

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.6056 of 2007**

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Arun Kumar Singh & Ors

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :For the Petitioner/s : Mr. Bindhyachal Singh
Mr. Parijat Saurav

For the Respondent no. 7 : Mr. Rajesh Mohan

For the State Mr. Arun Kr. Sinha, AC to GP 24

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**ORAL JUDGMENT****Date: 18-04-2017**

1. Heard learned counsel for the petitioners and learned counsel for the private respondent as well as learned counsel appearing for the State.

2. Petitioners have challenged the order dated 20.6.2000 passed by Deputy Director, Consolidation, Bihar, Patna in Revision case no. 357/1999 by which and where under learned Deputy Director, Consolidation, Headquarter set aside the order dated 3.2.1998 passed by the Deputy Director, Consolidation, Vaishali at Hajipur and directed to enter the name of the private respondent in land records.

3. The brief fact of the present matter is that private respondent filed petition under section 33A of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 before the Deputy Director, Consolidation, Vaishali at Hajipur. The aforesaid petition was registered as Case no. 241/1995 which was heard by the Deputy Director, Consolidation, Vaishali at Hajipur in absence of the petitioners and allowed the aforesaid case vide order dated 30.11.1995 directing to enter the name of the private respondent in land records.



Petitioners filed a petition before the Deputy Director, Consolidation, Vaishali at Hajipur for recall of order dated 30.11.1995 passed in Case no. 241/1995 and thereafter, Deputy Director, Consolidation, Vaishali at Hajipur recalled the above stated order dated 30.11.1995 passed in Case no. 241/1995 vide order dated 3.2.1998 which was challenged by the private respondent before the Director, Consolidation, Bihar, Patna by filing Revision case no. 357/1999. The aforesaid Revision case no. 357/1999 was heard by the Deputy Director, Consolidation, Headquarter and passed the impugned order dated 20.6.2000 which is under challenge before this court.

4. Certain facts are admitted in this case. The entries of the disputed lands were made during the consolidation proceeding in the name of father of petitioners and subsequently, original respondent no.7, namely, Raj Mahali Devi claimed before the Deputy Director, Consolidation by filing petition under section 33A of the aforesaid Act that the lands in question were settled to ancestor of the petitioners as well as her ancestor and subsequently, at the time of abolition of zamindari, zamindar filed return in the name of her ancestor as well as ancestor of the petitioners. Further claim of original respondent no.7 is that jamabandi was also prepared in the name of ancestor of the parties but in course of consolidation proceeding due to clerical error of the concerned official, lands in question were entered only in the name of father of the petitioners.

5. Learned counsel appearing for the petitioners submitted that the Deputy Director, Consolidation, Vaishali at Hajipur had got no jurisdiction to decide right and title of the parties under section 33A of the aforesaid Act because the consolidation authority can only exercise the power vested under section 33A of the aforesaid Act to



rectify the clerical error apparent on the face of the record but in the present case, Deputy Director, Consolidation, Hajipur adjudicated the right and title of the parties taking help of section 33A of the aforesaid Act. He further submitted that subsequently, when petition to recall the said order was filed, Deputy Director, Consolidation, Vaishali at Hajipur realized his fault and recalled the aforesaid order, passing the order dated 3.2.1998. Learned counsel for the petitioners submitted that in C.W.J.C. no. 11299 of 2013, a coordinate bench of this court vide order dated 5.8.2014 has already held that right and title of the parties can not be adjudicated under section 33A of the Consolidation Act. He, next, submitted that admittedly, order dated 3.2.1998 was passed by the Deputy Director, Consolidation, Vaishali at Hajipur which was challenged in Revision case no. 357/1999 but the aforesaid Revision case no. 357/1999 was heard by the Deputy Director, Consolidation, Headquarter. The officer who passed the order dated 3.2.1998 and the officer who passed the order dated 20.6.2000 are of same status and rank and, therefore, Deputy Director, Consolidation, Headquarter had got no jurisdiction to decide Revision case no. 357/1999. Learned counsel for the petitioners relied upon a decision reported in **2011 (4) PLJR 870 (Biswanath Rai vs. The State of Bihar & ors)** in which it has been held by a coordinate bench of this court that where an order is passed in appellate jurisdiction by the Deputy Director, Consolidation, then, notwithstanding delegation, an officer of his rank could not exercise revisional jurisdiction because revisional jurisdiction is a jurisdiction of superintendence over subordinate authority. He also relied upon an unreported judgment of Budhu Singh vs The State of Bihar and others passed on 9.4.2015 in C.W.J.C. no. 6746 of 1993.



6. On the other hand, learned counsel appearing for the private respondent supported the impugned order arguing that Deputy Director, Consolidation, Headquarter passed the impugned order dated 20.6.2000 while exercising delegated power and, as a matter of fact, order dated 3.2.1998 in Misc. case no. 8/1998 was passed by another officer, though he was also the officer of rank of Deputy Director, Consolidation. He further submitted that now, it has already been set at rest that Director, Consolidation may delegate his power to Deputy Director, Consolidation to hear revision and, therefore, there is no illegality in the impugned order because the impugned order as well as order of recall have been passed by two different persons. Learned counsel for the private respondent further submitted that so far as section 33A of the Consolidation Act is concerned, admittedly, the aforesaid section gives power to Consolidation authority to rectify clerical or arithmetical error and in the present case, Deputy Director, Consolidation, initially, rectified the error committed by consolidation authorities while preparing land records of disputed plots because it is the case of the private respondent that before consolidation proceeding, lands in question were jointly recorded in the name of ancestor of the petitioners as well as ancestor of the private respondent but the concerned consolidation authority failed to take note of the aforesaid fact and wrongly prepared land records only in the name of father of the petitioners and, therefore, it can not be said that Deputy Director, Consolidation adjudicated the right and title of the parties rather it is apparent from the aforesaid fact that Deputy Director, Consolidation rectified/modified the error committed by consolidation authority. He further submitted that Deputy Director, Consolidation, Headquarter disposed of Revision case no. 357/1999 in



the year 2000 but the present writ petition was filed in the year 2007 i.e. after seven years of passing the impugned order. He further submitted that the petitioners have already filed Title suit no. 456/2007 before the competent civil court for declaration of their right, title and possession upon the disputed lands.

7. No doubt, the impugned order was passed by Deputy Director, Consolidation, Headquarter on 20.6.2000 and the present writ petition was filed in the year 2007 i.e. after seven years of passing of the impugned order but even then an illegal order can not be treated as legal order only on the ground that the said order has been challenged after much delay.

8. Admittedly, private respondent filed petition under section 33A of the Consolidation Act for making entry in the land records and initially, the aforesaid petition of private respondent was allowed. Subsequently, same officer recalled his previous order passing order dated 3.2.1998 when the previous order was challenged by the petitioners by filing Misc. case no. 8/1998. However, it is not in dispute that under section 33A of the Consolidation Act, only clerical or arithmetical error can be modified or rectified and right and title of a person can not be adjudicated under section 33A of the Consolidation Act. Moreover, the object of the aforesaid section is to rectify those clerical or arithmetical errors which are shown on the very face of the records. If rectification of any error requires deeper enquiry, that error cannot be rectified under section 33A of the Consolidation Act. However, in the present case, there was no clerical or arithmetical error on the very face of records and to adjudicate the claim of the private respondent, a deeper enquiry was essential and the same could not have been adjudicated under section 33A of the



Consolidation Act. Therefore, in my view, learned counsel appearing for the petitioners rightly submitted that Deputy Director, Consolidation, Headquarter committed error while passing the impugned order adjudicating right and title of the parties.

9. It is also an admitted position that the order of recall was passed by the Deputy Director, Consolidation, Vaishali at Hajipur and when the aforesaid order was challenged before the Director, Consolidation, Bihar, Patna by filing Revision case no. 357/1999, the said revision was decided by Deputy Director, Consolidation, Headquarter. It is an admitted position that both the above stated officers were of same status and rank and, therefore, in view of the decision reported in 2011(4) PLJR 870, Deputy Director, Consolidation, Headquarter had got no jurisdiction to pass order in Revision case no. 357/1999 and the aforesaid revision ought to have been decided by the Director, Consolidation, Bihar, Patna himself.

10. On the basis of the aforesaid discussions, the impugned order dated 20.6.2000 passed in Revision case no. 357/1999 stands quashed and in the aforesaid manner, this writ petition stands disposed of.

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AFR/NAFR	NAFR
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(Hemant Kumar Srivastava, J)

