihar, Patna in Revision Case No. 1162 of 1994 whereby he has allowed the revision case preferred by the private respondents. The challenge to the exercise of jurisdiction by the Director Consolidation has been made

by the petitioners on the following grounds;

- (a) The jurisdiction vested in the Director Consolidation under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 has been invoked directly by the private respondents without exhausting the remedy of appeal; and
- (b) Two decimals of land being part of Chak No. 111 admeasuring 17 decimals was allotted in favour of the petitioners by issuance of purchase on 6.2.1996 in Settlement Case No. 18 of 1993-94, a copy of which is placed at Annexure-1 to the writ petition.

Perusal of the records of the case manifest that Plot Nos. 597, 557, 684, 633, 345 and 314 admeasuring two acres and 7 decimals situated in village Dian, Circle-Mohania in the district of Kaimur under Thana No. 435 was amalgamated to constitute Chak Khesra No. 111 admeasuring 17 decimals, Chak Khesra No. 36, admeasuring 41 decimals, Chak Khesra No. 402 admeasuring 65 decimals and Chak Khesra No. 5 admeasuring 64 decimals. It was the case of the private respondents before the revisional authority that the disputed lands were entered in the survey register as *gair majarua malik* and was settled in his favour by the Ex Zamindar who in the year 1956 had returned their name while filing the returns. It was the case of the private respondent that the name of the private respondent was entered in the revenue records maintained in Register-II



subsequently it but was incorrectly entered as Bihar Sarkar in the revenue records subsequently. The private respondents claimed possession over the plot on the basis of settlement and submitted that since at the time of the survey entry they were minor, hence they could not raise objection at that stage. The Director Consolidation upon getting the enquiry done and upon examination of the materials on record was satisfied that the lands in question were settled by the Ex-Zamindar in the name of the private respondents and the Ex-Zamindar had also filed a return to that effect. The entry of the name of the private respondents in the revenue records as well as their possession over the said land stood confirmed and it is taking into consideration such undisputed fact that the Director Consolidation vide the order impugned at 29.11.1996 issued directions for correction of the survey entry.

The writ petitioner has questioned the order on grounds that the jurisdiction of the Director Consolidation vested under Section 35 of the Act has been invoked by the private respondents directly without exhausting the remedy of appeal and secondly on grounds that two decimals of Chak Plot No. 111 stands settled in his favour vide settlement order dated 6.2.1996 passed in Settlement Case No. 18 of 1993-94.

Though there is no representation on behalf of the petitioners but I have perused the records and I have heard counsel for



the State as well as the private respondents. While the claim of the private respondents rests on the fact that the nature of the land in question was *gair mazarua malik* and was settled in their name by the Ex-Zamindar who also filed returns in their favour as well as on grounds of being in continuous possession of the plots in question which claim of the private respondents has been admitted by the Director Consolidation, on the other hand, the writ petitioners stake their claim by virtue of settlement present at Annexure-1.

Insofar as exercise of jurisdiction is concerned, the provisions of Section 35 vests wholesome power in the Director, Consolidation to exercise revisional powers in case he finds any irregularity in the consolidation proceedings and thus no error can be found in the jurisdictional exercise by the Director Consolidation in entertaining a revision directly. As to the merit of the case, in my opinion, whereas the claim of the private respondents rests on the settlement by the Ex-Zamindar which position has been found to be correct by the Director Consolidation who has also found the private respondents to be in continuous possession of the land in question, insofar as the private respondent is concerned, the settlement had been made on the premise that the land belonged to the State Government. Once the very foundation on which the settlement was made in favour of the writ petitioners stands removed and the nature of the land is held raiyati and stands settled in favour of the private respondents

then the settlement whatsoever in favour of the writ petitioners would have to be held invalid. Even otherwise the plot no. mentioned in the settlement order issued in favour of the petitioners present at Annexure-1 bearing Plot Nos. 227, Khata No. 42 does not find mention in the order of the Director to constitute Chak Plot No. 111. Be that as it may, once the land in question has been held to be settled in favour of the private respondents by the Ex-Zamindar, it sails away from the jurisdiction of the State Government and thus no settlement of any portion thereof could have been made by the State in favour of the writ petitioners.

In the circumstances existing, I find no reason to interfere with the order dated 29.11.1997 passed by the Director Consolidation in Revision Case No. 1162 of 1994. Insofar as the settlement made in favour of the writ petitioners by the authorities under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act present at Annexure-1 is concerned, in view of the position so reflecting above, they shall be at liberty to move the appropriate authority for alternative settlement.

The writ petition is accordingly disposed of.

(Jyoti Saran, J)

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