

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6746 of 1993

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Budhu Singh, son of Ragubansh Singh, resident of village Semariyan, P.O. Kochas, P.S. Kargahar, District Rohtas

.... Petitioner

Versus

1. The State of Bihar
2. The Deputy Director, (Hqr), Consolidation, Bihar, Patna
3. Deputy Director, Consolidation, Rohtas at Sasaram
4. Consolidation Officer, Kargahar, Rohtas
5. Haribansh Singh
6. Balrup Singh, both sons of late Ramuna Singh, both residents of village Semariyan, P.O. Kochas, P.S. Kargahar, District Rohtas
7. Butan Singh
8. Nathuni Singh
9. Jadubansh Singh, all the three sons of Cheehar Singh, all residents of village Semariyan, P.O. Kochas P.S. Kargahar, District Rohtas
10. Indrani Devi, wife of Ram Janam iSingh, resident of village Kudra, P.O. Mulaon, P.S. Ramgarh, District Rohtas
11. Jageshwar Singh, son of late Sheo Prasad Singh, resident of village Semariyan P.O. Kochas, P.S. Kargahar, District Rohtas.

.... Respondents

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Appearance :

For the Petitioner : Mrs. Mallika Mazumdar

For the Respondent-State: Mr. Rakesh Kumar Sharma, AC to GP 27
Mr. Anjanj Kr. Sinha

For the Respondent nos. 5 and 6: Mr. Anjani Kumar Sinha No.1

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
ORAL ORDER

13 09-04-2015 Heard Mrs. Mallika Mazumdar, learned counsel for the petitioner, and Mr. Rakesh Kumar Sharma, learned counsel for the Respondents-State. Heard also Mr. Anjani Kumar Sinha No.1, learned counsel for the respondent Nos. 5 to 6.

In terms of the order, dated 12.05.1986 (Annexure-1 to the writ application), the Consolidation Officer, Kargahar, Rohtas (respondent No.4), has held that the property, in dispute, is the



joint property of the present petitioner and respondent Nos. 5 to 10 herein. Aggrieved by the order so made on 12.05.1986, an appeal was, under Section 10 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act'), preferred by the respondent Nos.5 to 10 herein, which came to be dismissed by order, dated 08.05.1991, passed by the Deputy Director, Consolidation (respondent No.3).

Not satisfied with the order, dated 08.05.1991, aforementioned, whereby the order, dated 12.05.1986, was upheld, respondent No. 5 to 10 herein filed, under Section 35 of the Act, a revision, being Revision No. 928 of 1991, before respondent No.2, namely, Deputy Director (Hqr), Consolidation. This revision has been allowed by order, dated 09.06.1993 (Annexure-3 to the writ application).

Relying on the case of **Bishwanath Rai vs State of Bihar, (2011(4)PLJR 870)**, it has been submitted by the learned counsel for the petitioner that the appellate order, dated 08.05.1991, aforementioned, having been passed by a Deputy Director, no revision could have been entertained against the said order, dated 08.05.1991, by respondent No.3, namely, Deputy Director, Consolidation, and the same could not have been set at naught by order, dated 09.06.1993, passed by respondent No.2,

who, too, is a Deputy Director.

It is trite that if an order is passed in appellate jurisdiction by Deputy Director of Consolidation, then, notwithstanding delegation of power, an officer of the rank of appellate authority cannot exercise revisional jurisdiction, because revisional jurisdiction is a jurisdiction of superintendence over subordinate authority.

Hence, where an appellate order is passed by Deputy Director, Consolidation, the revisional jurisdiction has to be exercised by an authority superior to the Deputy Director, Consolidation.

Necessary, therefore, it is either the Director of Consolidation, who could have exercised, in the present case, the power under the provisions, of Section 34(2) of the Act against the appellate order of the Deputy Director, Consolidation, and if there be a valid delegation, then, a revisional order can be exercised by a Joint Director, Consolidation; but in no circumstances, Deputy Director, Consolidation, can exercise, in such a case, revisional jurisdiction. In short, an appellate authority and revisional authority cannot be of the same rank or grade. (See in this regard **Bishwanath Rai vs State of Bihar, [2011(4)PLJR 870]**)



Thus, when the Deputy Director (respondent No.2), who has passed the order, dated 09.06.1993, in Revision No. 928 of 1991, is not superior to the Deputy Director (respondent No.3), who has passed the appellate order, dated 08.05.1991, the order, dated 09.06.1993, aforementioned is, *ex facie*, bad in law.

It is, therefore, submitted, on behalf of the petitioner, that the revisional order, dated 09.06.1993, may be set aside and the revision be remanded to the Director of Consolidation for a hearing afresh and for making, in accordance with law, appropriate order disposing of the revision.

To the submissions so made, no serious objection has been raised on behalf of the respondents inasmuch as it is trite that revisional jurisdiction can be exercised only by an authority superior to the appellate authority.

In view of the above, the order, dated 09.06.1993, passed in Revision No. 928 of 1991 (Annexure-3), is hereby set aside.

Considering the matter in its entirety and in the interest of justice, the revision is hereby remanded to the Director of Consolidation, who shall either dispose of the revision himself in accordance with law or make over the revision, for decision, in accordance with law, to another competent authority, such as a Joint Director, Consolidation.

With the above observations and directions, this writ petition shall stand disposed of.

No order as to cost.

(I. A. Ansari, J)

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