

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10795 of 2009

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1.Bansu Bhar , son of late Ramsharan Bhar
2.Ghasi Bhar, son of late Ramsharan Bhar
Both residents of village- Dharhar, P.S- Durgawati, District- Rohtas

.... Petitioners.

Versus

1.The State of Bihar
2. The Director Consolidation, Bihar, Patna
3. The Deputy Director Consolidation Officer, Bhabhua
4. Cheddi Bhar son of late Ram Surat Bhar
5. Sudama Bhar son of late Ram Surat Bhar
6. Ram Dular Bhar son of late Ram Surat Bhar
7. Ram Narayan Bhar son of late Ram Surat Bhar
All resident of village – Dharhar, P.S- Durgawati, District- Rohtas

.... Respondents.

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Appearance :

For the Petitioners : Mr. Ram Suhawan Singh, Advocate.
Mr. Chandra Moleshwar, Advocate.
Mr. Ramesh Kr. Srivastava, Advocate.
For the State : Mr. Arun Kumar Sinha, AC to GP-24
For the Respondent Nos.4 to 7 : Mr. Udit Narayan Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 02-05-2017**

Heard learned counsel for the petitioners and learned
counsel for the private respondents as well as learned AC to GP-24
for the State.

2. This writ petition has been preferred against the order
dated 23.07.2009 passed by the learned Director of Consolidation,
Bihar, Patna, in Consolidation Revision Case No. 2073 of 1998, by
which and whereunder he set aside the order dated 24.12.1983 passed



by the Consolidation Officer, Durgawati, Rohtas, in Objection Case No.200 of 1983-84/409 of 1983-84 as well as order dated 01.07.1985 passed by the Deputy Director, Consolidation, Rohtas, in Appeal No. 1151 of 1984-85 on the ground that Consolidation Officer, Durgawati, Rohtas, as well as Deputy Director, Consolidation, Rohtas had no jurisdiction to entertain the petition filed by the petitioners under Section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act and the orders of both the above stated courts below were without jurisdiction.

3. The brief fact, which lies to file this writ petition, is that the petitioners filed a petition under section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act before the Consolidation Officer, Durgawati, Rohtas, in the year 1983 for recording their names on the disputed plot. The aforesaid petition was allowed by the Consolidation Officer, Durgawati, Rohtas, vide order dated 24.12.1983 passed in Objection Case No. 200 of 1983-84/409 of 1983-84, which was challenged by the private respondents before the Deputy Director Consolidation, Rohtas, in Appeal No. 1151 of 1984-85 but they could not succeed in the appeal and the order dated 24.12.1983 passed by the Consolidation officer, Durgawati, Rohtas, was confirmed by the Deputy Director Consolidation, Rohtas, in the aforesaid Appeal vide order dated



01.07.1985, which was challenged by the private respondents in Consolidation Revision Case No. 2073 of 1985 and the learned Director of Consolidation Bihar, Patna, passing the impugned order dated 11.01.1988 allowed the above stated Consolidation Revision Case No. 2073 of 1985 against which the present writ petition has been filed by the petitioners.

4. The petitioners claimed before the Consolidation Officer , Durgawati, Rohtas, under section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act that Khata No.47, Plot no. 2, measuring an area of 2.68 acres land and Plot no.8, measuring an area of 2.81 acres land, situated in Mauza- Baruni, Thana no. 19, Anchal-Durgawati, District-Rohtas was the property of Surajpura Estate and the landlord of the aforesaid plots settled the said plots to the ancestors of the petitioners as well as private respondents and at the time of settlement, the family of petitioners and private respondents was joint but in the settlement paper, the name of only Jangi Bhar was recorded and, accordingly, the records of the aforesaid land were prepared in the name of aforesaid Jangi Bhar. However, when the aforesaid village was notified, several lands were jointly recorded in the name of the ancestors of the petitioners and private respondents and the petitioners were under impression that the disputed lands were also jointly recorded in the name of their



ancestors as well as ancestors of the private respondents. However, some time in the year 1983, they came to know that disputed lands were recorded only in the name of ancestors of private respondent and thereafter, they filed a petition under section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act before the Consolidation Officer, Durgawati, Rohtas, who allowed the claim of the petitioners and the order of the Consolidation Officer, Rohtas, was confirmed by the Deputy Director, Consolidation, Rohtas, but the learned Director of Consolidation, Bihar, Patna, set aside both the orders passing impugned order.

5. Learned counsel appearing for the petitioners submits that the learned Director of Consolidation while exercising his revision power was not competent to set aside the concurrent findings of the two courts below and, moreover, the revisional court did not consider the documents filed on behalf of the petitioners as it has, specifically, been observed in the impugned order that the petitioners had not filed any documents whereas the petitioners had filed the documents which were, subsequently, withdrawn after disposal of the aforesaid objection case. He further submits that the learned revisional court wrongly held that the claim of the petitioners was barred by Section 10(A) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, particularly, in the circumstance, when the



claim was raised by the petitioners under section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act because Section 10 (B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act says that question relating to changes and transfer affecting any rights or interests recorded in the register of land published under sub-section (1) of Section 10 of the Act may be raised before consolidation officer before publication of notification under section 26A of this Act.

6. On the other hand, learned counsel appearing for the private respondents supported the impugned order arguing that the revisional court has widened power under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act because under the aforesaid provision, the Director of Consolidation either on the application of any party or on reference being made by any sub-ordinate authority may call for and examine the record of any case decided or proceedings taken by such authority for the purposes of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceeding, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit. He further submits that in the present case, admittedly, the notification under Section 10 of the Bihar



Consolidation of Holdings and Prevention of Fragmentation Act was made in the year 1973 and from 13.08.1973 to 12.09.1973, time was granted to file objection under Section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act but no objection was filed by the petitioners and after 10 years, they raised the matter under Section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act and, therefore, the revisional court rightly held that the petition filed by the petitioners was barred by Section 10(A) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act .

7. Having heard the contentions of both the parties, I have gone through the records of the case. It is an admitted position that the notification under Section 10 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act was published in the year 1973 and the objection regarding publication under section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act was invited in between 13.08.1973 to 12.09.1973 but no objection was filed between the aforesaid period by the petitioners.

8. Section 10(2) of Bihar Consolidation of Holding Act gives a chance to any aggrieved person to file his objection within 45 days from the date of publication of the entry if the said person is aggrieved by the correctness and nature of entries made in the records



or the statement of principles, prepared under Sections 8 and 9 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. The object of Section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, is to give an opportunity to a person who is not satisfied with the entries made during preparation of records under Sections 8 and 9 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. Section 10(A) of Bihar Consolidation of Holding Act says that “no question in respect of any entry made in the map or registers prepared under section 9 or the statement of principles prepared under section 9A relating to Consolidation area, which might or ought to have been raised under section 10 but has not been raised, shall not be raised or heard at any subsequent stage of the Consolidation proceeding”. The bare perusal of the aforesaid Section 10(A) goes to show that if no objection is raised under section 10(2) of Bihar Consolidation of Holding Act, the entries made in the revisional records under section 8 and 9 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, shall be final.

9. Learned counsel for the petitioners has relied upon section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act and submitted that the petitioners had filed petition before the Consolidation Officer under section 10(B) of the



Bihar Consolidation of Holdings and Prevention of Fragmentation Act but, in my view, the aforesaid Section does not give power to the Consolidation Officer to entertain a petition relating to the cause of action which had arisen during to preparation of map and records under Sections 8 and 9 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. The section 10(B) of the Act comes into picture when cause of action had not arisen at the time of proceeding of section 8 and 9 of the Act. The aforesaid section 10(B) of the Act gives jurisdiction to the consolidation officer when any changes or transfers are made after publication of registers of lands and statement of principles but in the present case, it is admitted position that the land records of disputed plots were published under section 10 of the Act in the name of ancestors of private respondents and no change was made after publication of register of disputed lands. The aforesaid fact goes to show that cause of action for raising the objection in respect of entries of disputed plots had already arisen during preparation of register of land records. Therefore, in my view, the learned revisional court rightly held that the Consolidation Officer as well as appellate court had got no jurisdiction to entertain the petition filed by the petitioners under section 10(B) of the Act.

10. Therefore, on the basis of aforesaid discussions, I do not find any ground to interfere into the impugned order and,



accordingly, this writ petition stands dismissed.

11. Let the lower court records be sent to the concerned court.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NAFR
Uploading Date	10.05.2017
Transmission Date	10.05.2017

