

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17192 of 2008

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1. Surjee Devi, Widow of Late Kauleshwar Yadav
 2. Chandradeo Yadav, Son of Late Akal Yadav.
 3. Munshi Yadav, Son of Late Lakhan Yadav.
 4. Sipahi Yadav, Son of Late Lakhan Yadav.
- All are resident of Village-Singhpur, P.O. Bankey Bazar, P.S. Roushanganj, District Gaya.

.... Petitioners

Versus

1. The State of Bihar.
 2. The Joint Director, Consolidation, Gaya.
 3. Deputy Director of Consolidation, Gaya.
 4. The Consolidation Officer, Bankey Bazar, Gaya.
 5. Daulti Devi, Wife of Late Bengali Bhooiya.
 6. Rajendra Manjhi, Son of Late Bengali Bhooiya.
 7. Dasu Bhooiya, Son of Late Ganeshi Bhooiya.
- All Respondents no. 5 to 7 are Jhogila Tole Kewal, P.O. Bankey Bazar, P.S. Roushanganj, District Gaya.

Opposite Party 1st Respondent 1st Set.

8. Deonath Choudhary.
 9. Raghunandan Choudhary.
 10. Ramjee Choudhary.
- Respondents no. 8 to 10 are sons of Late Sangho Pasi, Resident of Village-Singhpur, P.O. Bankey Bazar, P.S. Roushanganj, District Gaya.

Intervenor.....Respondents

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Appearance :

For the Petitioners	:	Mr. Ajay Kr. Singh, Adv.
For Pvt. Respondents	:	Mr. Dhruv Narayan, Sr. Adv. Mr. Prabhat Kr. Dipak, Adv. Mr. Abhishek, Adv. Sripriya Sinha, Adv.
For the State	:	Mr. Ranjan Kumar, AC to GA-12.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. JUDGMENT

Date: 30-03-2017.

1. This petition has been listed today for passing judgment.

2. This writ petition has been preferred for quashing the

order dated 12.06.2008 passed by the Joint Director, Consolidation,



Gaya in Revision Case No. 1075/ 1991-92 and for issuance of direction to the Consolidation Officer, Banke Bazar, Gaya to enter the name of petitioners in the records of right of Plots no. 283 and 284, area 11 decimal of village Singhpur, P.S. Banke Bazar, District Gaya and for any other reliefs for which petitioners are entitled.

3. The petitioners claimed that cadestral Khata no. 7 plot no. 188 of village-Singhpur, P.S. Sherghati, District Gaya was recorded in the name of Kaushal Bhooiya. New khata of aforesaid C.S. Khata no. 7, plot no. 188 was created as Khata No. 94, Plots No.283 and 284 etc. The original tenant of aforesaid plots executed registered sale deed on 29.03.1940 in favour of Akal Mahto @ Akal Gope. The name of purchaser Akal Mahto @ Akal Gope was entered into the records of right and accordingly, rent receipts were issued in his name. The aforesaid Akal Gope came in possession of the aforesaid plots after execution of registered sale deed dated 29.03.1940. Petitioners happen to be heirs of aforesaid Akal Mahto @ Akal Gope and they have been coming in possession of above stated plots. The consolidation proceeding in village- Singhpur was notified and petitioners produced relevant documents before the concerned consolidation authorities but the consolidation officer failed to enter the name of Kauleshwar Yadav, who is son of original vendee, Akal Mahto @ Akal Gope and the consolidation authorities left the



aforesaid lands in the name of original raiyat, namely, Kaushal Bhooiya. However, the aforesaid fact did not come to the notice of petitioners as they were under impression that after production of relevant documents their name had already entered in relevant records of the consolidation proceeding and that was the reason they did not file any objection under Section 10(2) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the “Act”). However, in the meantime, Bengali Bhooiya and Dasu Bhooiya, who are sons of original recorded tenant, Kaushal Bhuiyan, executed registered sale deed on 14.08.1981 in favour of Sangho Pasi in respect of plots no. 281, 282, 283 and 284 of Khata No. 94 after taking permission from consolidation authority. The aforesaid Sangho Pasi and thereafter his heirs got mutated their name in relevant records in respect of the aforesaid purchased lands and got rent receipts of aforesaid lands. The petitioners having heard rumor in village regarding purchase of lands of the petitioners by aforesaid Sangho Pasi and also having got information that their purchased land was still recorded in the name of original raiyati, Kaushal Bhooiya, filed Revision Case No. 1075/ 1991-92 under Section 35 of the Act before the Joint Director, Consolidation, Gaya. During pendency of the aforesaid Revision Case No. 1075/ 1991-92, sons of Kaushal Bhooiya filed compromise petition accepting that their father had



already sold plot no. 283 and 284 to Akal Mahto @ Akal Gope by executing registered sale deed. However, the respondents 2nd set on 28.05.2008 intervened into the aforesaid Revision Case No. 1075/ 1991-92 and prayed before the court to implead them as party to the aforesaid revision case and apart from this, they also filed Revision Case No. 86/ 2008 under Section 35 of above stated Act for declaration of right, title and possession in respect of plot no. 281, 282, 283 and 284 of Khata no. 94 on the basis of registered sale deed dated 14.08.1981. The Joint Director, Consolidation, Gaya heard Revision Case No. 1075/ 1991-92 as well as Revision Case No. 86/ 2008 together and disposed of both the aforesaid revision cases by common impugned order dated 12.06.2008. The Joint Director, Consolidation, Gaya rejected the claim of the petitioners on the ground that petitioners had not filed any objection under Section 10(2) of the Act and they failed to prove their right, title and possession over the plots in question. The Joint Director, Consolidation, Gaya also observed that claim of the petitioners was hit by Section 65 of Limitation Act and accordingly, the Joint Director, Consolidation, Gaya dismissed the Revision Case No. 1075/ 1991-92. So far as Revision Case No. 86/ 2008 is concerned, the Joint Director, Consolidation, Gaya allowed the aforesaid Revision Case No. 86/ 2008 and accordingly, directed the concerned consolidation officer to



delete the name of Bengali Bhooiya and Dasu Bhooiya from plots in question and get the name of respondents 2nd set be mutated in their place and issue modified khatian to the respondents 2nd set.

4. Learned counsel appearing for the petitioners challenged the impugned order arguing that the Joint Director, Consolidation, Gaya failed to take note of this fact that original tenant, namely, Kaushal Bhooiya had transferred the lands in question in the year 1940 executing registered sale deed in favour of Kauleshwar Yadav who was ancestor of the petitioners. He further submitted that the Joint Director, Consolidation, Gaya also failed to take note of this fact that the Director, Consolidation has got a very wide power under Section 35 of the Act. He further submitted that to invoke the power of Director of Consolidation under Section 35 of the Act, it is not prerequisite condition to raise objection under Section 10(2) of the Act and Section 10(A) of the Act does not restrict the power of Director of Consolidation vested under Section 35 of the Act. To support his contention, he referred the decision of **Shyam Bihari Upadhyay vs. State of Bihar reported in 1985 PLJR, 43** in which it has been held by the Division Bench of this court that Section 10A operates as a bar unless the Director in revisional jurisdiction comes to the conclusion that in the facts and circumstances of the case, it was only just and proper that party be allowed to file an objection in the



ends of justice. Learned counsel appearing for the petitioners further submitted that the Director, Consolidation may on the basis of petition filed by any aggrieved person or suo mottu call for and examine the record of any case decided or proceedings taken by such consolidation authority for the purpose of satisfying himself as to the regularity of the proceeding or as to the correctness, legality or propriety of any order passed by consolidation authority. Continuing his submission, learned counsel appearing for the petitioners submitted that the Joint Director, Consolidation, Gaya also failed to take note of this fact that respondents 2nd set had also not filed any objection under Section 10(2) of the Act but even then the Joint Director, Consolidation, Gaya allowed their objection filed under Section 35 of the Act. He further submitted that the Joint Director, Consolidation, Gaya ought to have given an opportunity to the parties to adduce their evidences but he failed to do so and, therefore, the impugned order cannot be sustained in the eye of law. He further submitted that admittedly, a proceeding under Section 144 of the Criminal Procedure Code was initiated between petitioners and respondents and in the aforesaid proceeding, the possession of petitioners was found by S.D.M., Sherghati, Gaya on 12.04.1984 which is evident from perusal of Annexure-4 to the petition but the Joint Director, Consolidation, Gaya did not pay any heed to the order of S.D.M., Sherghati, Gaya.



5. On the other hand, learned counsel appearing for the respondents no. 8 to 10 refuted the above stated submissions arguing that admittedly, respondents no. 8 to 10 had filed Revision Case No. 86/ 2008 whereas petitioners filed Revision Case No. 1075/ 1991-92 and both the revision cases were heard together and common order was passed but petitioners have filed only one writ petition and have made prayer for quashing the impugned order which was passed in Revision Case No. 1075/ 1991-92. He further submitted that petitioners did not choose to challenge the order passed in Revision Case No.86/ 2008 and, therefore, the order passed in Revision Case No. 86 of 2008 has already attained its finality. He further submitted that the Joint Director, Consolidation, Gaya rightly disbelieved the claim of the petitioners as they came before the Joint Director, Consolidation, Gaya after long delay and failed to explain the reason for the aforesaid delay.

6. The pleadings and submissions of the parties, at least, establish some admitted facts. It is an admitted position that applicants have raised their claim in respect of plots no. 283 and 284 of Khata No. 94 on the ground that the aforesaid plots were originally recorded in the name of Kaushal Bhooiya, who transferred the aforesaid plots to Akal Mahto @ Akal Gope on 29.03.1940 by executing registered sale deeds. It is also an admitted position that name of original tenant,



namely, Kaushal Bhooiya was not deleted from the aforesaid plots during consolidation proceeding and under Section 10 of the Act, the aforesaid lands were published in the name of original tenant, Kaushal Bhooiya but no objection was filed under Section 10(2) of the Act by the petitioners. It is also an admitted position that heirs of original tenant, Kaushal Bhooiya transferred the lands in question in the year 1981 in favour of one Sangho Pasi, who was ancestor of respondents no. 8 to 10 after taking prior sanction from competent authority. It is also an admitted position that both parties filed petitions straightway under Section 35 of the Act before the Joint Director, Consolidation, Gaya and put forth their claims in respect of the lands in question. It is also an admitted position that both petitions of the parties filed under Section 35 of the Act were heard together by the Joint Director, Consolidation, Gaya and a common impugned order dated 12.06.2008 was passed. It is also an admitted position that by passing impugned order, the Joint Director, Consolidation, Gaya dismissed the petition filed under Section 35 of the Act by the petitioners whereas allowed the petition filed under Section 35 of the Act by respondents no. 8 to 10 but petitioners have preferred only one writ petition in which they have prayed for quashing the order dated 12.06.2008 passed in Revision Case No. 1075/ 1991-92 and they have not prayed for quashing the order dated 12.06.2008 passed in Revision Case No. 86/



2008. It is obvious from perusal of the impugned order dated 12.06.2008 that the Joint Director, Consolidation, Gaya while allowing Revision Case No. 86 of 2008 directed the consolidation officer to delete the name of original tenant from the disputed plots and mutate the name of petitioners of Revision Case No. 86 of 2008 and, therefore, even if it assumed for the sake of convenience that Revision Case No. 1075/ 1991-92 is allowed, then also, this Court cannot disturb the finding of Joint Director, Consolidation, Gaya given in Revision Case No. 86/ 2008 as there is no prayer on behalf of the petitioners for quashing or disturbing the findings given in Revision Case No. 86/ 2008.

7. In my view, learned counsel appearing for the respondents no. 8 to 10 rightly submitted that petitioners ought to have filed separate writ for quashing the findings given in Revision Case No. 86 of 2008. Although, in course of hearing, learned counsel appearing for the petitioners submitted that non filing of writ in respect of order passed in Revision Case No. 86/ 2008 is mere an irregularity as the Revision Case No. 1075/ 1991-92 and Revision Case No. 86/ 2008 were disposed of by common order dated 12.06.2008 which has been challenged by the petitioners before this Court but I am unable to accept the aforesaid contention because in the present writ petition, the petitioners have only prayed for quashing



the findings given by the Joint Director, Consolidation, Gaya in Revision Case No. 1075/ 1991-92 and they have not even whispered for quashing the findings and direction given by the Joint Director, Consolidation, Gaya in Revision Case No. 86/ 2008 and, therefore, I am of the view that findings and directions given in Revision Case No. 86/ 2008 have already attained finality and, therefore, petitioners cannot get any relief in this writ petition.

8. My aforesaid view is supported by a decision rendered by a co-ordinate Bench of this court in **Sabitri Devi v. Rangnath Tiwary reported in 2005(2) PLJR, 476** in which at para-16, it has been held as follows:-

“Respondents have challenged the maintainability of the writ application itself on the ground that it is barred by the principles of res judicata. This writ application has been filed only against one revision application. So far other two revision applications which were also decided by common order dated 29.06.2000/ 30.06.2000, no writ application has been filed. By not challenging the order passed in other two writ applications, it has reached finality and they will operate as res judicata because for the same subject matter in between the same parties two orders have reached finality. Reliance has been placed on a decision reported in AIR 1997(2) 3760 (Ram Prakash vs. Smt. Charan Kaur and Anr.) wherein it has been decided



that “where two connected suits have been tried together and the findings recorded in one of the suit have become final in absence of an appeal, the appeal preferred against the findings recorded in the other suit would definitely be barred by the principles of res judicata.” There is substance in the submissions advanced by the petitioners and on this count also the petitioners cannot succeed.”

9. On the basis of aforesaid discussions, this writ petition has no merit and accordingly, stands dismissed.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	14.02.2017
Uploading Date	04.04.2017
Transmission Date	N.A.

