

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15571 of 2006

Sishir Sinha, son of Shri Sardendu Narayan Sinha, resident of village- Bhavdeopur, P.S. Riga, District- Sitamarhi, at present posted as Commissioner of Income Tax (Appeal-IX), Room No. 520, Mayur Bhawan, New Delhi-110001.

.... Petitioner/s

Versus

1. The State of Bihar through the Director of Consolidation, Bihar, Patna.
2. The Director of Consolidation, Bihar, Patna.
3. The Assistant Director of Consolidation, Sitamarhi.
4. The Consolidation Officer, Riga, P.O. and P.S. Riga, District- Sitamarhi.
5. Purnendu Narayan Sinha, son of late Suryadeo Narayan Sinha.
6. Lallan Prasad Singh
7. Anil Prakash Sinha, both sons of Shri Purnendu Narayan Sinha, all residents of Village Bhavdeopur, P.O. and P.S. Riga, District Sitamarhi, at present resident of House No. 67E, Rajiv Sadan, Road No.11-F, Rajendra Nagar, P.S. Kadamkuan, District Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Dr. K. N. Singh, Sr. Adv.

Mrs. Madhubala Verma

For the Respondent No. 1 to 4: Mr. Ajay Kumar Sharma, AC to PAAG

For the Respondent No.6 : Mr. Amar Nath Deo

Mr. Thakur Jai Singh

For the Respondent No. 7 : Mr. Shivendra Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 11-04-2016

Heard the learned Senior counsel appearing on behalf of the petitioner and the learned AC to the learned Principal Additional Advocate General, appearing on behalf of the respondent no. 1 to 4. I have also heard the learned counsel appearing on behalf of the respondent no. 6 and 7. However, it is a common case of the parties that the respondent no.5- Purnendu Narayan Sinha has passed away during the pendency of the present writ petition and his two sons, namely, respondent no. 6 and 7 are already on record, who are represented by their learned respective counsel. Hence, with the consent of the parties, the matter is taken up for consideration on

merits, treating the respondent no. 6 and 7 as the heirs and legal representatives of the deceased respondent no.5.

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 23.06.2000 passed in Consolidation Revision Case No. 170 of 1997, as contained in Annexure-7 to the writ petition, whereby the aforesaid revision application filed by the original respondent no.5- Purnendu Narayan Sinha, who is now dead and is substituted by his two sons, namely, respondent no. 6 and 7, has been allowed by the respondent- Director of Consolidation, Bihar, Patna in exercise of his powers under Section 35 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

The learned Senior counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned order, submits that apart from the merits, the impugned revisional order is liable to be set aside and quashed by this Court on the ground that it is an ex parte order. By referring to the averments made in paragraphs-14 and 17 of the writ petition, he has submitted that at no point of time notice was validly served upon the petitioner and he had no knowledge and information about the filing and pendency of the aforesaid revision application. Therefore, according to him, there has been violation of rules of natural justice, hence, the impugned order is not sustainable in law.

The learned State counsel appearing on behalf of the respondent no. 1 to 4 and the learned counsel appearing on behalf of the respondent no. 6 and 7 have contested the matter on merits. However, despite repeated query, they have not been able to produce any document to show that, in fact, the notices were validly served

upon the petitioner before passing the impugned final order by the respondent- Director of Consolidation, Bihar, Patna. As a matter of fact, no counter-affidavit has been filed on behalf of the private respondent no. 6 and 7 controverting the averments made in the writ petition filed on behalf of the petitioner.

After having heard the parties and on consideration of the materials available on record, this Court is of the considered opinion that this matter requires reconsideration and fresh decision by the respondent- Director of Consolidation, Bihar, Patna. In the impugned order itself, the respondent- Director of Consolidation, Bihar, Patna has noted that the opposite parties were not present, yet the final impugned order was passed. From perusal of the impugned order, this Court does not find that the notice was ever served upon the petitioner before passing the impugned final order dated 23.06.2000 (Annexure-7). Apparently, rules of natural justice have not been complied with before passing the impugned final order dated 23.06.2000, as contained in Annexure-7.

For the reasons recorded above, without going into the merits of the claims of the parties with respect to the lands in question, the impugned order dated 23.06.2000 (Annexure-7) passed in Consolidation Revision Case No. 170 of 1997 by the respondent- Director of Consolidation, Bihar, Patna is hereby set aside and quashed and the matter is remitted back to the respondent- Director of Consolidation, Bihar, Patna, with a direction to decide the aforesaid revision case afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to the parties i.e. the petitioner and the respondent no. 6 and 7, besides others, if any.

In order to expedite the matter, the writ petitioner as also the respondent no. 6 and 7 are hereby directed to appear before the

respondent- Director of Consolidation, Bihar, Patna with a certified copy of the present order within a period of one month from today, whereafter the respondent- Director of Consolidation, Bihar, Patna, shall fix a firm date for deciding the aforesaid Consolidation Revision Case No. 170 of 1997 afresh.

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

It is further clarified that this Court has not gone into the merits of the claims of the parties with respect to the lands in question in view of the fact that counter-affidavit has not been filed on behalf of the respondent no. 6 and 7, and this is left to be decided by the Director of Consolidation, Bihar, Patna strictly in accordance with law..

The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

BTiwary/-

U			
---	--	--	--