

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13897 of 2007

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1. Rajgir Singh son of Late Damari Singh
2. Raghubanshi Singh
3. Pramod Singh
4. Rabindra Singh
Petitioner Nos. 2 to 4 are sons of Late Thakur Singh,
All are residents of Village and Post Office Sahdei Buzurg, Police
Station Desari, District Vaishali Petitioner/s

Versus

1. The State of Bihar
2. Joint Director of Consolidation, Muzaffarpur
3. Deputy Director of Consolidation, Vaishali at Hajipur
4. Ram Shivalak Singh son of Late Thagan Singh
5. **Pyare Lal Singh (Expunged vide order dated 04.12.2015 and substituted by his widow Most Urmila Devi)**
6. Umesh Chandra Singh son of Late Mewa Lal Singh
7. **Dhodha Singh (Expunged vide order dated 04.12.2015 and substituted by his son Shiv Shankar Singh)**
8. Baidya Nath Singh
9. Dinesh Singh
Respondent Nos. 8 & 9 are sons of Late Palat Singh,
Respondent Nos. 4 to 9 are residents of f Village and Post Office Sahdei
Buzurg, Police Station Desari, District Vaishali Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamla Prasad Roy, Advocate
Mr. Madan Prasad Singh, Advocate
For the Respondent Nos. 1 to 3: Mr. Avanindra Kumar Singh, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

9 17-03-2016 Heard learned counsel appearing on behalf of the petitioners and the learned AC to AAG 13, appearing on behalf of the respondent nos. 1 to 3. However, despite valid service of notice, private respondent nos. 4 to 9 have chosen not to appear and contest the present matter.

2. The petitioners are aggrieved by the order dated 18.07.2007 passed in Consolidation Revision Case No. 7 of 2007 by the respondent Joint Direction of Consolidation, Muzaffarpur, as contained in Annexure-3 to the writ petition, whereby in exercise of his powers under Section 35 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act,

1956 (in short, “the Act, 1956”) he has allowed the aforesaid revision application filed on behalf of the private respondents mainly on the ground that the order passed by the appellate authority was without jurisdiction as the Mauza in question had already been confirmed.

3. The learned counsel appearing on behalf of the petitioners submits that the impugned revisional order suffers from error of record and is also a non-speaking one. According to him, no notification under Section 26A of the Act, 1956 was issued with respect to the Mauza in question. Therefore, the appellate authority was well within his jurisdiction to hear and decide the appeal, so preferred on behalf of the petitioners.

4. By order dated 27.02.2009 passed by a Bench of this Court, the State counsel was directed to file a counter affidavit and to place the Gazette Notification on record, if so issued under Section 26A of the Act, 1956.

5. The learned AC to AAG 13, appearing on behalf of the respondent nos. 1 to 3, by referring to the averments made in the counter affidavit filed on their behalf, submits that, in fact, notification under Section 26A of the Act, 1956 has not been issued till date with respect to Mauza in question. Therefore, according to him also, the impugned revisional order suffers from error of record.

6. As noticed above, none appears on behalf of the private respondents, despite valid service of notice upon them.

7. After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the matter requires reconsideration and a fresh decision by the revisional authority in accordance with law, as the impugned revisional order has been passed by the respondent no.2 under wrong premises that the consolidation operation had come to an

end with respect to Mauza in question, though as per averments made in the counter affidavit, the consolidation operation has not been closed for the Mauza in question by issuing notification under Section 26A of the Act, 1956. Furthermore, the claims of the private respondents have been allowed with respect to the lands in question by a cryptic and non-speaking order.

8. For the reasons recorded above, the impugned order dated 18.07.2007 passed in Consolidation Revision Case No. 7 of 2007 by the respondent Joint Director of Consolidation, Muzaffarpur is hereby set aside and quashed, and the matter is remitted to the Director of Consolidation, Bihar, Patna with a direction to decide the aforesaid consolidation revision case afresh in accordance with law, after giving an opportunity of hearing to all concerned.

9. In order to expedite the matter, the petitioners are hereby directed to appear before the Director of Consolidation, Bihar, Patna within a period of one month from today with a certified copy of the present order, whereafter the Director of Consolidation, Bihar, Patna shall proceed further to decide the aforesaid Consolidation Revision Case No. 7 of 2007 afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioners and the private respondents, besides others, if any.

10. 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)

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