

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9990 of 1997

- =====
1. Narad Bind son of late Mangaru Bind
 2. Sita Ram Prasad son of late Jiut Bind
 3. Awadhesh Prasad son of late Jiut Bind
 4. Basant Prasad @ Basant Bind son of late Jiut Bind
 5. (i) Subodh Bind S/o late Kishore Bind
(ii) Basisth Bind S/o late Kishore Bind
(iii) Guput Bind S/o late Kishore Bind
All R/o vill. Matar, P.S. Bhagwanpur, P.O. Umapur, Dist. Rohtas, now Kaimur, District
 6. (i) Ramchandra Prasad S/o late Lalat Bind
(ii) Manoj Kumar S/o late Lalat Bind
(iii) Ram Kumar Prasad, S/o late Lalat Bind
All R/o vill. Matar, P.S. Bhagwanpur, P.O. Umapur, Dist. Rohtas, now Kaimur, District.
 7. Bahadur Bind son of late Mangaru Bind
 8. Most. Akali Kuer wife of late Jiut Bind
 9. Suresh Bind son of late Mangaru Bind
 10. Sant Prasad son of Jiut Bind
 11. Sheo Lochani Devi daughter of Jiut Bind and wife of Prem Chand Bind all residents of village Kuddi Police Station Chand at present Village Matar, Police station Bhagwanpur, Dist. Rohtas now Kaimur District.

.... Petitioners

Versus

1. The State of Bihar
2. The Director of Consolidation Bihar, Patna.
3. The Deputy Director of Consolidation, Rohtas.
4. The Consolidation Officer, Bhagwanpur.
5. (i) Ashok Kumar Singh S/o late Rash Narain Singh
(ii) Amrendra Singh S/o late Rash Narain Singh
(iii) Umesh Singh S/o late Rash Narain Singh
6. Nit Narain Singh son of late Sri Narain Singh
Both resident of village Matar, Police Station Bhagwanpur P.O. Umapur, Dist. Rohtas.
7. Dulhin Dayawanti Devi wife of Kanhaya Lal Singh and daughter of late Shri Narain Singh resident of vill. Kagwan, Police Station Panaganj, P.O. Panaganj, Dist. Murzapur, U.P.
8. (i) Vinay Kumar Singh
(ii) Anup Kumar Singh
(iii) Sushil Kumar Singh
(iv) Gautam Kumar Singh
(v) Guddu Kumar Singh
All sons of late Dulhin Munna Devi W/o late Ramesh Prasad Singh
(vi) Baby Devi D/o late Dulhin Munna Devi W/o late Ramesh Prasad Singh
All residents of vill-Chandarpur, P.S. & P.O. Ambikapur, Dist. Chattishgarh at present the aforesaid legal heirs are residing at vill-Matar, P.S. Bhagwanpur, P.O. Umapur, Dist. Rohtas, now Kaimur.

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Ram Shankar Pradhan Sr. Advocate.
Mr. Amrendra Narain Rai, Advocate.
For the Respondents : Mr. Shashi Shekhar Dwivedi, Sr. Advocate.
For the State : Mr. Pankaj Kumar Pankaj, AC to SC-33.

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 14-05-2015

Heard the parties.

An Interlocutory application being I.A. No. 4157 of 2015 has been filed after exchange thereof between the parties praying therein to expunge the name of petitioner no.8, namely, Most. Akali Kuer and for substitution of heirs and legal representatives of deceased petitioner nos. 10 and 11.

It is submitted that legal heirs of petitioner no.8 are already on record as petitioner nos.10 and 11 but subsequently both the petitioners have also died leaving behind their heirs and legal representatives mentioned in paragraph nos. 6 and 7 on 20.08.2009 and 6.11.2009 respectively. It is stated that along with the application 'Vakalatnama' duly executed by them has already been filed.

Having heard the parties, the same is allowed. Let the name of petitioner no.8, namely Most Akali Kuer be expunged from the cause title as the heirs and legal representatives are already on record. The name of petitioner nos. 10 and 11, namely, Sant Prasad and Sheo Lochani Devi shall also be deleted and in their place the

heirs and legal representatives as set out in paragraph nos. 6 and 7 respectively be substituted.

A long litigation has been fought between the parties over the subject land measuring a total area of 7.46 acres situated in village Matar, within Bhagwanpur Police station in the District of Rohtas. Relevant details whereof, have been set out in para 3 of the writ petition. The petitioners who claimed to be the descendants of tenants were initially recorded as Sikmidar(s) in respect of the subject land. Litigation with respect to possession over the land were also fought before the Court under Section 145 of the Cr. P.C.

A brief facts providing the backdrop under which the present writ petition has been filed questioning the legality/correctness of the order dated 30.08.1997 passed by the Director, Consolidation in Revision case no. 518 of 1983 (Annexure-11) need to be noticed. According to the petitioners, their ancestors were recorded as Sikmidar(s) of the subject land. They continued in possession in the said status for a long period of time. In the revisional survey khatian the ancestors of the petitioners were shown as Sikmidar. The respondents filed an objection in respect thereof under Section 103(A) of the Bihar Tenancy Act (for short 'the B.T. Act') which, on contest, was rejected by the revenue authority on 11.7.1965 (Annexure-8). It is the case of the petitioners that R.S.



khatiyani was thereafter prepared in which the names of the father/ ancestor of the petitioners herein were recorded as raiyats, copy whereof has been enclosed as Annexure-1. The respondents filed a suit vide Title suit no. 218 of 1969 for correction in the records of right and also for declaration of title. While the said suit was pending a notification under Section 3 of the Bihar Consolidation of Holdings and Prevention of the Fragmentation Act, 1956 (for short 'the Act') was published. On an application filed in this regard, the pending suit was declared to have abated on 4.1.1978. The respondents filed an objection in respect of the subject land obviously under Section 10B of the Act which was entertained. The petitioners contested the same. On hearing the parties, the Consolidation Officer vide order dated 1.9.1982 (Annexure-5) allowed the objection of the respondents. Aggrieved thereby the writ petitioners filed an appeal which was allowed after hearing the parties by order dated 9.3.1983 (Annexure-6) passed by the appellate authority. Dissatisfied therewith the respondents filed a revision application which was contested by the petitioners (respondents before the revisional Court) and allowed on 7.5.1987 (Annexure-7). The same was challenged before this Court by the writ petitioners in CWJC No. 2249 of 1987 which was allowed vide order dated 30.08.1990 (Annexure-10) and after setting aside the order dated 7.5.1987, the matter was remitted to the revisional

Court for passing a fresh order but after affording opportunity of hearing to both sides. The respondent-Director, in the light of the said order, once again heard the revision application and allowed the same under the impugned order (Annexure-11).

Mr. Pradhan, while assailing the order, has made diverse submissions. It has been submitted that the Sikmidar cannot be treated as raiyat without their being any declaration under Section 48E of the Act. The finding of the respondent Director is erroneous. The proceeding instituted by the respondents under Section 10 B of the Act itself was barred by Section 10A of the Act. There is admission of the respondents in a ceiling proceeding that the subject land was in possession of the ancestors of the petitioners since long who had the status of sikmidar.

Mr. Dwivedi, learned counsel, on the other hand, submitted that the lis of the kind can be appropriately agitated before the competent Court of civil jurisdiction. In order to support his contention he has relied on the order passed by this Court in CWJC No. 2249 of 1987 (Annexure-10). It has been submitted that all relevant facts and legal issue arising in the case were considered and on mere technical grounds the matter was remitted to the Director for passing a fresh order which has been answered in the impugned order in favour of the respondents.

This Court would extract hereinbelow paragraph no.11 of the order passed in CWJC No. 2249 of 1987:-

“11. It has been contended on behalf of the respondents that as per the decision of this court in the case of Kalika Kuar alias Kalika Singh vs. State of Bihar and others (supra) the consolidation authorities are deemed to be courts of limited jurisdiction. Any decision by them except on questions relevant to the records of rights, correctness whereof, can be questioned on the ground of wrong decision on pure question of title. It shall neither be binding nor available as the evidence of title in any court of law. Therefore, according to the learned counsel, the petitioners can question the finding recorded by the consolidation authorities before the Civil Court. According to him, no useful purpose will be served by sending the matter back to the consolidation authorities for reconsideration. To the extent that the petitioners will have full opportunity to question the findings recorded by the consolidation authorities before the Civil court, the submission of the learned counsel for the respondents has got substance. But when it has come to the notice of this Court that the order of the Director, Consolidation, for making correction in the records of rights is based on irrelevant and extraneous consideration, this court should not allow such an order to stand. While exercising the revisional power under section 35 of the Act, the Director Consolidation is required to give detailed reasons in support of his findings. This revisional power is not pari materia with the revisional power under the provisions of the code of civil procedure.”

The submission of Mr. Dwivedi that the matter can

appropriate be agitated before the Civil Court has not been seriously disputed by Mr. Pradhan, counsel for the writ petitioners.

I was initially inclined to remit the matter once again to the respondent- Director for fresh consideration in view of certain apparent flaw(s) in the finding with regard to the status of the writ petitioners and reasons assigned therefor but having regard to the fact that when the respondents have claimed removal of the name of the writ petitioners from the RS khatyan and also for declaration of his/their title over the subject land the matter can be appropriately agitated before the Court of competent civil jurisdiction.

In view of the aforesaid, this Court disposes of the writ application by permitting the aggrieved party to move the court of competent jurisdiction for declaration of their right, title and interest in respect of the subject land. The benefits of the order passed by the Consolidation Officer shall in that event, not inure either to the plaintiffs or the defendants of the suit. In case the suit is preferred within a reasonable time the same shall be disposed of on its own merit in accordance with law.

(Kishore Kumar Mandal, J)

Shyam/-

U			
---	--	--	--