

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 20769 of 2011

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Ram Janam Singh, Son of Late Parikhan Singh, resident of Village-Khudura, P.S. Ramgarh, District Kaimur.

.... Petitioner

Versus

1. The State of Bihar
2. The Director, Consolidation, Bihar, Patna.
3. The Consolidation Officer, Ramgarh, District Kaimur
4. The Assistant Consolidation Officer, Ramgarh, District Kaimur
5. Ram Iqwal Singh, Son of Sri Ram Bachan Singh
6. Ram Bachan Singh, Son of Late Mukhi Singh
7. Rajbali Singh, Son of Late Parikhan Singh
8. Baban Singh, Son of Late Parikhan Singh
9. Lallan Singh, Son of Late Parikhan Singh
10. Chhakkan Singh, Son of Late Parikhan Singh
11. Ram Shitalu Singh @ Shital Singh, Son of Sri Narayan Singh @ Shyam Narayan Singh

All respondents no. 5 to 11 are resident of Village Khudura, P.S. Ramgarh, District Kaimur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ranjit Kumar Singh, Adv.

For Private Respondents : Mr. Dinu Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 01-08-2017

1. Heard learned counsel for the petitioner as well as learned counsel appearing for the private respondents.

2. Petitioner has challenged the order dated 18.06.2008, contained at Annexure-4, passed by the Director, Consolidation, Bihar, Patna (respondent no. 2) in Revision Case No. 335 of 1997 by which and where under Director, Consolidation, Bihar, Patna set aside the order dated 13.11.1987 passed by Assistant Consolidation Officer, Ramgarh in Case No. 106/ 1987-88 with direction to record the



disputed lands jointly in the name of the parties.

3. It would appear from perusal of the record that during consolidation proceeding the father of respondent no. 5 and other respondents as well as petitioner filed compromise petition jointly before the Assistant Consolidation Officer, Ramgarh praying therein to open the khata of the lands in name of those persons whose name has been given in the aforesaid compromise petition and in view of the aforesaid compromise petition, the Assistant Consolidation Officer passed the order dated 13.11.1987 in Case No. 106/ 1987-88. However, after ten years of passing the aforesaid order, the respondent no. 5 challenged the order dated 13.11.1987 passed in Consolidation Case No. 106/ 1987-88 before the Director, Consolidation, Bihar, Patna in Revision Case No. 335 of 1997 but the aforesaid revision case was dismissed by the Director, Consolidation, Bihar, Patna treating the same as time barred vide order dated 17.12.2007. However, it would appear from perusal of impugned order dated 18.06.2008 that the Director, Consolidation, Bihar, Patna restored the aforesaid revision case and passed the impugned order.

4. Learned counsel appearing for the petitioner submits that before passing order of restoration no notice was given to petitioner and moreover, the Director, Consolidation, Bihar, Patna had got no jurisdiction to restore the Revision Case No. 335 of 1997,



particularly, in the circumstance when he had already dismissed the aforesaid revision case on the point of limitation.

5. On the other hand, learned counsel appearing for the private respondent no. 5 submits that under Section 35 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as “the Act”), the Director of Consolidation has ample power to correct the illegality or irregularity committed by the subordinate officers during consolidation proceeding. He further submitted that Director, Consolidation, Bihar, Patna restored the Revision Case No. 335 of 1997 when a petition under Section 5 of Limitation Act was filed. He further submitted that moreover, the respondent no. 5 was not made party to the compromise petition and the order dated 13.11.1987 was passed by the Assistant Consolidation Officer behind the back of respondent no. 5. He further submitted that admittedly, respondent no. 5 has share in the disputed lands but the Assistant Consolidation Officer did not take note of the aforesaid fact and passed the order dated 13.11.1987 which was subsequently modified and corrected by the Director, Consolidation, Bihar, Patna by exercising his power vested under Section 35 of the Act.

6. It is an admitted position that Revision Case No. 335 of 1997 was filed after ten years of passing order dated 13.11.1987 and no petition under Section 5 of Limitation Act was initially filed



along with Revision Case No. 335 of 1997. It is also an admitted position that taking note of the aforesaid fact, the Director, Consolidation, Bihar, Patna dismissed the aforesaid Revision Case No. 335 of 1997 treating the same as barred by law of limitation. It is also an admitted position that the Director, Consolidation, Bihar, Patna restored the aforesaid revision case and passed the impugned order. In my view, the Director, Consolidation, Bihar, Patna had no jurisdiction to restore Revision Case No. 335 of 1997, particularly, in the circumstance when he had already dismissed the aforesaid Revision Case No. 335 of 1997 holding that aforesaid revision case was barred by law of limitation.

7. No doubt, under Section 35 of the Act the Director of Consolidation has wide power to correct any illegality or irregularity committed by the subordinate consolidation officers during course of consolidation proceeding and there is no period of limitation for filing petition under Section 35 of the Act but in the present case, initially, the revision petition was filed after ten years and the Director of Consolidation dismissed the revision on the ground of long delay in filing the revision and, therefore, the very restoration of Revision Case No. 335 of 1997 was illegal because the Director, Consolidation, Bihar, Patna had no power to pass such an order under Section 35 of the Act. Moreover, before restoration of aforesaid Revision Case No.



335 of 1997, no notice was given to the petitioner. However, the procedure as adopted by the Director, Consolidation, Bihar, Patna is completely unknown to establish procedure of the law and, therefore, I have no option except to set aside the order dated 18.06.2008 passed by the Director, Consolidation, Bihar, Patna in Revision Case No. 335 of 1997 and, accordingly, this petition stands dismissed on admission stage itself. However, it is made clear that if respondent no. 5 wants to challenge the order dated 17.12.2007 passed in Consolidation Revision Case No. 335 of 1997 before the appropriate forum, this order shall not cause any prejudice to him.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.08.2017
Transmission Date	N.A.

