

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3477 of 2008

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Shri Mahabir Jee Deity Village Taruhan, P.O. Turki, Police Station Kudra, District Rohtas (Sasaram) through Kamala Kant Upadhyay son of Mathura Upadhyay Shebait and Secretary of Shri Mahabir Jee Deity, resident of Village Taruhan, P.O. Turki, Police Station Kudra District Rohtas (Sasaram).

.... Petitioner/s

Versus

1. The State of Bihar
2. Director Consolidation, Bihar, Patna.
3. Deputy Director, Consolidation, Rohtas (Sasaram).
4. Consolidation Officer, Kudra, Rohtas.
5. Biral Hazam son of Sheo Pujan Hazam, resident of Village Turki, P.O. Turki, Police Station Kundra, District Rohtas, Sasaram.
6. Radha Shyam Upadhyay son of Ramdhar Upadhyay, resident of Village Hasanpura, P.O. Turki, Police Station Kundra, District Rohtas, Sasaram.
7. Ram Raj Upadhyay son of Deo Narain Upadhyay, resident of Village Hasanpura, P.O. Turki, Police Station Kundra, District Rohtas, (Sasaram).
8. Rajendra Upadhyay son of Mathura Upadhyay, resident of Village Taruhan, P.O. Turki, Police Station Kundra, District Rohtas, (Sasaram).
9. Sheo Pujan Mishra son of Late Laxmi Mishra, resident of Village Babhangawan, P.O. Dengari, Police Station Kundra, District Rohtas, (Sasaram).
10. Sheo Dusadh son of Manbodh Dusadh, resident of Village Hasanpura, P.O. Turki, Police Station Kundra, District Rohtas (Sasaram).(deleted vide Court's order dated 03.02.2016).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar
Mr. Radha Mohan Pandey
Mr. Satish Kumar

For the Respondent No.1 to 4: Mr. A. Kr. Upadhyay, SC- 20

For the Respondent no. 5 :Mr. Rewti Kant Raman
Mr. Satish Kumar
Ms. Sangita Kumari.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 18-03-2016

When the matter has been taken up for consideration on merits, a counter-affidavit on behalf of the respondent no. 5 is being filed by his counsel. At this stage, the learned counsel appearing on behalf of the petitioner raises an objection that a copy of the aforesaid counter-affidavit was served upon him today itself in the Court, which

is in violation of the requirement of The Patna High Court Rules. Therefore, according to him, aforesaid counter-affidavit filed on behalf of the respondent no.5 may be ignored/ rejected.

2. The learned counsel appearing on behalf of the respondent no. 5 does not dispute the factum of service of the copy of the aforesaid counter-affidavit upon the learned counsel appearing on behalf of the petitioner today itself.

3. The second proviso to Rule-6 of Chapter-XXI-C of The Patna High Court Rules mandates that in a writ petition filed under Articles 226 and 227 of the Constitution of India, an answer showing cause must be made by filing an affidavit and by serving a copy thereof with annexures, if any, upon the Advocate for the writ petitioner not later than twenty-four hours before the date fixed for hearing.

4. The present writ petition was filed way back on 18.02.2008 and by order dated 23.10.2008, notices were issued to the respondent no. 5 to 10 by a Bench of this Court. The respondent no. 5 entered appearance through his counsel way back on 19th December, 2008, yet counter-affidavit was not filed on his behalf. This matter was adjourned on several occasions on one ground or the other. The matter is coming on the Board for last several dates for its final disposal, yet counter-affidavit on behalf of the respondent no. 5 has been filed today itself and a copy of which was not served upon the learned counsel appearing on behalf of the petitioner as per requirement of The Patna High Court Rules, as referred to above.

5. In above view of the matter, counter-affidavit filed on behalf of the respondent no. 5 in the present proceeding shall not be taken into consideration and is hereby rejected.

6. Heard the learned counsel appearing on behalf of the

petitioner, the learned Standing counsel-20 appearing on behalf of the respondent no. 1 to 4 and the learned counsel appearing on behalf of the respondent No.5 on merits of the case. However, none is appearing on behalf of the remaining private respondents, though notices have been validly served upon them.

7. 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 18.12.2007 passed in Consolidation Revision Case No. 453 of 1986 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-6, whereby the aforesaid consolidation revision application filed on behalf of the petitioner under Section 35 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (In short 'Act, 1956') has been dismissed by a reasoned and speaking order and the order passed by the appellate authority has been affirmed.

8. It is not in dispute that the claims/ objections raised on behalf of the respondent no. 5 under Section 10B of the Act, 1956 before the respondent Consolidation Officer, Kudra, Rohtas, giving rise to Case No. 329 of 1982, was finally rejected by order dated 18.12.1982, as contained in Annexure-1 to the writ petition. The respondent no.5, being aggrieved by the aforesaid order, preferred an appeal under Section 10(6) of the Act, 1956 before the Respondent Deputy Director of Consolidation, Rohtas, Sasaram, which gave rise to Appeal No. 419 of 1983-84. After hearing the parties including the present writ petitioner, the aforesaid appeal filed on behalf of the respondent no. 5 was finally allowed by an order dated 01.11.1985 (Annexure-2) and the claims raised on behalf of the respondent no.5 with respect to the lands in question as also his Shebaitship was accepted. The writ petitioner, being aggrieved by the aforesaid order,



preferred Revision No. 453 of 1986 before the respondent Director of Consolidation, Bihar, Patna, which was finally heard and allowed by an order dated 12.02.1988 passed by one Shri K.P. Sinha, the Deputy Director of Consolidation (Headquarter), as contained in Annexure-3 to the writ petition, but its validity and correctness was subject matter of challenge in CWJC No. 1780 of 1988. The aforesaid writ petition was finally allowed by a co-ordinate Bench of this Court by order dated 15th February, 1988, as contained in Annexure-4 to the writ petition, on the ground that aforesaid Mr. K.P.Sinha, the Deputy Director of Consolidation, was not authorised to hear and decide consolidation revision case filed under Section 35 of the Act, 1956 and accordingly, the order dated 12.2.1988 (Annexure-3) was set aside, and the matter was remitted back to the revisional authority for deciding the aforesaid revision application afresh after hearing the parties.

9. In view of the aforesaid remand order made by this Court, the aforesaid Consolidation Revision Case No. 453 of 1986 was heard afresh by the respondent Director of Consolidation, Bihar, Patna and finally by the impugned revisional order dated 18.02.1987, it has been dismissed and the order passed by the appellate authority has been affirmed.

10. Though, the learned counsel appearing on behalf of the petitioner argued the matter at some length, but he essentially raised the issues of facts regarding the lands in question. He has not been able to point out any legal infirmity or procedural error committed by the respondent Director of Consolidation, while passing the impugned revisional order. In support of his contention, the learned counsel appearing on behalf of the petitioner placed reliance on a judgment of a learned Single Judge of this Court in the case of **Mishri Lal Mahto**

v. State of Bihar [2002(1) PLJR 195], which is in considered opinion of this Court, does not help the petitioner with respect to issues involved in the present proceeding.

11. The matter has been contested by the learned Standing Counsel-20 appearing on behalf of the respondent no. 1 to 4 as also the learned counsel appearing on behalf of the respondent no.5. According to them, the claims raised on behalf of the writ petitioner has been rejected by the appellate authority by an order dated 1.11.1985, as contained in Annexure-2, which has been affirmed by the revisional authority by the impugned order dated 18.02.2007 (Annexure-6). It is contended by them that the appellate authority as also the revisional authority were well within their jurisdiction to pass the orders, as contained in Annexure-2 and 6 respectively, which cannot be legally faulted. The learned Standing Counsel-20 further submitted that the issues of facts raised on behalf of the petitioner in the present writ petition have already been answered by the revisional authority by the impugned order dated 18.12.2007, which is a final court of fact. Therefore, according to him, the writ petition is liable to be dismissed.

12. However, in response to the query made by this Court, the learned counsel appearing on behalf of the petitioner as also the learned counsel appearing on behalf of the respondents have fairly conceded that till date notification under Section 26A of the Act, 1956 has not been issued by the State Government, closing the consolidation operation in the Mauza/ unit in question.

13. After having heard the parties and on consideration of the materials available on record, this Court finds that by recording a concurrent finding of facts the appellate authority as also the revisional authority have rejected the claims raised on behalf of the

petitioner with respect to the lands in question as also with respect to Shebaitship. The revisional authority has taken into consideration all the issues raised on behalf of the parties and by a reasoned and speaking order, aforesaid revision application filed on behalf of the petitioner has been dismissed and the order passed by the appellate authority has been affirmed. This Court also finds that the learned counsel appearing on behalf of the petitioner, while assailing the impugned revisional order has not pointed out violation of any provisions of the Act, 1956. He has also not pointed out any procedural error committed by the revisional authority or lack of jurisdiction in him, while passing the impugned revisional order, as contained in Annexure-6.

14. In above view of the matter, this Court does not find any good ground to interfere with the impugned revisional order dated 18.12.2007 passed in Consolidation Revision Case No. 453 of 1986 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-6. The writ petition is apparently devoid of merit and is, accordingly, dismissed, but without costs.

15. However, it is clarified that once a gazette notification under Section 26A of the Act, 1956 is issued by the State Government, closing the consolidation operation in the Mauza/ unit in question, then the aggrieved party shall be at liberty to approach the civil court of competent jurisdiction for grant of appropriate relief with respect to the lands in question.

(Birendra Prasad Verma, J)

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