

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9562 of 1993

Ram Lachhan Rai son of Sri Yodhan Rai resident of village-Karnaiji, P.O. Sair,
Police Station- Vaishali, District- Vaishali

.... Petitioner

Versus

- 1. The State of Bihar
- 2. Joint Director, (Consolidation), Muzaffarpur
- 3. Deputy Director (Consolidation) Vaishali at Hazipur
- 4. Consolidation Officer, Vaishali at Hazipur
- 5. Mahesh Rai son of Lakshaman Rai
- 6. Kira Rai son of Jodhan Rai
- 7. Bochan Rai
- 8. Satahu Rai
- 9. Arun Rai

Sl. No. 7 to 9 are sons of Brahmdeo Rai, SL. Nos. 5 to 9 are resident of village-
Karnaiji, P.O. Sain, Police Station- Vaishali, District- Vaishali

.... Respondents

With

Civil Writ Jurisdiction Case No. 9588 of 1993

Ram Lachhan Rai, son of Sri Yodhan Rai resident of village-Karnaiji, P.O. Sain,
P.S. and District- Vaishali

.... Petitioner

Versus

- 1. The State of Bihar
- 2. The Joint Director Consolidation, Muzaffarpur
- 3. The Deputy Director Consolidation, Vaishali
- 4. The Consolidation Officer, Vaishali
- 5. Mahesh Rai son of Lakshaman Rai
- 6. Shri Kira Rai
- 7. Bochan Rai
- 8. Satahi Rai
- 9. Arun Rai

Sl. Nos. 5 to 8 are sons of Sri Jandhari Rai, resident of village- Karnaiji, P.O.
Sain, P.S. and District- Vaishali

.... Respondents

With

Civil Writ Jurisdiction Case No. 10022 of 1993

Ram Lachhan Rai, son of Sri Yodhan Rai, resident of village-Karnaiji, P.O. Sain,
Police Station- Vaishali, District- Vaishali

.... Petitioner

Versus

- 1. The State of Bihar
- 2. The Joint Director Consolidation, Muzaffarpur

- 3. Deputy Director Consolidation, Vaishali
- 4. The Consolidation Officer, Vaishali
- 5. Mahesh Rai son of Lakshman Rai, resident of village- Karnaiji, P.O. Sain, P.S. and District- Vaishali

.... Respondents

Appearance :
(In CWJC No. 9562 of 1993)

For the Petitioner/s : Mr. Girija Prasad, Adv.
Mr. Ram Suhawan Singh, Adv.
Mr. Amar Nath Singh, Adv.
For the Respondent/s : Mr. (GP6)

(In CWJC No. 9588 of 1993)

For the Petitioner/s : Mr. Girija Prasad, Adv.
Mr. Ram Suhawan Singh, Adv.
Mr. Amar Nath Singh, Adv.

For the Respondent/s : Mr. (GP6)

(In CWJC No. 10022 of 1993)

For the Petitioner/s : Mr. Girija Prasad, Adv.
Mr. Ram Suhawan Singh, Adv.
Mr. Amar Nath Singh, Adv.

For the Respondent/s : Mr. (GP6)
Mr. Girijanand Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 06-07-2015

All these writ applications under Article 226 of the Constitution of India arise out of a common order dated 16.06.1993 passed by the Joint Director, Consolidation, Muzaffarpur in Revision case No. 1845 of 1990, 1846 of 1990 and 1855 of 1990 and relate to the same land appertaining to C.S. Khata No. 209, C.S. Plot No. 740, R.S. Khata No. 741, R.S. Plot No. 2271 of Village Karnaiji, Thana No. 186 of Anchal Vaishali admeasuring 30 decimal equivalent to approximately 5 Kattha and 12 Dhurs. The parties in all the three writ applications are same and therefore, these applications have been

heard together and are being disposed of by present common judgment.

2. I have heard learned counsel appearing on behalf of the petitioners, learned counsel representing respondent no. 6 and the contesting private respondents. From the pleadings on record and on the basis of the order under challenge, it would transpire that the petitioner had filed an objection before the Consolidation Officer, Vaishali being Objection Case No. 188 of 1985 for deleting the name of respondent no. 5 from the Register against the land in dispute. It was his case that at the time of vesting of Zamindari, the ex-landlord in his return has mentioned his name, which was, accordingly, recorded in Serista of Bihar Sarkar and on the basis of the said entry, he had been paying rent to the State of Bihar and getting rent receipt. At the time of revisional Survey operation, the said Revisional Survey Plot No. 2271 was carved out for an area of 30 decimal. Respondent no. 5 also filed a petition for correction giving rise to Consolidation Case No. 722 of 1985 for separating his share in the land as the said land was recorded jointly in the name of the petitioner and respondent no. 5. The Consolidation Officer, by an order dated 29.01.1986, is said to have allowed, the petition filed by respondent no. 5 for separating his share. The objection, which was filed by the petitioner giving rise to Consolidation Case No. 188 of 1985, was disposed of



by an order dated 29.01.1986 on the basis of compromise between the petitioner and respondent no. 5. It is the case of the respondent no. 5 that no such compromise was ever entered into and the said order dated 29.01.1986 was collusively obtained. Respondent No. 5 also filed an application before the Consolidation Officer giving rise to Consolidation Case No. 774 of 1989 seeking permission to sale his share in the property, which came to be allowed by the Consolidation Officer by an order, dated 28.11.1989. Private respondents other than respondent no. 5 i.e. Mahesh Rai purchased the said land in the light of the permission granted by the Consolidation Officer by an order dated 28.11.1989. The purchasers of the land from Mahesh Rai filed petition before the Consolidation Officer giving rise to Case No. 18 of 1989 for necessary correction and for recording their names in the record of rights. By an order dated 26.10.1989, the Consolidation Officer allowed the petition filed by the purchasers of Mahesh Rai and he set aside the orders passed by his purchaser dated 29.01.1986 passed in Consolidation Case No. 188 of 1985, which was preferred by the petitioner. The respondent no. 5 preferred an appeal against the order dated 29.01.1986 passed in Consolidation Case No. 188 of 1985 before the Deputy Director, Consolidation giving rise to Appeal No. 130 of 1990. The petitioner filed an appeal before the Deputy Director, Consolidation against the order dated 28.11.1989 passed in



Consolidation Case No. 774 of 1989 giving rise to Appeal No. 05 of 1990. The petitioner also filed an appeal against the order passed by the Consolidation Officer dated 26.10.1989 in Consolidation Case No. 18 of 1989 giving rise to Appeal No. 110 of 1990. The Deputy Director, Consolidation, Vaishali, allowed the Appeal No. 05 of 1990, thus setting aside the order dated 28.11.1989 whereby the Consolidation Officer had granted respondent no. 5, permission to sell the land in dispute. Appeal No. 110 of 1990 filed by the petitioner was also allowed. The appeal preferred by respondent no. 5 i.e. Appeal No. 130 of 1990, which was directed against the order dated 29.01.1986, which was passed on the basis of compromise, was dismissed. Against the orders passed by the Deputy Director of Consolidation, respondent no. 5, filed revision petitions before the Joint Director, Consolidation giving rise to Revision Case No. 1845 of 1990, 1846 of 1990 and 1855 of 1990.

3. This is the circumstance in which the three writ applications have been preferred against the orders passed by the Revisional Court i.e. the Joint Director, Consolidation. From the documents on record, it would transpire that Appeal No. 05 of 1990 and Appeal No. 110 of 1990 were disposed of by the common order passed by the Deputy Director, Consolidation, Vailshali which is subject matter of dispute in C.W.J.C. No. 9562 of 1993 and in

C.W.J.C. No. 9588 of 1993 revisional order passed in Revision Case No. 1855 of 1990 arising out of Consolidation Case No. 18 of 1989, is under challenge.

4. Learned counsel appearing on behalf of the petitioner has made a very short submission that by the impugned order dated 16.06.1993, the Joint Director, Consolidation has upset the findings of fact arrived at by the appellate authority i.e. the Deputy Director, Consolidation and he, thus, went beyond his jurisdiction while exercising revisional power under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act). In support of his submission, he has relied upon a decision of this Court in case of ***Subedar Mahto Vs. The Joint Director of Consolidation & others reported in 1998(3) PLJR 47*** and in case of ***Harbans Lal v. Jagmohan Saran reported in AIR 1986 Supreme Court 302***.

5. Learned counsel appearing on behalf of the private respondents, on the other hand, defending the order passed by the revisional authority i.e. the Joint Director, Consolidation has contended that the Consolidation Officer by an order dated 29.01.1986 had allowed an objection filed on behalf of respondent no. 5 for separating his share as admittedly, the said land was recorded in joint name of the petitioner and respondent no. 5. He has submitted



that the said order dated 29.01.1986 passed in Consolidation Case No. 722 of 1985 was never challenged by any person. He has further contended that the petitioner obtained order dated 29.01.1986 for deleting the name of respondent no. 6, fraudulently on the basis of the alleged compromise. He has submitted that, as a matter of fact, respondent no. 5 did not have any knowledge about the institution and pendency of Case No. 188 of 1985 referred to by the petitioner. He has submitted that in the facts and circumstances of the case, the revisional authority rightly set aside the order of the Deputy Director of Consolidation. He has further submitted that the revisional court came to a correct finding of fact that both the parties had purchased the land in question from the same vendor and it was a benami transaction and contends that the land was purchased by respondent no. 5 from one Muneshwar Mahto in the name of one Khakhan Rai, and as a matter of fact, it was a benami transaction as the entire amount was paid by respondent no. 5. He has contended that the Joint Director, Consolidation, rightly accepted the case of respondent no. 5 that the land in question was purchased from the same vendor by the contesting parties.

6. I have perused the different orders passed by the Consolidation Officer, Vaishali in the present case, which have been mentioned above as also the order passed by the Deputy Director,



Consolidation in appeal. From the orders passed by the Consolidation Officer, it appears that he has proceeded whimsically, while deciding the matters without any application of mind as is required from an authority exercising and performing quasi judicial functions. From the orders of the Consolidation Officer, it appears that no evidence was adduced before him by the parties. The order of the Deputy Director, Consolidation does not show the manner in which he took documents and other material on evidence, for the purpose of deciding the appeal. Same is the case with the order passed by the Joint Director, Consolidation dated 16.06.1993, which is under challenge in the present writ application.

7. Learned counsel for the petitioner appears to be right in his submission that the revisional authority, took into account, such facts, which were not available before the original court of Consolidation Officer. He is right in his submission that revisional authority could not have upset the findings of fact, in the facts and circumstances of the case.

8. Apparently, the Joint Director, Consolidation ignored the limitations laid down by the Supreme Court in case of **SHER SINGH (dead) by Lrs. Versus JOINT DIRECTOR OF CONSOLIDATION AND OTHERS** reported in 1978 (3) SCC 172, dealing with section 48 of U.P. Consolidation of Holdings Act, 1953

which provision is pari materia. Section 35 of the Act as succinctly discussed the scope of jurisdiction by a revisional authority under the provisions of the Act.

9. At the same time, I find that the manner in which the Consolidation Officer has passed orders in Objection Case No. 722 of 1985, Case No. 188 of 1985, Case No. 774 of 1989 and Case No. 18 of 1989 cannot at all be approved.

10. All such orders passed by the Consolidation Officer in the said cases stand quashed. Orders passed by the Deputy Director, Consolidation in appeal are also quashed. The order passed by the Joint Director, Consolidation in Revision Case No. 1845 of 1990, 1846 of 1990 and 1855 of 1990 is also quashed.

11. The entire matter is remitted to the court of Consolidation Officer who will require to consider all the cases afresh and pass appropriate orders in accordance with law after giving the parties due opportunity of adducing evidence and hearing.

12. All these applications are allowed with the observations, as aforesaid.

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

(Chakradhari Sharan Singh, J.)

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