

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4192 of 2014

=====

1. Surendra Rai Son Of Late Amrit Rai
2. Upendra Rai Son Of Late Hans Rai @ Harbansh Rai
Both are resident of Village + P.O. Nayagaon, P.S. Desari,
District - Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reforms, Govt. of Bihar, Patna
2. The Director, Department Of Consolidation, Govt. Of Bihar, Patna
3. The Deputy Director, Consolidation, Vaishali At Hazipur
4. The Consolidation Officer, Desari, Hazipur At Vaishali
5. Jawahar Rai
6. Lal Babu Rai
7 Chandeshwar Rai
All are sons of Late Khelawan Rai, resident of Village + P.O. Nayagoan, P.S. Desari, District - Vaishali

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sabal Kumar Jha, Advocate
For the Respondent Nos. 1 to 4: Mr. Kundan Bhadur Singh, SC 22
Mr.Madanjeet Kumar, AC to SC 22
For the Respondent Nos. 5 to 7: Mr. Shanti Kumar, Advocate
Mr.Dhananjay Kr.Tiwary, Advocate
Mr.Baban Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 21-06-2016

Heard the parties.

2. The petitioners are aggrieved by order dated 31.01.1998 passed in Case No. 89 of 1998 by the respondent Deputy Director of Consolidation, Vaishali at Hajipur, as contained in Annexure-4 to the writ petition, whereby the aforesaid case filed on behalf of the respondent nos. 5 to 7 has been allowed and the lands in question have been directed to be recorded in the name of the aforesaid respondent nos. 5 to 7.

3. The learned counsel appearing on behalf of the petitioners submits that the petitioners had no knowledge/information

about the impugned order dated 31.01.1998, which was passed ex-parte.

4. Both the learned counsel appearing on behalf of the respondents, on the other hand, submit that against the order impugned, the petitioners have an alternative and statutory remedy under Section 35 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short, “the Consolidation Act”) before the Director of Consolidation, Bihar, Patna; therefore, the present writ petition is pre-mature and is fit to be dismissed on that score alone.

5. At one point of time, this Court was inclined to remit the matter back to the respondent Deputy Director of Consolidation on the ground that order impugned has been passed ex-parte, allegedly without any knowledge/information to the petitioners, but despite query by the Court, the learned counsel appearing on behalf of the petitioners has not been able show any averment made in the writ petition that notices were not served upon the petitioners before passing the impugned final order by the respondent Deputy Director of Consolidation, Vaishali at Hajipur.

6. In above view of the matte, accepting the plea raised on behalf of the respondents, the present writ petition is disposed of with a liberty to the petitioners to file an appropriate petition before the Director of Consolidation, Bihar, Patna under Section 35 of the Consolidation Act.

7. If such a petition is filed on behalf of the petitioners after impleading all the necessary parties including respondent nos. 5 to 7, besides others, if any, within a period of one month from today with a certified copy of the present order, then the Director of Consolidation, Bihar, Patna shall decide the same on its merits after

hearing the parties, but shall not dismiss the petition on the ground of limitation in the factual background noticed above.

8. The parties shall be at liberty to raise all the issues of facts and law before the respondent Director of Consolidation, Bihar, Patna which may be available to them with respect to lands in question.

9. The writ petition stands finally disposed of with the aforesaid observations and directions.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	NAFR
CAV DATE	NO
Uploading Date	24.06.2016
Transmission Date	