

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4797 of 2007

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Sakal Rai son of Late Tulsi Rai, resident of village Kajri Bujurg, P.O. & P.S. Jandaha, District Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Joint Director, Consolidation, Muzaffarpur
3. Baleshwar Rai son of Late Tulsi Rai, resident of Village Kajri Bujurg, P.O. & P.S. Jandaha, District Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharmesh Kumar, Advocate

For the Respondent Nos.1 & 2 : Mr. Sanjeev Kr.Singh, AC to SC 12

For the Respondent No.3 : Mr. Naresh Chandra Verma, Advocate
Mr.Lakshmi Kant Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 26-11-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 23.08.1993 passed in Consolidation Revision Case No. 913 of 1991 by the respondent Joint Director of Consolidation, Muzaffarpur, as contained in Annexure-2, whereby the aforesaid revision application filed on behalf of the respondent no.3 under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 has been allowed ex-parte.

3. The learned counsel appearing on behalf of the petitioner, by referring to the averments made in the main writ petition supported by the supplementary affidavit, submits that before passing the impugned revisional order, an opportunity of hearing was not given to the petitioner and notices issued to the writ petitioner was served bala-bala. According to him, besides

merits of the case, the impugned revisional order is fit to be set aside and quashed on the said ground alone.

4. Learned AC to SC 12, appearing on behalf of the respondent nos. 1 and 2 and the learned counsel appearing on behalf of the respondent no.3, on the other hand, submit that from the plain reading of the impugned order it appears that notices were issued to the writ petitioner by the revisional authority, but since he chose not to appear and contest the matter; therefore, the revision application filed on behalf of the respondent no.3 was allowed by the impugned order by looking into the materials available on the record.

5. The present writ petition was filed on behalf of the petitioner way back on 13.04.2007 asserting therein that he had no knowledge or information about the impugned order passed by the revisional authority before 2007. This fact has been re-asserted in the supplementary affidavit filed on behalf of the writ petition, but the facts stated therein have not been controverted by the private respondent till date.

6. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the matter requires re-consideration and a fresh decision by the revisional authority. It is true that in the impugned order it has been mentioned that notices were issued to the opposite parties and despite service of notice, opposite parties did not turn up, but it has also been mentioned that the case was decided ex-parte. In the aforesaid factual matrices, this Court is of the opinion that reasonable opportunity of hearing has not been given to the petitioner before passing the impugned revisional order.

7. For the reasons recorded above, the impugned revisional order dated 23.08.1993 (Annexure-2) passed in Revision Case No. 913 of 1991 by the respondent Joint Director of Consolidation, Muzaffarpur is hereby set aside and quashed and the matter is remitted back to the Director of Consolidation, Bihar, Patna with a direction to decide the aforesaid Revision Case No. 913 of 1991 filed by the respondent no.3 afresh after giving an opportunity of hearing to the writ petitioner.

8. In order to expedite the matter, the petitioner as also the respondent no.3 are hereby directed to appear before the Director of Consolidation, Bihar, Patna within a period of one month from today with a certified copy of the present order, whereafter the Director of Consolidation, Bihar, Patna shall fix a firm date for hearing and deciding the aforesaid Revision Case No. 913 of 1991 afresh strictly in accordance with law by a reasoned and speaking order.

9. It is further clarified that the parties shall be at liberty to raise all the issues of facts and law before the Director of Consolidation, Bihar, Patna, which may be available to them with respect to the lands under dispute.

10. The writ petition stands allowed to the extent indicated above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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