

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7257 of 1992

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1. Mahatam Singh.

2. Bansh Narain Singh.

Both Sons of Late Ram Charitar Singh, residents of Village-Pithari,
P.O.-Sagaraon Mangraon, P.S.-Rajpur, District-Buxar.

.... Petitioner/s

Versus

1. Joint. Director Consolidation, Head Quarter, Patna.

2. Deputy Director Consolidation, Bhojpur.

3. Consolidation Officer, Rajpur.

4A. Sheo Nath Pandey.

4B. Bhawnath Pandey.

4C. Tumnath Pandey.

Sons of Late Ram Bachan Pandey, all resident of Village- Village-
Pithari, P.O.-Sagara, P.S.-Rajpur, District-Buxar.

4D. Urmila Devi, W/o Late Om Prakash Pandey, D/o Late Ram
Bachan Pandey, resident of Village-Dehari, P.O. & P.S.-Rajpur,
District-Buxar.

4E. Kashmira Devi, W/o Shashi Kant Pandey, D/o Late Ram
Bachan Pandey, resident of Village-Ora, P.O.-Gosain Pur, P.S.-
Rajpur, District-Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad - II, Advocate

For the Respondent/s : Mr. Shailendra Kumar Jha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT

Date: 23-02-2015



This writ application, under Article 226 of the Constitution of India, has been filed seeking quashing of an order, dated 11.05.1992, passed by the Joint Director, Consolidation (Headquarter), Patna, in Revision Case No.1575 of 1988, whereby, he has set aside the order, dated 30.03.1988, passed by the Deputy Director, Consolidation, Bhojpur, in Consolidation Appeal No.165 of 1987-88.

2. Heard Mr. Mahesh Prasad-II, learned counsel, appearing on behalf of the petitioners and Mr. Shailendra Kumar Jha, learned counsel, appearing on behalf of the contesting respondents.

3. It is the case of the petitioners that they were in possession of 2.77 acres of land in one block, under Chak Khata No.54, bearing R.S. Plot No.845, admeasuring 2.15 acres and 727 area, admeasuring 84 decimals, for which, they were allotted Draft Chak No.54, having area 2.44 acres, in a consolidation proceeding. The father of respondent Nos.4A to 4E (***hereinafter referred to as "the private respondents"***) possessed 4.56 acres of land in the said block, bearing R.S. Plot No.843, admeasuring 2.30 acres, and R.S. Plot No.847, admeasuring 2.26 acres under Chak Khata No.96, admeasuring 6.01 acres. It is their case that allotment of



Draft Chak No.54, admeasuring 2.44 acres, in their favour was against the resolution of the Village Advisory Committee and, therefore, they had filed an objection before the Consolidation Officer, Rajpur, giving rise to Objection Case No.34 of 1987-88, claiming that they be allotted Chak north to south in length so that they might have facilities of ingress and egress of water to the said Chak. An objection was filed by the father of the private respondents before the Consolidation Officer, Rajpur, giving rise to Objection Case No.43 of 1987-88, claiming that Chak No.96, admeasuring 6.01 acres be allotted north to south in length to facilitate ingress and egress of water. The Consolidation Officer, Rajpur, dismissed the said objection, filed by the petitioners, by an order dated 26.02.1987. They, thereafter, preferred consolidation appeal before the Deputy Director, Consolidation, Bhojpur at Arrah, giving rise to Consolidation Appeal No.165 of 1987-88. The Deputy Director, Consolidation, by an order, dated 30.03.1988, allowed the said appeal in favour of the petitioners. It is the further case of the petitioners that after the order was passed by the Appellate Authority, the Consolidation Authorities prepared and confirmed Chak map, including the Chaks of the parties and, accordingly, Chak No.629 came to be



allotted to the father of the private respondents, Chak No.630 to the petitioners and Chak No.631 to respondent No.5. A revision petition was filed thereafter in the Court of Director, Consolidation, by the predecessor in interest of the private respondents, aggrieved by the order of the Deputy Director, Consolidation, dated, 30.03.1988, giving rise to Consolidation Revision No. 1575 of 1988.

4. I need to pause here to take into account the case of the petitioners that the said revision petition was filed belatedly, by the respondents, without any application for condonation of delay and secondly, the father of the private respondents, who had filed the revision petition, died on 23.09.1990, but no step had been taken for his substitution. Despite the fact that as on the date of the order, dated 11.05.1992, the father of the private respondents, who had filed a revision petition, had died, the Revisional Authority, i.e., the Joint Director, Consolidation, allowed the said revision petition, set aside the order of the Appellate Authority and restored the order passed by the Consolidation Officer.

5. The petitioners have pleaded, in support of their case, that there are two mango trees on the northern portion of R.S. Plot No.845 and Pucca well fitted with boring towards northern edge of said plot, which have



been taken out from the petitioners' Chak and have been included in the Chak of the private respondents, without any compensation to the petitioners. It is also their case that R.S. Plot Nos.843 to 847 are inclined south to north due to which water normally gets stagnated in southern portion without any passage for discharge and, thus, the crops standing in southern portion of the land would remain submerged in water. Further, it is their case that it was because of the inclination/dimension of the land towards north that the Village Advisory Committee had resolved that all the Chaks of the said block should be carved out north to south, in length.

6. A counter affidavit has been filed on behalf of the private respondents, denying the fact that the draft Chak was prepared contrary to the resolution of the Village Advisory Committee. They have contended that the draft Chak was prepared in accordance with the resolution of the Village Advisory Committee, from north to south. They have also taken a plea that by a deed of registered exchange, dated 22.09.1981, the writ-petitioners had transferred to them 37½ decimals of land of R.S. Plot No.845 and by another deed of exchange, dated 29.09.1993, the Raiyats of R.S. Plot No.846 had given them 32 decimals of land of R.S. Plot No.846. They



have denied the statement that the writ-petitioners have been deprived of the facilities of ingress and egress of water because of allotment of Chak, as the revisional map would go to show that R.S. Plot No.845, belonging to them, was not connected with the outlet running north to south towards east from R.S. Plot No.845 because of the intervening R.S. Plot No.847, belonging to the respondent No.4 (the private respondents). It has further been asserted that R.S. Plot No.845, belonging to the writ-petitioners, was not connected with the outlet running east to west towards south of the same, as R.S. Plot No.805 intervened between R.S. Plot No.845 and the channel situated south of it. R.S. Plot No.845 was not connected with the Chawar towards north, as in between the Chawar and R.S. Plot No.845, there is R.S. Plot No.846. It is the case of the private respondents that because of the impugned order passed by the Revisional Authority, restoring the position of draft Chak, the Chak of the writ-petitioners stands connected with the channel towards south and east, both. The private respondents have disputed the assertion made by the writ-petitioners that there is any mango tree in any portion of R.S. Plot No.845 and Pucca well fitted with boring on R.S. Plot No.845 of the writ-petitioners. While specifically



controverting these facts, as asserted in the writ petition, the private respondents have stated that there is one mango tree in the southern portion of R.S. Plot No.846. They have further averred that the said Pucca well fitted with boring, belonging to the writ-petitioners, lies towards south from the middle portion of R.S. Plot No.845.

7. Mr. Mahesh Prasad - II, learned counsel, appearing on behalf of the petitioners, has very vehemently argued that the order passed by the Revisional Authority is nullity in the eye of law, as no order could have been passed in favour of the revisionist, as on the date of passing of the order respondent No.4 had already died. According to him, the order impugned is nullity in the eye of law. He has further submitted that the Consolidation Officer, without holding local inspection, ought not to have passed the impugned order in violation of mandatory provision under "***The Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956***".

8. Learned counsel, appearing on behalf of the private respondents, Mr. Shailendra Kr. Jha, on the other hand, has submitted that the petitioners have attempted to mislead this Court by making false statement that a belated revision petition was filed by their father without



any petition for condonation of delay. He has drawn my attention to Annexure-D and D/1 to the counter affidavit to submit that on a separate petition for condonation of delay at the time of filing of revision case was filed, the Revisional Court, while admitting the same on 27.12.1988, had passed specific order, condoning the delay in filing of the application. He has further submitted that in order to mislead this Court, the petitioners have suppressed this fact that the private respondents had filed an application for substitution before the Court of Joint Director, Consolidation, on 15.07.1991, for expunging the name of his father and substituting him in his place. When the writ-petitioners had appeared in the revision case, on 31.12.1991, no objection was raised as regards abatement of the said revision case on account of death of the revisionist, who happened to be the grandfather of the private respondents, though they were in know of the fact as regards his death. The writ-petitioners had filed their written note of arguments also before the Revisional Court, but did not raise any such plea. It is, accordingly, submitted that the plea to this fact raised by the petitioners, is malicious and not entertainable. It has further been submitted on behalf of the private

respondents that order passed in a revision petition filed by a person, who died subsequently, cannot be termed to be a nullity, in the facts and circumstances of the case.

9. This Court, while exercising power of judicial review, under Article 226 of the Constitution of India, has to keep in mind the limitations within which such powers are to be exercised. It is well settled that while exercising the power of judicial review, this Court is more concerned with the decision making process than the merit of decision itself. In the present case, the Revisional Court has passed an order, based on materials on record before him, exercising revisional jurisdiction, after giving the parties due opportunity of hearing. It is not the case of the petitioners that the decision of the Revisional Authority is based on no material and is perverse for any reason. Such power can be exercised in a *certiorari* proceeding, if there is non-consideration or non-application of mind to the relevant factors by the Authority exercising *quasi-judicial* functions. It is also trite that if the power is exercised, on the basis of facts which do not exist and which are patently erroneous, such exercise of power will also stand vitiated requiring this Court, in exercise of power of judicial review, to interfere with such actions. In the present case, I find that no such

plea has been taken. The petitioners want this Court to interfere with the impugned decision of the Revisional Authority, on the basis of facts stated in the writ petition, which have not been admitted by the contesting respondents rather specifically denied and disputed.

10. The power of judicial review is certainly not intended to assume supervisory role. The order of the Revisional Court, dated 11.05.1992, in my opinion, cannot be interfered with, on the basis of the facts averred in the writ petition, which has been seriously disputed.

11. I also find that there has been suppression of material fact or misstatement of fact, inasmuch as, the petitioners raised specific plea that belated revision petition was entertained by the Revisional Authority, without there being any application for condonation of delay. This statement is falsified by the statement made in the counter affidavit, supported by relevant order, which has also been brought on record to show that on the basis of petition filed on behalf of the revisionist, the delay in filing of the revision petition was condoned. This has also not been disputed that the private respondents had filed an application for substitution before the Revisional Court. Specific averments made to this effect,

in the counter affidavit, have not been controverted by the petitioners in their rejoinder, filed on 18.02.2015.

12. If the plea of abatement of the revision petition, as raised by the petitioners, is considered with the substitution petition filed on behalf of the petitioners on 18.12.2008, after nearly thirteen years of the death of the original respondent No.4, the writ petition could be treated to have been abated in the absence of any specific order, setting aside abatement of the writ petition as against the deceased, namely, Ram Bachan Pandey. I find from the records that no petition is there on record, in the present proceeding, for setting aside the abatement, despite the fact that petition for substitution was filed nearly thirteen years after the death of said Ram Bachan Pandey (respondent No.4, the contesting respondent). I, accordingly, do not find any merit in this writ application.

13. This application is, accordingly, dismissed.

14. There shall be, however, no order as to costs.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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