

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3406 of 1988

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1. Jokhu Pandey, Son of Shri Shob Nath Pandey
2. Sri Kishun Pandey, Son of Shri Shob Nath Pandey
3(a) Shakuntla Kuer, W/o Shri Shob Nath Pandey
3(b) Santosh Pandey S/o Shri Shob Nath Pandey
3(c) Anita Devi, D/o Shri Shob Nath Pandey
3(d) Sunita Devi, D/o Shri Shob Nath Pandey
3(e) Poonam Kumari, D/o Shri Shob Nath Pandey
4. Radhey Shyam Pandey @ Radha Krishna Pandey, S/o Shri Shob Nath Pandey
All resident of village Gossisipur, P.S. Durgawati, District Rohtas

.... Petitioners

Versus

1. The State of Bihar
2. Joint Director, Consolidation, Bihar (Headquarter), Patna
3. Deputy Director, Consolidation, Rohtas at Sasaram
4. Consolidation Officer, Durgawati at Durwati, P.S. Durgawati, District Rohtas
5(a) Surahoo Paswan
5(b) Murahoo Paswan
5(c) Jyoti Paswan, all sons of late Baldeo Dusadh (respondent no.5)
Son of Late Sukhraj Dusadh, resident of village Kusaisipur, P.S. Durgawati,
District Rohtas

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kamal Nayan Chaubey, Sr. Adv.
Mr. Kaushal Kishore Mishra, Adv.

For the Respondent/s : Mr. Naman Nayak, AC to AAG-10
For the private respondents: Mr. Krishna Bihari, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

CAV JUDGMENT

Date: 12-12-2018

The writ petitioners are aggrieved by the order dated 26.11.1987 passed by the Deputy Director, Consolidation (Headquarters), Patna in purported exercise of revisional powers vested in him under section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') in Revision Case No. 2550/1985 (Baldeo Dusadh v. Jokhu Pandey & ors.), whereby the revision has been allowed and the order



of the Deputy Director, Consolidation, Rohtas in Appeal Case No. 1217/1983-84 has been set aside. A copy of the order is impugned at Annexure 3 to the writ petition.

This writ petition was admitted for hearing on 18.7.1988 and has been taken up for final hearing and disposal when the parties have been heard at length.

The dispute relates to a plot bearing C.S.Khata No. 20, Plot No. 168, admeasuring 1.50 acres situated in village Gosaisipur, P.S. Durgawati, in the district of Rohtas. Several plots were carved out from the said plot after the revisional survey bearing R.S.Khata No. 9, Plot No. 287, admeasuring 52 decimals, Plot No. 288, admeasuring 56 decimals and Plot No. 289, admeasuring 42 decimals, in all totaling 1.50 acres.

The facts of the case as briefly noted from the writ petition is that respondent no.5 Baldeo Dusadh (since deceased) filed a case in the court of the Consolidation Officer, Durgawati by invoking the provisions of Section 10(kha) of 'the Act' giving rise to Case No. 1/1976 with the prayer to enter his name in place of the writ petitioners to the extent of his share. According to the writ petitioners, the Consolidation Officer without verifying the facts and without holding any enquiry and with no opportunity to the writ petitioners, vide order passed on 27.6.1979 allowed 56 decimals in Plot No. 288 and 42 decimals in Plot No. 289 in favour of respondent no.5. A



petition was filed by the writ petitioners before the Consolidation Officer on 13.7.1979 indicating that the order had been procured by respondent no.5 by suppression of relevant facts and the documents of unimpeachable character. A prayer was made for passing order afresh after holding enquiry and giving opportunity of hearing to all. According to the writ petitioners, the petition remained pending on record and in the meanwhile the Consolidation Officer got transferred and the new incumbent vide order passed on 15.6.1982 dismissed the petition while recording that he had no power of review.

An appeal was filed by the writ petitioners under the statutory provisions present in 'the Act' before the Deputy Director, Rohtas numbered as Case No. 287/1982-83. The appeal was allowed and the matter was remitted back to the Consolidation Officer by the appellate authority vide order passed on 16.7.1983 for passing order afresh after holding enquiry and in consideration of the relevant documents. On remand of the matter, the Consolidation Officer passed a fresh order after holding enquiry and examining the witness on 17.1.1984, whereby the claim of the writ petitioners was upheld taking note of the registered sale deed dated 5.4.1943 executed by the Karta of the joint family as well as taking note of the order passed by the statutory authority under section 103 of the Bihar Tenancy Act. It is feeling aggrieved by this order dated 17.1.1984 enclosed at Annexure 2 that deceased respondent no.5 filed appeal before



respondent no.3 i.e. the Deputy Director, Consolidation numbered as Appeal No. 1217/1983-84. The Deputy Director, Consolidation while affirming the order of the Consolidation Officer enclosed at Annexure 2, dismissed the appeal on 23.9.1985. The respondent no.5 moved further in the statutory ladder to file revision under section 35 of 'the Act' giving rise to Revision No. 2550/1985. The revision petition was heard by the Deputy Director, Consolidation (Headquarters), Patna, who vide order passed on 26.11.1987 allowed the revision and set aside the orders passed by the appellate authority as well as original authority enclosed at Annexures 2 and 1 respectively. The order of the Deputy Director exercising revisional power is impugned at Annexure 3 to the writ petition and it is feeling aggrieved by this order that the writ petitioners are before this Court.

Mr. Kamal Nayan Chaubey, learned Senior Counsel has appeared for the petitioners alongwith Mr. Kaushal Kishore Mishra, Advocate on record. Mr. Naman Nayak, learned AC to AAC-10 has appeared for the State and Mr. Krishna Bihari, learned counsel has appeared for the private respondents i.e. substituted heirs of respondent no.5 Baldeo Dusadh in whose favour the revisional order has been passed.

I have heard learned counsel for the parties and have perused the records.

The family genealogy is mentioned under paragraph 4 of the



writ petition as well as in the order impugned and it is undisputed that the father of the revisional petitioner Baldeo Dusadh, namely, Sukhraj Dusadh as well as vendor of the writ petitioners Sukhi Dusadh were own brothers and some family arrangement took place in amongst these three brothers, namely, Sukhi Dusadh, Dukhi Dusadh and Sukhraj Dusadh. While it is the complaint of the revisional petitioner late Baldeo Dusadh who was son of Sukhraj Dusadh that despite such position, the name of the writ petitioners got entered in the survey records as against the disputed plot, according to the writ petitioners Sukhi Dusadh had executed a registered sale deed in their favour as back as on 5.4.1943 as Karta of the joint family and since whereafter the writ petitioners are holding possession over the said land. Again, while the stand of the private respondent, who was petitioner before the revisional forum is that Sukhi Dusadh had no right to execute any such sale deed, the position has been contested by the writ petitioners and Mr. Chaubey, learned Senior Counsel advancing their cause has raised the following issues for consideration in support of the contentions and which stands noted in the order dated 28.9.2018 of this Court and runs under:

- (a) The Deputy Director exercising revisional powers vested in the Director, Consolidation, could not have commented upon the sale deed executed by one of the land owners as the



‘Karta’ of the family after a lapse of more than three decades in view of the legal position settled on the issue void/ voidable;

- (b) The power exercised by the Deputy Director as the Director of Consolidation, is wholly without jurisdiction; and
- (c) The ‘Karta’ of family had a right to dispose of the land in case of legal necessity faced by the family.

In support Mr. Choubey has relied upon the following judgments:

- (i) AIR 2018 SC 3907 (**Kehar Singh v. Nachittar Kaur & ors.**)
- (ii) AIR 1973 SC 2451 (**Gorakh Nath Dube v. Hari Narain Singh & ors.**)
- (iii) 1984 BBCJ 140 (**Jagarnath Thakur & anr. V. the State of Bihar & ors.**)

According to Mr. Chaubey, while Sukhi Dusadh as the Karta of the joint family had full authority to execute the sale deed, its genuineness has not been tested before the court of competent jurisdiction and the statutory authorities under the Consolidation act are not vested with any jurisdiction to comment upon the legality or validity of such sale deed which was executed by a person holding



title over the said land.

The other issue raised by Mr. Chaubey while relying upon the decisions aforementioned is, that the revisional power exercised by the Deputy Director, Consolidation (Headquarters) is wholly without jurisdiction.

Though learned counsel appearing for the private respondent, who stand substituted by the legal heirs after his death, has laboured hard to find support on the cause raised by the private respondents placing reliance on the order of the revisional forum but having heard learned counsel appearing for the contesting parties I am of the firm opinion that in view of the legal position settled on the issue raised by Mr. Chaubey, learned Senior Counsel, the order passed by the Deputy Director (Headquarters) in purported exercise of revisional jurisdiction, is unsustainable not only on merits but is also in excess of jurisdiction so vested in a Deputy Director (Headquarters).

In so far as the issue of jurisdiction is concerned, the judgment rendered by the Division Bench of this Court in the case of **Jagarnath Thakur** (supra) is point specific on this issue when at paragraph 11 of the judgment the Division Bench speaking through Justice N.P.Singh as his Lordships then was, holds thus:

“Section 35 vests supervisory power in the Director of Consolidation, who may of his own motion or on the application of any party call for and examine the record



of any case for the purpose of satisfying himself as to the regulatory, correctness, legality or propriety of any order and can pass an order as he thinks fit. No doubt, the power under section 35 is very wide which has to be exercised under the conditions mentioned therein by the Director of Consolidation, but, in the instant case, the power has been exercised by the Deputy Director and not the Director under section 35 of the Act.”

As regarding power of a Karta of the joint Hindu family to make sale of the joint family property in case of legal necessity, the position has been upheld by the Supreme Court in the case of **Kehar Singh** (supra) and paragraphs 27 and 28 are again point specific on the issue, which runs as under:

“27. In our considered opinion, a case of legal necessity for sale of ancestral property by the Karta (Pritam Singh) was, therefore, made out on facts.

28. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the Karta of his family. The plaintiff being a son was one of the co-coparceners along with his father – Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all.”



What I note from paragraph 14 of the writ petition is that the petitioners, who are vendors from Sukhi Dusadh, have specifically stated that the reason for sale is mentioned in the sale deed dated 5.4.1983 where it is mentioned that the property was being disposed of for legal necessity i.e. marriage of the daughters and construction of the joint family house which stipulation present in the sale deed has neither been controverted nor the sale deed has been put to challenge before a competent forum at any stage.

The third issue raised by Mr. Chaubey is that the sale deed could not have been put to question after more than three decades by the son of one of the coparceners especially where the issue was contested in a proceeding initiated under section 103A of the Bihar Tenancy Act, which was decided in favour of the writ petitioners and which order has attained finality.

As I have observed, though learned counsel for the private respondents has laboured hard to support the impugned order but in the nature of the discussions made above, it is a lost battle for the private respondents and the order passed by the Deputy Director, Consolidation in purported exercise of revisional jurisdiction is an order wholly without jurisdiction and is also not sustainable on merits because the right, title and interest in the writ petitioners as purchaser of the disputed land cannot be interfered with by the revisional authority at the behest of the private respondents until such time, that



the sale deed dated 5.4.1943 stands in their favour. That their earlier quest by invoking the provisions of Section 103A of the Bihar Tenancy Act also stands negated, it was a close chapter for them and even though their second round challenge by invoking the provisions of ‘the Act’ also was negated until the appellate stage, the deceased respondent no.5 did manage to upset the appplecart by obtaining the order dated 26.11.1987 from an authority who was not vested with the jurisdiction to exercise revisional powers under ‘the Act’.

In result, the order dated 26.11.1987 passed by the Deputy Director, Consolidation (Headquarters), Patna in Revision Case No. 2550/1985, impugned at Annexure 3, is quashed and set aside.

The writ petition is allowed with no order as to costs.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	28.09.2018
Uploading Date	14.12.2018
Transmission Date	NA

