

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12774 of 2010

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1. Surendra Mahto S/O Ram Ayodhaya Mahto R/O Vill +P.O.Harigaon,
P.S.Jagdishpur, Distt-Bhojpur

2. Butan Mahto S/O Late Ram Raj Mahto

3. Prabhawati Devi W/O Prayag Mahto R/O Vill +P.O.Harigaon, P.S.Jagdishpur,
Distt-Bhojpur

4. Ram Ayodhaya Mahto S/O Late Ram Raj Mahto R/O Vill +P.O.Harigaon,
P.S.Jagdishpur, Distt-Bhojpur

5. Parshuram Mahto @ Prashuram Singh R/O Vill +P.O.Harigaon, P.S.Jagdishpur,
Distt-Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar

2. Director Consolidation Bihar, Patna

3. Deputy Director Of Consolidation Bhojpur, Arrah

4. Consolidation Officer Jagdishpur, Arrah

5. Ran Vijay Mahto S/O Late Chandradeep Mahto R/O Vill & P.O.Harigaon,
P.S.Jagdishpur, Distt-Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Din Bandhu Singh

For the Respondent/s : Mr. Anish Chandra Sinha
Mr. Krishna Murari Rawt

For the State Mr. Yogendra Prasad Sinha AC to AAG-VII

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date: 06-03-2017

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

2. I.A.No.1358 of 2017 has been filed on behalf of the
petitioners for expunging the name of petitioner nos. 2 and 3 as they



died during pendency of this writ petition and for substitution of the name of their legal heirs in their places. The name of legal heirs of petitioner no. 2 has been mentioned at para-3 of the Interlocutory Application whereas the name of legal heirs of petitioner no. 3 has been mentioned at Para-2 of the aforesaid Interlocutory Application.

3. Accordingly, I.A. No. 1358 of 2017 stands allowed.

4. Let the name of petitioner nos. 2 and 3 be expunged from this writ petition and in their places, the names of their legal heirs, as mentioned in paragraphs-3 and 2 respectively of the aforesaid Interlocutory Application, are ordered to be substituted.

5. This writ petition has been filed for quashing the ex-parte order dated 01.09.2009 passed by the Director Consolidation, Bihar, Patna, in Revision Case no. 259 of 1997 by which and whereunder the learned Director Consolidation set aside the order dated 08.07.1997 passed by the Deputy Director of Consolidation, Bhojpur, Arrah, in consolidation Appeal no. 41/ 1988-89.

6. It would appear from perusal of Annexure-4 to the petition that one Dhruw Dayal Mahto filed CWJC No. 11774 of 1999 against the order dated 20.08.1999 passed in Revision Case No.259 of 1997 and a co-ordinate Bench of this Court vide order dated 22.08.2001 quashed the order dated 20.08.1999 as the revisional as well as appellate order were passed by functionary of same rank and



the Revision Case no. 259 of 1997 was remitted back to the Director of Consolidation for fresh hearing and passing the order in accordance with law but the State challenged the order dated 22.08.2001 passed in CWJC No. 11774 of 1999 before a Division Bench of this court in Letters Patent Appeal No. 686 of 2002 and a Division Bench of this Court, in Letters Patent Appeal no. 686 of 2002 stayed the further proceeding of Revision Case no. 259 of 1997. In compliance of the aforesaid order of Division Bench of this Court, the Director Consolidation Stayed the further proceeding in Revision Case no. 259 of 1997 till disposal of L.P.A. No. 686 of 2002. The aforesaid order of stay was passed by Director of Consolidation on 08.02.2007.

7. Annexure-5 to the writ petition is complete order sheets of the orders passed by the Director of Consolidation Revision Case no. 259 of 1997 and the aforesaid Annexure-5 goes to show that further proceeding of Revision Case No. 259 of 1997 was stayed vide order dated 08.02.2007 but, even then, the concerned court adjourned the case for several dates. Moreover, on 27.03.2009, the Director Consolidation took Revision Case No. 259 of 1997 for ex parte hearing and, later on passed the impugned order on 01.02.2009 behind back of the petitioners.

8. Submission on behalf of the petitioners is that before passing the impugned order, neither any notice nor any information



was given to the petitioners and, as a matter of fact, petitioners were not aware about the status of Revision Case No. 259 of 1997. Learned counsel for the petitioners further submits that it was bounded duty of the Director of Consolidation to give notice to the petitioners before passing final order in Revision Case no. 259 of 1997 and, therefore, the impugned order cannot be sustained in the eye of law.

9. On the other hand, learned counsel appearing for private respondent refuted the above stated submissions, arguing that petitioners participated in consolidation Revision Case no. 259 of 1997, even after passing of the order of stay but, subsequently, they voluntarily left the pairvi, as a result of which the Director of Consolidation pronounced ex parte order in absence of petitioners but Para-16 of the counter affidavit filed on behalf of the private respondent goes to show that the petitioners appeared before the Director Consolidation till 31.10.2007 and admittedly, prior to 31.10.2007 the further proceeding of consolidation Revision Case no. 259 of 1997 had already been stayed L.P.A. No. 686 of 2002 was disposed of by a Division Bench of this Court vide order dated 20.08.2008 and, therefore, it is apparent from perusal of materials available on the record that before passing the impugned order dated 01.09.2009, the Director of Consolidation Bihar, Patna, had not given any notice to the petitioners and passed the impugned order behind



the back of the petitioners.

10. Learned counsel for the private respondent submits that present writ petition is not maintainable because for similar relief the petitioners have already filed Title suit no. 172 of 2013, but in my view, though the petitioners filed Title suit no. 172 of 2013 for similar relief but even then an illegal order can not be left to be continued. Moreover, it is not a proper stage for this Court to give any finding on the point as to whether Revision Case no. 259 of 1997 shall continue due to pendency of Title suit no. 172 of 2013 or not and it is upon the Director of Consolidation to decide the aforesaid issue as he is competent to do the same.

11. On the basis of aforesaid discussions, this writ petition is allowed and, accordingly, the impugned order dated 01.09.2009 passed in Revision Case no. 259 of 1997 by the Director of Consolidation, Bihar, Patna is quashed and the matter is remitted back to Director of Consolidation, Bihar, Patna, with a direction to him to rehear the Revision Case no. 259 of 1997 and pass a fresh order in accordance with law.

12. Since the parties are fighting since long, therefore, both the parties are directed to appear before the Director of Consolidation Bihar, Patna in Revision Case no. 259 of 1997 on 11th April 2017 and, therefore,, Director Consolidation shall take all



possible step to dispose of the Revision Case no. 259 of 1997 as early as possible.

13. The office must communicate this order to the Director of Consolidation, Bihar, Patna in Revision Case no. 259 of 1997 without any delay.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.03.2017
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