

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4944 of 2008

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Bibi Nasima Khatoon @ Nasima Khatoon widow of Late Quayam Uddin, resident of village Madhuban, P.S.Simri Bakhtiyarpur, P.O. Khamauli, District Saharsa (Expunged vide order dated 23.11.2009 and substituted by her following heirs and legal representatives)

1. Md.Tarique Ali
2. Md.Ahtesham Alam
3. Md.Sarfraz Alam
4. Gulnaz Parveen

.... Petitioner/s

Versus

1. The State of Bihar
2. Director of Consolidation, Bihar, Patna
3. Deputy Director of Consolidation, Saharsa
4. Consolidation Officer, Simribakhtiarapur, District Saharsa
5. Assistant Consolidation Officer, Simribakhtiarapur, District Saharsa
6. Ramautar Pandit son of Asarfi Pandit, resident of Simri Bakhtiarapur near Block Chowk, P.S.Simri Bakhtiarapur, District Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr.Advocate
Mr.Ashok Kumar Sinha No.4, Advocate
Mr.Sanjay Kumar Mishra, Advocate

For the Respondent Nos. 1 to 5: Mr.Subhash Pd.Singh, GA 7
Mr.Indeshwari Pd.Mandal, AC to GA 7

For the Respondent No.6 : Mr.Pramod Rajpati, Advocate
Smt.Durga Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 24-06-2016

Heard.

2. The substituted writ petitioners are aggrieved by order dated 31.10.2007 passed in Consolidation Revision Case No. 30 of 2002 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-8 to the writ petition, whereby aforesaid Consolidation Revision Case filed on behalf of the respondent no.6 under Section 35 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short, “the Act”) has been allowed and the order 11.02.2002 passed in Consolidation Appeal

No. 24 of 1993 by the respondent Deputy Director of Consolidation, Saharsa, as contained in Annexure-7 to this writ petition, has been set aside and the earlier appellate order dated 14.11.1998 passed in aforesaid Consolidation Appeal No.24 of 1993, as contained in Annexure-4 to this writ petition, has been restored.

3. It is not in dispute that the original writ petitioner Bibi Nasima Khatoon as also respondent no.6 Ramautar Pandit purchased the lands in question from one Md.Rafiqu Uddin. The respondent no.6 purchased the lands in question through a registered sale deed in the year 1970, whereas original writ petitioner also purchased the lands in question through a registered sale deed in the year 1973. During the consolidation proceeding, register of lands in terms of Section 9 of the Act was prepared in the name of private respondent no.6 and the same was accordingly published in terms of Section 10(1) of the Act; whereafter the original writ petitioner filed an objection under Section 10(2) of the Act, which gave rise to Case No. 411 of 1976. The aforesaid objection case filed by the original writ petitioner was allowed by order dated 30.04.1977 by the Assistant Consolidation Officer, Simri Bakhtiarpur, as contained in Annexure-3, in terms of Section 10(3) of the Act and the lands in question were directed to be recorded in the name of the original writ petitioner. The respondent no.6, being aggrieved by the aforesaid order, filed Consolidation Appeal No. 24 of 1993, which was finally allowed by order dated 14.11.1998 (Annexure-4) passed by the Deputy Director of Consolidation, Saharsa and the order passed by the Assistant Consolidation Officer was set aside and the land in question was directed to be recorded in the name of the respondent no.6. The original writ petitioner, being aggrieved by the aforesaid appellate order, preferred Consolidation Revision No. 35 of 1998 under



Section 35 of the Act, which as finally allowed by order dated 11.05.1999 (Annexure-6) and the matter was remitted back to the appellate authority with a direction to hold local inspection in terms of Section 10(7) of the Act and pass a fresh order in accordance with law. After the aforesaid remand order, fresh order was passed by the appellate authority on 11.02.2002 (Annexure-7), but without holding local inspection in terms of Section 10(7) of the Act, and he simply relied upon the report of the Consolidation Officer. The respondent no.6, being aggrieved by the aforesaid appellate order dated 11.02.2002 (Annexure-7), moved before the Director of Consolidation, Bihar, Patna under Section 35 of the Act, which has been finally allowed by the impugned order dated 31.10.2007.

4. It is to be noted that during the pendency of the writ petition, the original writ petitioner Bibi Nasima Khatoon died and she has been substituted by her heirs, who are the present petitioners.

5. The learned senior counsel appearing on behalf of the petitioners submits that while passing the impugned revisional order, the respondent Director of Consolidation, Bihar, Patna has placed reliance upon the order of the appellate authority, as contained in Annexure-4, which had already been set aside; therefore, according to him, the order impugned cannot be sustained. He further submits that the respondent Director of Consolidation has not examined the sale deeds of the original writ petitioner viz-a-viz respondent no.6 in its correct perspective. He also submitted that if Director of Consolidation was satisfied that in accordance with the direction of the earlier remand order the appellate authority had not decided the appeal correctly, then he could have remanded the matter back once again for fresh decision.

6. The learned counsel appearing on behalf of the



respondent no.6, on the other hand, has supported the impugned revisional order. However, despite opportunity granted by this Court, no counter affidavit has been filed on behalf of the respondent no.6. He pointed out that on earlier occasion, while the matter was being remitted back by order dated 11.05.1999 (Annexure-6), the appellate authority was directed to hold local inspection in terms of Section 10(7) of the Act, but that was not done by the appellate authority and he illegally and arbitrarily dismissed the appeal of the respondent no.6 by order 11.02.2002. According to him, the aforesaid order 11.02.2002 (Annexure-7) cannot be sustained in law.

7. After having heard the parties and taking into consideration the factual background of the case, noticed above, this Court is of the opinion that this matter requires reconsideration and a fresh decision from the stage of the appellate authority. Indisputably, by earlier order of remand passed by the revisional authority on 11.05.1999 (Annexure-6) the appellate authority was directed to hold local inspection under Section 10(7) of the Act and pass a fresh order, but that has not been done. The revisional authority does not appear to have examined the entire matter independently and has reiterated the earlier order of the appellate authority passed on 14.11.1998 (Annexure-4). Hence, it cannot be countenanced.

8. For the reasons recorded above, the impugned revisional order dated 31.10.2007 passed in Consolidation Revision Case No. 30 of 2002 by the Director of Consolidation, Bihar, Patna, as contained in Annexure-8, as also the appellate order dated 11.02.2002 passed in Consolidation Appeal No. 24 of 1993 by the Deputy Director of Consolidation, Saharsa, as contained in Annexure-7, are hereby set aside and quashed, and the entire matter is remitted back to the appellate authority i.e. Deputy Director of Consolidation,

Saharsa with a direction to hear and decide the aforesaid Consolidation Appeal No. 24 of 1993 filed by the respondent no.6 afresh. Before passing a fresh final order, he shall make local inspection under Section 10 (7) of the Act and if so required, he may record evidence produced by the parties in terms of Section 37B of the Act.

9. In order to expedite the matter, the present substituted petitioners as also respondent no.6 are hereby directed to appear before the respondent Deputy Director of Consolidation, Saharsa within a period of six weeks from today with a certified copy of the present order, whereafter he shall proceed to decide the matter afresh strictly in accordance with law keeping in mind the observations and directions indicated above.

10. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties shall bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.06.2016
Transmission Date	