

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17029 of 2011

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SUBHASH CHANDRA GHOSH, SON OF KISTO KUMAR GHOSH,
RESIDENT OF MOHALLA, MILAN PALLI, P.S.- KISHANGANJ
DISTRICT- KISHANGANJ (BIHAR)

... .. Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary Department Of Revenue And Land Reforms, Govt. Of Bihar, Patna
2. The Director Of Consolidation, Bihar, Patna
3. The Survey Settlement Officer, Kishanganj
4. Noor Alam S/O Saidur Rahman, R/O Village Singhia P.S.- Kishanganj, Distt.- Kishanganj
5. Mina, W/O Noor Alam R/O Village Singhia P.S.- Kishanganj, Distt.- Kishanganj

... .. Respondent/s

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Civil Writ Jurisdiction Case No. 17247 of 2011

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SUBHASH CHANDRA GHOSH, S/O KISTO KUMAR GHOSH, R/O
MOHALLA-MILAN PALLI, P.S.-KISHANGANJ, DISTT.-KISHANGANJ
(BIHAR)

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Revenue And Land Reforms Govt. Of Bihar Patna
2. The Director Of Consolidation Bihar, Patna
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4. Noor Alam S/O Saidur Rahman R/O Village-Singhia, P.S.-Kishanjanj, Distt.- Kishanganj
5. Mina, W/O Noor Alam R/O Village-Singhia, P.S.-Kishanjanj, Distt.- Kishanganj

... .. Respondent/s

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Civil Writ Jurisdiction Case No. 17259 of 2011

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SUBHASH CHANDRA GHOSH, S/O KISTO KUMAR GHOSH, R/O
MOHALLA-MALAN PALLI, P.S.-KISHANGANJ, DISTT.-KISHANGANJ
(BIHAR)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY DEPARTMENT OF REVENUE AND LAND REFORMS, GOVT. OF BIHAR PATNA
2. THE DIRECTOR OF CONSOLIDATION, BIHAR, PATNA
3. THE SURVEY SETTLEMENT OFFICER, KISHANGANJ



4. NOOR ALAM S/O SAIDUR RAHMAN R/O VILLAGE-SINGLIA, P.S.-KISHANGANJ, DISTT.-KISHANGANJ
5. MINA, W/O NOOR ALAM R/O VILLAGE-SINGLIA, P.S.-KISHANGANJ, DISTT.-KISHANGANJ

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 17029 of 2011)

For the Petitioner/s : Mr. Sunil Kumar Karn, Advocate
For the State : Mr. Arvind Kumar Sinha, A.C. to S.C. 14
For the respondent
no.4 and 5 : Mr. Ram Iswar Prasad, Advocate

(In Civil Writ Jurisdiction Case No. 17247 of 2011)

For the Petitioner/s : Mr. Sunil Kumar Karn, Advocate
For the State : Mr. Arvind Kumar Sinha, A.C. to S.C. 14
For the respondent
no.4 and 5 : Mr. Ram Iswar Prasad, Advocate

For Intervenor/s : Mr. Mithilesh Prasad, Advocate

(In Civil Writ Jurisdiction Case No. 17259 of 2011)

For the Petitioner/s : Mr. Sunil Kumar Karn, Advocate
For the State : Mr. Kinkar Kumar, S.C. 9
For the respondent
no.4 and 5 : Mr. Ram Iswar Prasad, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date : 18-10-2017

The orders dated 03.08.2011 passed in Revision Case No.148 of 2010, Revision Case No.152 of 2010 and Revision Case No.153 of 2010 by the Director, Consolidation, Bihar, Patna are under challenge in C.W.J.C. No.17029 of 2011, C.W.J.C. No.17247 of 2011 and C.W.J.C. No.17259 of 2011 respectively.

All the writ petitions have been heard together with the consent of the parties in view of the fact that certain common questions are involved. Accordingly, they are being disposed of by a common judgment.



I have heard learned counsel for the petitioners, the State and respondent nos.4 and 5 and have perused the records of all the cases.

Shorn of all unnecessary details, short facts that are necessary for adjudication of the matter stand enumerated as under:-

C.W.J.C. No.17029 of 2011:

As per the petitioner, in relation to the lands involved in this case as stated in paragraph no.5 of the writ petition, the sikmi rights were purchased by the father of the petitioner from the ancestors of respondent no.4 in the year 1969 through a registered deed. Thereafter, the said lands were settled in favour of the father of the petitioner by State of Bihar. The said lands were actually declared surplus in a Ceiling Proceeding and, thereafter, finding the father of the petitioner to be a Sikmidar in possession of the lands, the said lands were settled in his favour by the Deputy Collector Land Reforms, Kishanganj in Case No.96/65-66 on 20.09.1976, and eventually purcha was issued in favour of the father of the petitioner. The documents have been brought on record as Annexure 2 to the supplementary affidavit filed on behalf of the petitioner on 13.05.2016. Further case of the petitioner is that soon after the purchase of Sikmi rights through a registered



deed, father of the petitioner came in possession of the land in the year 1969 itself and eventually in case no.60/1976-77 vide order dated 14.01.1977, the Consolidation Officer, Kishanganj directed to record the name of the father of the petitioner in the Chak Scheme of the Mauja which was finally published subsequently. It is further pleaded on behalf of the petitioner that his father died in the year 1990 and after his death, there was partition in the family. The land concerned fell into the share of the petitioner and, accordingly, he started paying rent to the State of Bihar and the State of Bihar, after acknowledging the same, had issued rent receipt in his favour. Some of the rent receipts starting from the year 1991 to 2004 have been appended as Annexure 1 series to the writ petition.

No counter affidavit has been filed on behalf of the respondent nos.4 and 5. The aforesaid order of the Consolidation Officer passed in the year 1977 was put to challenge under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as “the Act”) before the Director, Consolidation by filing Revision Case No.148/2010, i.e, after about 33 years and much after final publication of Chak Scheme in the Mauza concerned.



Though no counter affidavit has been filed on behalf of the respondent nos.4 and 5, however, original records of the case were called for and from the petition filed under Section 35 of the Act, it appears that the disputed land stood recorded as Sikmi land in the name of the ancestors of the private respondent, namely, Kutub Ali, of which one Anand Mohan Bose was the recorded tenant. The respondents claim to be coming in possession over the disputed lands and have stated that the State of Bihar has no concern with the lands, therefore, the lands could not have been settled by the State as claimed by the petitioner and, thus, on the basis of wrong facts produced by the father of the petitioner, his name came to be recorded in the consolidation record. They claim that the order dated 14.01.1977, was passed *ex parte* and no notice was ever issued to them in the concerned case. A ground appears to have been taken that the consolidation court has no power to decide the Sikmi dispute. It is further stated that the petitioner filed requisites for supply of certified copy of the concerned order on 03.05.2010 which was received by them on 07.05.2010. Upon receipt of the certified copy they came to know that such order has been passed. They moved before the Deputy Director, Consolidation but he did not entertain the application of the



petitioner on the ground that scheme has already been confirmed.

Hence the revision under Section 35 of the Act.

The petitioner has challenged the order impugned on diverse grounds. First and foremost ground which has been raised by the petitioner is that the revision filed before the Director, Consolidation suffers from deliberate laches and delay which was filed for upsetting the decision of the Consolidation Officer which was passed 33 years back. Though there is no limitation prescribed in the statute for preferring a revision before the Director, Consolidation, it is contended that it would not mean that whenever a party awakes he will simply come and file a revision petition even after 30-40 years of passing an order.

On merit, it is stated that father of the petitioner came in possession of the lands in the year 1969 and after the death of the father of the petitioner, the petitioner came in possession of the lands as the concerned lands fell into his share in an amicable partition which took place in the family after the death of his father. It is contended that Sikmi rights of the lands concerned were transferred through a registered deed by the father of the respondent no.4 and this was the reason that, despite issuance of notice in case no.60/1976-77 by the Consolidation Officer,



Kishanganj, he never appeared in the case to challenge the petitioner's claim.

The petitioner admits that in the survey record of right, Anand Mohan Bose has been shown as kaymi raiyat of khata no.1 and name of the Md. Kutub Ali and ancestors of respondent no.4 were shown as Sikmidar khata no.2. However, it is stated that the land ceiling case was initiated against Anand Mohan Bose and when the heirs of the Sikmidar came to know that the raiyat is going to surrender the land in dispute along with other lands in ceiling case without renewing the contract of cultivation in favour of the heirs of Kutub Ali, they executed several deeds in favour of Kisto Kumar Ghosh and other family members on different dates and put them in peaceful possession. The lands in dispute along with other lands of Anand Mohan Ghosh were surrendered in ceiling case. However, finding the petitioner's father (since deceased), and his family members in possession, the lands were settled in their favour by issuance of Parwana dated 19.09.1976, after proper verification of the physical possession. Xerox copies of the relevant records including the settlement Parwana have been brought on record as Annexure 2 series appended with the supplementary affidavit. Thus, it is urged that though initially Sikmi rights were purchased but subsequently after issuance of



Parwana, the father of the petitioner and, thereafter, the petitioner and his family members became raiyat of the lands in question and in that background of the matter, a Case No. 60 /1976-77 was filed before the Consolidation Officer for recording their names as raiyat which was allowed after proper physical verification and notice to the vendor Saidur Rehman and others. Eventually, the name of the father of the petitioner was ordered to be recorded in chakbandi records vide order dated 14.01.1977.

Learned counsel appearing for the petitioner raises question that the transfer made by the father of the respondent no.4 of the Sikmi rights through a registered deed could not have been ignored and declared unlawful by the Director, Consolidation as such registered deeds could have been annulled by a Civil Court of competent jurisdiction only. Secondly, the Director, Consolidation was not competent to declare a settlement made by the State of Bihar of the surplus land acquired by it in a ceiling proceeding as illegal, erroneous or not required to be considered in the facts and circumstances of the case. Since the order was passed by a competent authority and was never challenged by the father of the respondent no.4 as it is claimed that at that point of time he was alive, after a lapse of about 33 years, it cannot be challenged before the Director, Consolidation.



Though no counter affidavit has been filed on behalf of the respondents, it is submitted on their behalf that their ancestors Kutub Ali was in possession of the land as Sikmidar and, thereafter, they are in continuous possession of the lands and, thus, correct order has been passed by the Director as the Consolidation Officer passed the order without noticing the petitioner or his father. Thus, *ex parte* order passed by him was liable to be quashed and their name was required to be entered.

On appreciation of rival submissions, this Court finds following issues which are required to be adjudicated in the present case:-

- (i) Whether Director, Consolidation could have entertained the revision application for up-setting the order passed by the Consolidation Officer under Section 35 of the Act after about 33 years of passing of such order and even after confirmation of the Consolidation scheme?
- (ii) Whether he could have passed such order without calling for the lower court records and examining the same merely on the basis of Xerox copy of the khatiyā brought on record by the revisionist?



- (iii) Whether the Director, Consolidation was competent to declare that Sikmi rights being non-transferable, the registered deed dated 16.12.1975, was contrary to law and, thus, was required to be ignored?
- (iv) Whether he could have held that though settlement parwana was issued by the State of Bihar, since he could not find any document or any justification for settlement of parwana, it was simply required to be ignored and further could have held that in the facts and circumstances, the lands in questions are fit to be recorded in the name of revision-petitioners?
- (v) Whether the revision petitioners have been able to prove that they are in continuous possession of the land concerned?

C.W.J.C. No.17247 of 2011:

Through this writ application, the petitioner seeks quashing of the order dated 03.08.2011, passed in Revision Case No.152/2010 by the Director, Consolidation, Bihar, Patna in its purported exercise of revisional power under Section 35 of the Act. This revision was also filed challenging the order dated



19.11.1976, passed by the Consolidation Officer, Kishanganj in original case no.114 of 1976 after about more than 34 years and that has been entertained. Since none had appeared on behalf of the opposite parties despite notice issued under registered cover, the order has been passed *ex parte*. The petitioner has filed this application being son of the late Smt. Chanchlawala Ghosh who was the opposite party in the revision case and who, according to the petitioner, had died on 23.03.1974 itself leaving behind her husband Kisto Kumar Ghosh who also died in the year 1990. It is claimed by the petitioner that, after the death of his parents, there was amicable partition in the family and all the family members are coming in physical possession of the lands concerned and some portion of the land was sold by them also. It is contended that the lands were acquired through two registered deeds which were executed by Saidur Rahman, Dk. Lahan, Sk. Ataur Rahman, Sk. Jamruddin and Gayasuddin, sons of Kutub Ali along with the widow of Kutub Ali, namely, Most. Imaman and daughter Most. Kitaban in favour of Smt. Chanchala Bala Ghosh, mother of the petitioner on 12.01.1969. The said transfers have been annulled by the Director, Consolidation only on the ground that the transfers have been challenged by the revisionist and the opposite party



Smt. Chanchala Bala Ghosh did not appear even though notice was issued under registered cover.

The petitioner has also drawn attention of this Court towards the fact that Smt. Chanchala Bala Ghosh had died in the year 1974 itself which was well known to everybody but still a dead person was made a party, her legal heirs were not impleaded as party, and registered notice was also issued against a dead person, thus, the entire proceeding also suffers from the vice of the utter violation of the principle of natural justice. In fact, it is contended that the factum of death of Smt. Chanchala Bala Ghosh was purposely suppressed by the respondent nos.4 and 5 in the revision case.

In the facts and circumstances of the case, following issues are required to be adjudicated in the present case:-

- (i) Whether Director, Consolidation could have entertained the revision application for up-setting the order passed by the Consolidation Officer under Section 35 of the Act after about 34 years of passing of such order and even after confirmation of the consolidation scheme?
- (ii) Whether he could have passed such order without calling for the lower court records and



examining the same only on the basis of Xerox copy of the khatiyani brought on record by the revisionist?

- (iii) Whether the order impugned is fit to be set aside on the sole ground that it was passed against a dead person?
- (iv) Whether the Director, Consolidation was competent to ignore two registered sale deeds executed on 12.01.1969 after a lapse of about 41 years?

C.W.J.C. No.17259 of 2011:

Through this writ application, the petitioner seeks quashing of the order dated 03.08.2011 passed in Revision Case No.153/2010 by the Director, Consolidation, Bihar, Patna by which the order dated 08.02.1978 passed by the Consolidation Officer, Kishanganj in Original Case No.29 of 1977-78 and Chak Scheme prepared thereon, has been set aside and Chak Scheme had been upset. The aforesaid revision case was filed by the respondent nos.4 and 5 after about 32 years of passing of the order passed by the Consolidation Officer taking a ground that under Section 12 A of the Act, in the case no.29 of 77-78 filed on behalf of the opposite party Kisto Kumar Ghosh, the Chak no.86 was



allotted to them but the area of the lands so far as they relate to khat nos. 10, 13 and 24 was lesser, for which they were required to be compensated after making necessary correction. It was claimed that the Consolidation Officer, without issuing notice to the present petitioners and without hearing them, allowed the claim of the opposite party on 08.02.1978.

In this case also, a ground has been raised by the petitioner that though Kisto Kumar Ghosh died in the year 1990 itself, he has been made party and thus, on the sole ground the order is required to be set aside as no order could have been passed against a dead person and that too after about 32 years of passing of the order by the Consolidation Officer. It is contended that prayer of the petitioner had been allowed for preparation of separate Chak with regard to R.S. Khata no.10.

In the facts and circumstances of the case, following issues are required to be adjudicated in the present case:-

- (i) Whether Director, Consolidation could have entertained the revision application for up-setting the order passed by the Consolidation Officer under Section 35 of the Act after about 32 years of passing of such order and even after confirmation of the Consolidation scheme?



- (ii) Whether he could have passed such order without calling for the lower court records and examining the same only on the basis of Xerox copy of the khatiyā brought on record by the revisionist?
- (iii) Whether the order impugned is fit to be set aside on the sole ground that it was passed against a dead person?
- (iv) Whether on merit, the revision petition was fit to be allowed?

Issue No. i

A common question has arisen in all the three writ petitions as to whether the Director, Consolidation under the purported exercise of his revisional power under Section 35 of the Act, could have entertained the revision application after a lapse of 32-34 years and could have passed *ex parte* orders against the writ petitioners up-setting the earlier orders passed by the Consolidation Officer even after confirmation of the consolidation scheme?

Such issue came to be considered and decided by a Single Judge Bench of this Court in **Bhanumati Devi Versus State of Bihar [2011(3)PLJR 542]**. The learned Single Judge of



this Court placing reliance upon a decision of the Apex Court rendered in **Mansaram V/s. S.P. Pathak & Ors. [AIR 1983 SC 1239]** has held that the matter which was settled as far back as 28 years could not have been challenged before the revisional court, i.e., the Director, Consolidation after such a long delay and the Director, Consolidation could not have assumed jurisdiction in the matter after such a long inordinate delay. In **Moti Lal Chamar Versus State of Bihar [2014 (3) PLJR 44]**, same view has again been taken by the learned Single Judge Bench of this Court holding that even though the power of revision under Section 35 of the Act contains no provision for limitation, it does not mean that whenever a party wakes up, he can move against an order. The exercise of revisional jurisdiction in such a matter after a long inordinate delay of 40 years would virtually be acting without jurisdiction in view of the decision in **Bhanumati Devi (supra)**. In **Bhanumati Devi (supra)**, learned Single Judge has quoted the passage from the decision of the Apex Court in **Mansaram (supra)**, and the same is again extracted for better appreciation.

“But as stated earlier, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercises of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in



State of Gujarat v. Patel Raghav Natha & Ors.
In that case Commissioner exercised suo motu revisional jurisdiction under sec. 211 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner exercised revisional jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of the Commissioner. In the appeal by State of Gujarat, this Court declined to interfere holding inter alia that the revisional power in the absence of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late.”

The Apex Court in **State of Punjab Versus Bhatinda District Coop. Milk P. Union Ltd. [2007(11)SCC 363]**, in context of Punjab General Sales Tax Act, 1948, has held that if no period of limitation has been prescribed, the statutory authority must exercise its jurisdiction within a reasonable period.

In all the three revision cases, though Section 35 of the Act does not disclose any limitation period of filing a revision case, a petition for condonation of delay has been filed and revisional authority also has condoned the delay without issuing the notice upon the otherside.

In my considered view, neither of the two was required. A petition for condonation of delay was not required and order



condoning the delay could not have been passed without issuing notice to the other side. However, the revision petitioner was required to explain as to why he had filed a revision application after such an inordinate delay to cross the barrier of unreasonableness and deliberate laches etc. From such petitions filed before the Court below, it appears that the only ground taken was that the petitioner, when filed a requisite for getting certified copy in the year 2010, came to know about the order passed by the Consolidation Officer. However, the moot question which arises is as to why after a delay of 32 to 34 years, they filed a requisite for obtaining certified copy? What was the date of their knowledge of the order passed by the Consolidation Officer has nowhere been stated either in the petition for condoling the delay or revision petition. Thus, in my considered view, the Director, Consolidation was not at all required to entertain revision application after 32 to 36 years specially when consolidation scheme was already confirmed.

Accordingly, in my view, on the aforesaid sole ground itself, the impugned orders are liable to be set aside in view of the judicial pronouncements discussed above.



Thus, issue no.(i) which is common in all the writ petitions is decided in favour of the petitioners and against the respondent nos.4 and 5.

Issue No. ii

Second question which is common in all the three writ applications is issue no.(ii), i.e., as to whether without calling for the lower court records and examining the same, merely on the basis of Xerox copy of the document, the order of the Consolidation Officer passed in the concerned cases, could have been set aside and the consolidation scheme could have been upset by the Director, Consolidation?

Section 35 of the Act lays down in clear terms that the Director, Consolidation may on his own motion or on the application of any party or on reference being made by any subordinate authority, call for and examine the record of any case. It does not appear from the original records of the revision cases that the lower court records/original records were ever called for by the revisional authority.

Thus, on this sole ground also, the writ petitions may succeed.

Issue nos.(iii), (iv) and (v) of C.W.J.C. No.17029 of 2011:



It appears from the impugned order that registered deed of sale transferring the Sikmi rights dated 16.12.1975, have been ignored being contrary to law. Now the question would be as to whether that can be considered as a void document and was liable to be ignored?

In my considered view, the concerned sale deed was not a void deed but a voidable document which could have been nullified by a civil court of competent jurisdiction. This issue has already been decided in **Babujan Rai & Anr. Vs. The State of Bihar & Ors. [2009(4) PLJR (HC) 300]** as well as **Rasik Lal Mahto Versus State of Bihar [2010 (3) PLJR 506]**, holding that Sikmi rights may be transferable or may not be transferable depending upon the customs which is prevalent in the concerned village or the area which would be required to be pleaded and proved. It has not been raised in the revision application anywhere that such custom was not prevalent in the concerned village. It has not been held by the revisional authority also that such custom was not prevalent in the concerned village, therefore, sale deed was contrary to the law. In fact, that cannot be held by the revisional authority for the reason that for that purpose evidence would be required to be led and appreciated by a civil court of competent jurisdiction.



When learned counsel for the respondent nos.4 and 5 was controverted with a question as to under what authority the Director, Consolidation could have ignored the transfer through a registered deed and allowed the revision case setting aside the order passed by the Consolidation Officer directing the name of the revision petitioner to be recorded in the consolidation records with respect to the lands in dispute, he had no answers.

Thus, in my view, such one line finding recorded that Sikmi right is not transferable and, therefore, the sale deed is apparently contrary to law would be bad. On such basis, the revisional authority has not only set aside the order passed by the Consolidation Officer but has also upset the claim of more than 30 years of possession of the writ petitioners.

The revision petitioner – respondent nos.4 and 5 have pleaded before the revisional authority that they are coming in continuous possession of the lands but nothing has been brought on record by them to prove that they are in possession of the lands concerned.

What was the rent fixed for the lands? Whether they were paying rent? No evidence of possession has not been brought on record at all. So far the writ petitioners are concerned, they have taken a plea that after the concerned sale deed, their father and



thereafter the petitioner and his family members have been in continuous possession and copy of the rent receipt issued by the State of Bihar has been brought on record. That apart, though the Director, Consolidation has held that Sikmi right is not transferable but he has not considered other aspect of the matter as to whether Sikmi rights are heritable and could the revision petitioner have inherited the Sikmi rights. In **Rasik Lal Mahto (supra)**, this Court has held that Sikmi right is neither heritable nor transferable unless a custom is prevailing in the village and that is pleaded and proved. The revisional petitioners have not stated anywhere in their revision applications that in their village, the prevailing custom is that the Sikmi rights are heritable.

Thus, in my view, such finding recorded by the revisional authority is fit to be set aside.

Without calling for the records and considering as to under what circumstances, 4.13 acres were settled by the State of Bihar in favour of the father of the opposite party, i.e., late Kisto Kumar Ghosh, a finding has been recorded by the revisional authority that he does not find any document for justification of settlement of Parwana. He could also have called for the lower court records or could have directed the revision petitioners to bring on record the



materials to show as to how such Parwana was issued as issuance of settlement parwana is admitted.

The writ petitioners have come with the explanation that there was ceiling proceeding in which concerned lands were shown as surplus by the land holder and those lands vested in the State of Bihar. Thereafter, finding the father of the petitioner in possession of the lands as Sikmidar in view of the registered deed transferring the Sikmi rights on 16.12.1975, the lands were settled by the State of Bihar by issuance of parwana. However, the revisional authority, without examining the matter, has simply held that there is no justification for settlement by issuance of parwana. Thus, in my considered view, such finding recorded by the revisional authority is also bad is accordingly set aside.

C.W.J.C. No.17247 of 2011 and C.W.J.C. No.17259 of 2011:

Issue No. (iii)

This common issue is involved in both the aforesaid writ applications as to whether revisional order could have been passed against a dead person. Petitioners have taken a stand that mother of the petitioner Smt. Chanchlawala Ghosh died in the year 1974 and father of the petitioner died in the year 1990.



No counter affidavit has been filed controverting the aforesaid stand taken by the petitioner. The petitioner has filed a death certificate also regarding Kisto Kumar Ghosh as Annexure 1 to the C.W.J.C. No.17259 of 2011 which shows that he died on 03.12.1990 itself.

Thus, in my considered view, even a registered notice could not have been issued against a dead person and their heirs were required to be impleaded as party. In the absence of such step, both the orders are fit to be set aside on the sole ground.

Issue no.(iv) in C.W.J.C. No.17247 of 2011:

Two registered deed of sale were executed in favour of Smt. Chanchlawala Ghosh on 12.01.1969 by son of Kutub Ali, i.e., the recorded tenant, his widow and daughter. The aforesaid two transfers has simply been ignored on the ground that transfers have been challenged by the petitioner and ignoring the transfer, the order passed by the Consolidation Officer has been set aside and the direction was given to revision petitioner in respect to the land in dispute.

In my view, such stand taken by the revisional authority lacks legality and the same can be considered as perverse. It is well settled that if a sale deed is void, it can be ignored by the consolidation authority but if it is voidable then



such sale deed can only be annulled by a civil court of competent jurisdiction in a properly constituted suit. A reference in this regard is made to a decision of the Apex Court rendered in **Ram Sakal Singh Vs. Most. Monako Devi & Ors. [1997 (2) PLJR (S.C.) 63]**. Thus, in my considered view, the sale deed could not have been ignored simply on the ground that the revisional petitioners have challenged it and none had appeared on behalf of the opposite party to counter it.

In my view, such order is fit to be set aside. Accordingly, this issue is also decided in favor of the writ petitioner.

Issue No.(iv) in C.W.J.C. No.17259 of 2011:

From the impugned order it appears that merely a direction has been given to verify the documents of the revision petitioner and the entries in consolidation registers and suitability of such allotment in the Chak of the opposite party and if it is found that land of the present petitioners may be excluded without affecting the viability of the Chak of the opposite party then, for the lands belonging to the petitioners, a separate Chak may be prepared. From perusal of this last paragraph, it hardly appears that the writ petitioner can be aggrieved by the order. However, in the preceding paragraph it is stated that in the instant revision case, out



of the lands of khata no.10, only three kathas have been claimed by the revision petitioners which has already been ordered to be recorded in their name in another revision case. Obviously, the revisional authority is referring to revision case no.152/2010, the order passed wherein has already been held to be illegal by the Court.

Thus, in my considered view, the impugned order is not at all sustainable in the eye of law as the basis on which the separate Chak is sought to be carved out has already been found illegal and invalid in the preceding paragraphs of the present order.

Accordingly, this issue is also decided in favour of the writ petitioner and against the respondent nos.4 and 5.

Thus, in my considered view, the writ petitions are fit to be allowed on each and every issue which has been raised by the writ petitioner as has been held above.

Accordingly, the impugned orders passed in all the writ petitions are quashed and set aside.

However, before parting with the matter, I.A. No.9360 of 2013 as well as I.A. No.2517 of 2014 filed in C.W.J.C. No.17247 of 2011 are also required to be dealt with.



Though the learned counsel appearing in the interlocutory applications did not appear to press the applications but they being the purchasers from different heirs of Smt. Chanchlawala Ghosh claiming them to be *bona fide* purchaser in particular portion of the lands in dispute, the interlocutory applications are also fit to be dismissed as the *inter se* dispute between the writ petitioners and the purchaser is not an issue in the present writ application.

However, since I.A. No.1980 of 2016 in C.W.J.C. No.17029 of 2011, which was filed by another set of purchaser, has been allowed to be withdrawn by this Court vide order dated 12.05.2016 granting liberty to the intervenor to move before the competent authority for redressal of his grievance, similar liberty is granted to these intervenors also.

With this observation, the aforesaid interlocutory applications are also dismissed.

(Dr. Ravi Ranjan, J)

Spd / Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.10.2017
Transmission Date	NA

