

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16257 of 2011

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Most. Mina Devi & Ors

.... Petitioner/s

Versus

THE JOINT DIRECTOR, CONSOLIDATION & ORS

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.N. Choubey
Mr. Ashok Kumar Garg
Mr. Ritu Priyadershini
Mr. Akhilesh Kumar Pandey
Mr. Dineshwar Pandey

For the Respondent/s : Mr. Md. N. Hoda Khan SC-18

For the private Respondent Mr. Ram Ishwar Prasad

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

ORAL JUDGMENT

Date: 12-07-2017

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

2. Petitioners have prayed for setting aside the order dated 06.06.2011
passed by the learned Joint Director, Consolidation, Bihar at Patna in
Consolidation Revision Case No. 252 of 2010 by which and whereunder he set
aside the orders passed by Consolidation Officer, Rajpur, Buxar in Consolidation
Case no. 32 of 1987 and Consolidation Case No. 19 of 2010-11 and gave
direction to the Consolidation Officer, Rajpur, Buxar to decide the share of
private respondents of the village Khempur and make necessary correction in his
Chak, Khata of aforesaid village- Khempur.

3. It is an admitted position that the private respondents and
petitioners are agnates and their paternal properties are situated in four villages
i.e, Moharia, Jamuni, Dihra and Sugara. The lands of the aforesaid four villages
were recorded in the name of Most. Samrajo Devi. In course of consolidation



operation, the paternal lands of the parties of villages Moharia, Jamuni, Dihra and Sugara, were entered in the name of both the parties but in Consolidation Case No. 32 of 1987, the lands of village Khempur was recorded only in the name of original petitioners of the present writ petition and the order passed in Consolidation Case No. 32 of 1987 was never challenged before any authority.

4. However, after more than 20 years, the private respondents filed Consolidation Case No. 19/ 2010-11 and prayed for setting aside the order passed by the Consolidation officer in Case no. 32 of 1987 and further prayed for recording their names in the lands of Khempur along with the original petitioners of the present writ petition but Consolidation officer, Rajpur, Buxar rejected the claim of the private respondents vide order dated 29.06.2010 holding that the order passed in Consolidation Case No. 32 of 1987 had already attained its finality and he was not competent to make any amendment in Chak after finality of order passed in Consolidation Case No. 32 of 1987. The private respondents challenged the aforesaid order of Consolidation officer, Rajpur, Buxar in Revision Case no. 252 of 2010 before the Joint Director, Consolidation, Bihar, Patna who while exercising his revisional power vested under the consolidation Act set aside the order passed by the Consolidation Officer, Rajpur, Buxar, against which this writ petition has been filed by the original petitioner. It is pertinent to note here that prior to filing of Consolidation Case No. 19/2010-11, private respondents filed title suit for declaration of their right, title and possession in respect of lands of village Moharia, Jamuni, Dihra and Sugara.

5. Learned counsel appearing for the petitioners submits that Section 35 of the Bihar Consolidation Act, no doubt, gives wide power to the Director of Consolidation to correct any irregularity made during consolidation proceeding and no statutory period has been prescribed for preferring a revision but rule 28



of Bihar Consolidation Rules 1958 prescribe only 30 days from the date of order for filing application under section 35 of the Consolidation of Holding Act. He further submits that moreover, while exercising the power vested under section 35 of the act, the concerned authority should be cautious in cases of great unexplained delay. He further submits that in the present matter, admittedly, the Consolidation Case No. 19/2010-11 was filed after 20 years of passing order in Consolidation Case No. 32 of 1982 and no proper explanation of aforesaid delay was given but the revisional court did not take any note of the aforesaid fact. He further submits that the private respondents have already filed Title suit for declaration of their right and title in respect of the land of village Khempur and the aforesaid fact was brought to the notice of Joint Director Consolidation in Revision Case No. 252 of 2010 but even though the Joint Director Consolidation, Bihar, Patna set aside the order passed by Consolidation Officer in Consolidation Case No.32 of 1987.

6. On the other hand, learned counsel appearing for the private respondents submits that, admittedly, the lands of all the four villages are ancestral properties of both the parties and the name of private respondents were recorded in respect of lands of three villages but, as a matter of fact, taking advantage of absence of the respondents, the petitioners got entered their name in the lands of village- Khempur and the Consolidation Officer, Rajpur, Buxar passed the aforesaid order behind the back of ancestors of the private respondents and, therefore, the Joint Director of Consolidation rightly set aside the order passed by the Consolidation Officer, Rajpur, Buxar in Consolidation Case No. 32 of 2010 but in course of hearing, he fairly conceded this fact that the private respondents have already filed title suit for declaration of their right title and possession in respect of the lands of village- Khempur.



7. Private respondents do not dispute the pendency of title suit. The object of Bihar Consolidation of Holding and Prevention of Fragmentation Act is to prevent the fragmentations of agricultural lands. Admittedly, the consolidation authorities have no power to decide the right and title of a person under the consolidation Act. In consolidation proceedings, the consolidation authorities can only make entry in respect of lands for maintaining lands records and to allot the chak. Therefore, even if the consolidation officer entered the name of private respondents only in land records of village Khempur in Case No. 32 of 1987, then, also the aforesaid entry does not affect right title and possession of respondents. However, the private respondents filed Consolidation Case no. 19/ 2010-11 after 20 years of passing order in Consolidation Case no.32 of 1987, particularly, when the register of lands and statement of petitioners had already been prepared much earlier and no objection under the relevant provisions of the Act was filed by the private respondents within prescribed period, Admittedly, the order passed in Consoliation Case no. 32 of 1987 was never challenged before the appellate authority and the said order had already attained finality.

8. Therefore, in my view the Joint Director Consolidation, Bihar , Patna committed error in setting aside the order passed in Revision Case No. 32 of 1987 and accordingly, this writ petition stands allowed and the impugned order dated 06.06.2011 passed by the learned Joint Director, Consolidation, Bihar at Patna in Revision Case No. 252 of 2010 stands set aside.

(Hemant Kumar Srivastava, J)

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AFR/NAFR	NAFR
CAV DATE	NAFR
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Date	
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