

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6381 of 1999

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1. Radha Prasad Singh , Son of Late Ramani Singh
 2. Lakshaman Singh, sons of Radha Prasad Singh
 3. Jitendra Prasad Singh, sons of Radha Prasad Singh, all residents of village-Khatiba, P.S. Itarhi, District Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Director of Consolidation (Head Quarter), Bihar, Patna
3. The Deputy Director of Consolidation Bhojpur at Ara.
4. The Consolidation Officer, Itarhi District Buxar
Respondent/s Ist set
5. Kishore Bin, son of late Ram Kawal Bind, resident of Village Khatiba, PO Itarhi, P.S. Itarhi, District-Buxar.
Respondent 2nd Set

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Appearance :

For the Petitioner/s :	Mr. Ras Bihari Thakur & Mr. Ashok Kumar Rai
For the Respondent/s :	Mr. Rang Nath Choubey Mr. Arabind Nath Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 23-07-2015

1. This is an application seeking quashing of the order dated 08.03.1999 passed in Consolidation Revision Case No. 145 of 1998 by the Deputy Director, Consolidation, Bihar, Patna exercising revisional jurisdiction under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act), whereby he has allowed a revision petition filed by respondent No.5. The petitioners have also challenged a subsequent order dated 09.04.1999 passed in the same Consolidation

Revision Case No. 145 of 1998 by the Deputy Director, Consolidation, whereby, he has allowed an application filed by respondent no.5, under Section 33A of the Act.

2. Though Respondent no.5 entered appearance through his counsel, no counter affidavit has been filed on his behalf, nor there is any representation on his behalf. This Court, is therefore, proceeding on the basis of averments made in the writ application.

3. The Deputy Director, Consolidation by the said order dated 08.03.1999 has directed to carve out an area of 1 decimal from the petitioners' plot bearing Chak No. 323 and add it to the Chak allotted to respondent No.5 as according to him, the said land was wrongly added in the Chak of the present petitioners.

4. Learned counsel appearing on behalf of the petitioners, in order to assail the impugned order has raised two basic points. He has firstly, submitted that the revisional authority exercised his power in violation of provision under Section 35 of the Act, inasmuch as, before exercising his revisional power under the said provision, he did not call for the records of his subordinate authorities. He has secondly, submitted that after the Chaks were finalized in the area, the respondent No.5 straight way filed the revision petition before the Deputy Director, Consolidation without approaching Subordinate authorities under the Act.



5. He has drawn my attention to the specific averment made in this regard in paragraph 23 of the writ application, to the effect that the Deputy Director, Consolidation did not call for the records of the case and allowed the claim of the said Respondent No.5 on a direct petition filed by him, after lapse of 12 years of the confirmation of the Mouza concerned. This statement has remained uncontroverted as no counter affidavit has been filed, denying it.

6. Section 35 of the Act reads thus:-

“35. Revision and reference.- The Director of Consolidation may of his own motion or on the application of any party or on reference being made by any subordinate authority, call for an examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity or the proceeding; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.”

7. It is evident from Section 35 of the Act that the revisional authority under Section 35 of the Act can exercise his power of satisfying himself as to the regularity of the proceeding; or as to the correctness, legality or propriety of any order passed by the

authority subordinate to him in a case or proceedings under the Act, only after calling and examining the records of any case decided or proceedings taken by such subordinate authority.

8. Learned counsel for the petitioners appears to be right in his submission that power of revision as conferred upon the revisional authority under Section 35 of the Act cannot be exercised by the concerned authority without calling for and examining the records of any case decided or proceedings taken by the authority subordinate to him, under the Act.

9. From the impugned order also, I find that there is no mention by the Deputy Director, Consolidation of having called for the records from the Subordinate authorities in the concerned case/proceeding nor there is any mention of having examined such records. The impugned order dated 08.03.1999 passed by the Director, Consolidation (Head Quarters), Bihar, Patna in Revision Case No. 145 of 1998, therefore, cannot be sustaining, being without jurisdiction. The consequential order dated 09.04.1999 passed under Section 33A of the Act also cannot be sustained for the same reason, which is also quashed.

10. The matter is remitted back to the Director, Consolidation, Bihar, Patna for passing an order afresh on the revision Case No. 145 of 1998.

11. This application is accordingly, allowed with the observation as above.

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

(Chakradhari Sharan Singh, J)

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