

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3034 of 2012

=====

Md. Habibur Rahman S/O Late Sahebjan, R/O Vill- Mahsaal P.S. +Dist.-
Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. D.M. Sitamarhi
3. Dy. Director, Consolidation, Sitamarhi
4. Consolidation Officer, Dumra, Sitamarhi
5. Hamida Khatoon W/O Abdul Khalique, R/O Vill- Mehsaul, P.O.
Mehsaal P.S + Distt- Sitamarhi

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur
Mr. Alok Kr. Jha

For the Respondent/s : Mr. Kumar Manish, SC-21

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 24-02-2016 Heard the learned counsel appearing on behalf of the petitioner as also the learned State counsel appearing on behalf of the respondent no. 1 to 4. However, despite valid service of notice the respondent no. 5 has chosen not to appear and not to contest the present matter.

The petitioner is aggrieved by the order dated 21.12.2011 passed in Appeal No. 2 of 2011 by the respondent Deputy Director of Consolidation, Sitamarhi, as contained in Annexure-5 to the writ petition, whereby the aforesaid appeal filed on behalf of the petitioner under Section 10(6) of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 has been stayed in the light of letter dated 15.09.2011 issued by the Deputy Director of Consolidation (Headquarter), Bihar, Patna, as contained in Annexure-B to the counter-affidavit filed on behalf of the respondent no. 2 to 4.

The present writ petition was, in fact, heard earlier by a

Bench of this Court [Coram: Prakash Chandra Verma, J, since superannuated) and by order dated 14.02.2012 the writ petition was finally disposed of with a direction to the Deputy Director of Consolidation, Sitamarhi, to decide the appeal No. 2 of 2011 filed on behalf of the petitioner.

The respondent no.5, being aggrieved by the aforesaid order dated 14.02.2012, preferred Civil Review No. 171 of 2012 raising a grievance that the writ petition filed on behalf of the petitioner has finally been disposed of without giving any opportunity of hearing to her. The aforesaid Civil Review No. 171 of 2012 was finally allowed by order dated 21.10.2013 passed by another Bench of this Court [Coram: Navaniti Prasad Singh, J]. By the aforesaid order dated 21.10.2013, the order dated 14.02.2012, disposing of the present writ petition, was recalled and the matter was directed to be listed under the heading "For Admission" for fresh consideration. However, while passing the aforesaid order it was directed that review petitioner, who is respondent no. 5 in the present writ petition, shall file counter-affidavit in the writ petition within a period of one month from that date and it was further observed that the review petitioner be deemed to have been noticed in the writ petition.

In the light of the aforesaid order dated 21.10.2013 passed in Civil Review No. 171 of 2012, the present writ petition was listed under the heading "For Admission". However, despite observations and directions dated 21.10.2013, the review petitioner did not appear in the present matter and did not file any counter-affidavit. In above background, by way of abundant precaution and in order to give one more opportunity to the respondent no. 5, notice was directed to be issued to her by order

dated 22.09.2015, both by ordinary process as also by registered post with A/D. Notice upon respondent no.5 has been validly served which is apparent from the office note dated 05.01.2016. Unfortunately, despite valid service of notice, the respondent no.5 has chosen not to appear and not to contest the matter.

In the present case, earlier a counter-affidavit on behalf of the respondent no. 2 to 4 was filed by the learned State counsel. Subsequently, by order dated 22.01.2016, the learned Standing Counsel No.21 was directed to file a supplementary counter-affidavit on behalf of the respondent no. 1 to 4. The aforesaid order dated 22.01.2016 has been complied with and the supplementary counter-affidavit on behalf of the respondent no. 2 to 4 has been filed, wherein it has been stated that the Additional Collector, Sitamarhi has been vested with the powers of the Deputy Director of Consolidation, Sitamarhi and the appeal preferred on behalf of the petitioner is not being decided in view of the stay order passed earlier in the present proceeding. The learned Standing Counsel-21 has submitted that once the stay order is modified, then the appeal preferred on behalf of the petitioner shall be taken to its logical conclusion and shall be decided on its own merit.

Indisputably, the appeal preferred on behalf of the petitioner has not been decided on merits, rather it has been stayed on the basis of the letter dated 15.09.2011. The learned counsel appearing on behalf of the petitioner submits that the appeal preferred by the petitioner may be directed to be decided on merits as the other similar appeals are being heard and decided on merit by the appellate authority.

In the considered opinion of this Court, once a statutory

appeal has been preferred by the petitioner against the order passed by the Consolidation Officer, then that must be taken to its logical conclusion. The appeal preferred on behalf of the petitioner may be either allowed or may be dismissed, but the matter cannot be kept pending for an unending period.

For the reasons recorded above, the order dated 21.12.2011 passed in Consolidation Appeal No. 2 of 2011 by the Deputy Director of Consolidation, Sitamarhi (Annexure-5) is hereby set aside and quashed and the appellate authority i.e. the Additional Collector, Sitamarhi-cum- Deputy Director of Consolidation, Sitamarhi is hereby directed to dispose of the aforesaid Appeal No. 2 of 2011 on merits at an early date preferably within a period of three months from the date of receipt/ production of a copy of this order, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioner and the respondent no. 5, besides others, if any.

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.

In the result, 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			
---	--	--	--