

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2571 of 1996

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1. Shankar Pratap Dayal Narayan Singh. S/O Late Uma Shankar Singh.
 2. Chandra Shekhar Singh, S/O Late Uma Shankar Singh.
 3. Rajendra Singh S/O Late Uma Shankar Singh.
 4. Avanind Kumar, S/O Shankar Pratap Dayal Narayan Singh.
- All are R/O Village- Sabar, P.O. and P.S.- Bhagwanpur, District- Rohatas Now Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Director, Consolidation, Bihar, Patna.
3. Research Officer, Consolidation, Bihar, Patna.
4. Deputy Director, Consolidation, Rohtas (Sasaram).
5. Consolidation Officer, Bhagwanpur, District- Kaimur (Bhabhua).
6. Brij Pati Singh (expunged vide order dated 14.11.2014
- 6(i) Ram Janam Singh, son of Late Brij Pati Singh, resident of Village- Sabar, P.S. Bhagwanpur, District- Rohtas, now Kaimur (Bhabhua).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Prasad Singh
For the Respondent-State	:	Mr. (GP2)
For the private respondent	:	Mr. Shashi Shekhar Dwivedi, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-04-2015

Heard Mr. Jitendra Prasad Singh, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Shashi Shekhar Dwivedi, learned senior counsel appearing for the private respondent.

This writ petition under Article 226 of the Constitution of India questions the order dated 15.9.1995 passed by the Research Officer, Consolidation, Bihar in Revision Case No.1914 of 1985, whereby the Research Officer while exercising the revisional power of consolidation vested under section 35 of the Bihar Consolidation



of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') has reversed the order passed by the appellate authority as well as the Consolidation Officer thus confirming the possession of the respondent no.6 who has since deceased and is substituted by his legal heirs, over the land in question.

The subject matter of dispute in so far as the present case is concerned, is a piece of land of Khata no.9, plot no.57 having an area of 2.64 acres situated in Village- Dhanawal, P.S.- Bhagwanpur presently falling in the district of Kaimur. Whereas the petitioners in the present case claim the piece of land by way of family partition, the private respondent claims it on the basis of a judgment and decree passed in Title Suit No.365 of 1973. The petitioners succeeded before the Consolidation Officer who decided their right, title and interest over the piece of land in their favour vide order passed on 17.1.1975 and which order was confirmed by the appellate authority being the Deputy Director of Consolidation when the appeal preferred by the private respondent was dismissed by the Deputy Director of Consolidation on 1.7.1985. The concurrent findings have been upset by the revisional authority who in the present case is Research Officer, Consolidation, who vide judgment and order dated 15.9.1995 have set aside both the orders of the statutory authorities below and thus confirming the possession of

the private respondent on the piece of land.



Although learned counsel appearing on behalf of the respective contesting parties have tried to establish their right, title and possession over the piece of land on the basis of different orders but one of the issues that has been raised by Mr. Jitendra Prasad, Singh, learned counsel appearing on behalf of the petitioners is that the order passed by the revisional authority suffers from the vice of *forum non-judice* inasmuch as the Research Officer does not possess the status to exercise the powers of a Director of Consolidation as envisaged under sections 34 and 35 read with section 2 (4) of 'the Act'. Learned counsel appearing for the petitioners to establish this point has referred to a Bench decision of this Court reported in **1998(1) PLJR 352 (Danu Mahto Vs The State of Bihar)** and with a particular reference to the conclusions drawn by the Court in paragraphs 5 to 7 of the judgment he submits that the exercise of revisional jurisdiction by Research Officer is without jurisdiction.

The Bench while recording its opinion in the case of **Danu Mahto** (supra) has held that since the Deputy Director, Consolidation who is the appellate authority under 'the Act', is an officer of the rank of 'Additional Collector' and a Research Officer is an officer of the rank of a 'Deputy Collector', hence it would be preposterous to appreciate that the statute would confer a revisional jurisdiction upon an officer lower in rank than the appellate

authority.

Although Mr. Dwivedi, learned senior counsel appearing on behalf of the private respondent has strenuously argued to establish the case of the private respondent in the light of the decree passed by the trial court in the suit referred to above but even while making such submissions learned counsel has agreed upon the fact that the petitioners were not a party to the suit.

I have heard learned counsel for the parties and perused the records.

There are two different sources through which each of the contesting party is trying to establish his right. This writ petition was filed in 1996 and has been admitted by order dated 13.1.1998. This Court considering the passage of time would in normal circumstances, taken upon itself the adjudication of the issues raised but considering the judgment of this Court in **Danu Mahto** (supra) as well as that the issues raised by learned counsel appearing on behalf of the contesting parties are issues of facts which requires appreciation of evidence, this Court is of the considered opinion that the matter would require a re-consideration by the revisional authority for recording his opinion on the concurrent finding of fact by the original authority as well as the appellate authority because the revisional order impugned in this writ petition is clearly without jurisdiction.

Having heard learned counsel for the parties and in view of the clear legal position where the exercise of powers of revision by the Research Officer being completely without jurisdiction there cannot be any confusion that the order dated 15.9.1995 passed by the Research Officer, Consolidation in Revision Case No.1914 of 1985 is illegal and is accordingly set aside.

The writ petition is allowed and the Revision Case No.1914 of 1985 is remitted to the Director, Consolidation, Bihar, Patna for its consideration and disposal afresh in accordance with law and after giving opportunity of hearing to the contesting parties expeditiously and preferably within a period of three months from the date of receipt/production of a copy of this order.

Since the parties are represented through their counsel they would appear before the Director, Consolidation, Bihar, Patna along with a copy of this judgment and order on or before 4.5.2015 whereafter the Director, Consolidation would proceed to dispose of the matter in the light of the stipulations made hereinabove.

It is made clear that this Court has expressed no opinion on the merits of the case.

(Jyoti Saran, J)

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