

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7775 of 2009

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1. Nirichhan Rai
 2. Nagina Rai, both sons of late Sundar Rai, resident of village- Chak-Sakra, P.S. Hajipur, Anchal Hajipur, Distt. Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Director of Consolidation, at Hajipur, Vaishali.
3. The Director of Consolidation, Bihar, Patna.
4. Sita Ram Chowdhary
5. Chunchun Choudhary
6. Prem Choudhary
7. Gorakh Chowdhary, All sons of Late Haribans Naraan Choudhary, resident of village- Hathsurganj, Anchal- Hajipur, P.S. Hajipur, Distt. Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushkar Nath Singh
Mr. Ram Ishwar Prasad

For the Respondent No.1 to 3 : Mr. Madhukar Krishna Sinha, SC-1
Mr. Ashutosh Singh, AC to SC-1

For the Respondent no. 4 to 7 : Mr. Shrinandan Pd. Singh
Mr. Ashok Kumar
Mr. Surendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGEMENT

8 19-05-2016 Heard the parties.

2. The petitioners are aggrieved by the order dated 05.05.2009 passed in Consolidation Revision Case No. 205 of 2007 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-1, whereby aforesaid consolidation revision case, filed on behalf of the respondent no.4, has been allowed and the order dated 13.01.1998 passed in Miscellaneous Case No. 451 of 1997 by the respondent Deputy Director of Consolidation, Vaishali, Hajipur, as contained in Annexure-2, has been set aside and the name of the respondent no.4 has been directed to be recorded as per the entry made in the register of lands/ the khatian prepared under Section 9 of The Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (In short 'Consolidation Act').

3. The learned counsel appearing on behalf of the petitioners submits that the respondents had no locus standi to challenge the aforesaid order dated 13.01.1998 passed by the respondent Deputy Director of Consolidation, Vaishali in Miscellaneous Case No. 451 of 1997 (Annexure-2). Therefore, according to him, the impugned order is liable to be set aside by this Court.

4. Per contra, the learned counsel appearing on behalf of the private respondent no. 4 to 7 submits that, in fact, after preparation of register of lands under Section 9(2) and preparation of statement of principles under Section 9A of the Consolidation Act, and after their publication under Section 10(1) of the Consolidation Act, no objection was filed under Section 10(2) of the Consolidation Act by any person including the petitioners. Hence, it became final. However, the petitioners straightaway filed Miscellaneous case No. 451 of 1997, after a long time, before the respondent Deputy Director of Consolidation, Vaishali, the prescribed appellate authority, which was not maintainable. Therefore, according to him, the order passed by the respondent Deputy Director of Consolidation, Vaishali, as contained in Annexure-2, is patently illegal and without jurisdiction, which has rightly been set aside by the Director of Consolidation, Bihar, Patna in exercise of his powers under Section 35 of the Consolidation Act.

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that in absence of any order passed under Sub Sections (3) (4) and (5) of Section 10 of the Consolidation Act, on the basis of objection filed by the aggrieved person under Section 10(2) of the Consolidation Act, the petition filed by the petitioners straightaway before the Deputy Director of Consolidation

purportedly under Section 10(6) of the Consolidation Act was not maintainable. The appellate authority has not been vested with inherent powers under the scheme of the Consolidation Act. That being the position, the order dated 13.01.1998 (Annexure-2) passed by the respondent Deputy Director of Consolidation, Vaishali was patently illegal and without jurisdiction, which has rightly been set aside by the Director of Consolidation, Bihar, Patna by the impugned order dated 05.05.2009 (Annexure-1).

6. It is well settled principles of law that the High Court would seldom exercise its discretionary powers under Article 226 of the Constitution of India, if after setting aside an order under challenge, a patently illegal order gets revived. So far the present case is concerned, if the impugned order dated 05.05.2009 (Annexure-1) is set aside by this Court, then that would lead to revival of a patently illegal order dated 13.01.1998 (Annexure-2) passed by the respondent Deputy Director of Consolidation, Vaishali, Hajipur.

7. In above view of the matter, this Court does not feel persuaded to interfere with the impugned order dated 05.05.2009 passed in Consolidation Revision Case No. 205 of 2007 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-1. Consequently, the writ petition is dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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