

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8743 of 1991

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Ramasray Rai

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Sr. advocate
Mr. Kunal Tiwary, advocate

For the State : Mr. (GP4)

For the private respondents: Mr. Sri Narayan Singh, Sr. advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-02-2018

Heard both sides.

The petitioner has filed this writ petition for quashing the order dated 24.09.1991/26.09.1991 passed by Joint Director, Consolidation, Muzaffarpur in Consolidation case No. 1361/86 (Annexure-5) whereby the Joint Director set aside the order dated 22.03.1986 passed by Assistant Director, Consolidation in Consolidation Appeal No. 7368-85-86.

The relevant facts is that revisional survey plot No. 516 was carved out from cadastral survey plot No. 588 and recorded in the name of Khublal Rai. The villagers made objection and on the basis of report of Amin it was found that on plot No. 516, area 7 decimal, there was cattle shed of the petitioner. Kali Sthan (temple) is situated at plot No. 446 and, accordingly, the Consolidation Officer ordered to record the name of the petitioner in the consolidation record as per the entry made in the revisional survey records. The Assistant Director, Consolidation also found that on the basis of possession of Raghunath Gwala in the kafiati column of the cadastral survey records, revisional survey record was prepared with regard to plot No. 516 area 7 decimal in the name of Khublal Rai, uncle of the petitioner. The respondents



preferred revision. The Joint Director, Consolidation set aside the order of the Consolidation Officer as well as the appellate authority on the ground that nobody produced any chit of paper about the settlement of the land and in the cadastral survey the nature of land was shown to be public Rasta.

Mr. Ashok Kumar Singh, the learned senior counsel for the petitioner, submits that from the cadastral survey records (Annexure-A), it would appear that land of plot No. 588 was in exclusive possession of the landlord, of course nature of land was shown to be rasta but in the remark column name of Raghunath Gwala is mentioned as in possession of the land. Consequently, during revisional survey plot No. 516, area 7 decimal was recorded in the name of Khublal Rai, son of Raghunath Rai. The petitioner is nephew of Khublala Rai. The villagers did not raise any objection during revisional survey. During the consolidation proceedings the villagers raised objection that the land of plot No. 516 area 7 decimal is used as public Rasta and the same is situated by the side of Kali Sthan. The consolidation officer called for report from Amin and the Amin reported that plot No. 516 is not part of Kali Sthan land and Kali Sthan is situated at plot No. 446. It is submitted that the order of Joint Director is not based on facts and the same is not sustainable.

Mr. Sri Narayan Singh, the learned senior counsel for the private respondents submits that the Joint Director, Consolidation passed the order on facts that the land was recorded as Gairmazarua Aam Rasta in the cadastral survey and the Gairmazarua Aam Rasta cannot be settled in favour of any person.

From perusal of Annexure-A to the counter affidavit, it appears that plot No. 588 is the land of ex landlord and the nature of land is joint possession of the entire family of landlord. Total area of the land was 1 acre 56 decimal shown as Rasta but from perusal of column-4 name of tenure holder (Darmiyani Haqdar) is mentioned as



Faujdar Rai. Similarly in the kafiat column name of Raghunath Gwala, grand father of petitioner, was mentioned. This fact itself shows that the land was in possession of Raghunath Gwala during the operation of cadastral survey and accordingly on the basis of entry made in cadastral survey during the revisional survey name of Khublal Rai, son of Raghunath Gwala was entered with regard to land of plot No 516 area 7 decimal. The Consolidation Officer as well as Assistant Director, Consolidation ordered for keeping the entry in tact in the consolidation proceeding but the Joint Director, Consolidation ignored all these facts and the set aside the order of Consolidation Officer as well as the appellate authority on the ground that the petitioner did not produce any paper with regard to settlement of land. The cadastral survey and revisional survey records show that the land of plot No. 588 old, 516 (new), area 7 decimal was found in possession of Raghunath Gwala and thereafter the same land was entered in the name of Khublal Rai during revisional survey. The report of Amin also shows that there is no Aam Rasta on the land and Bathan of petitioner is standing there. Thus I find that the finding of Joint Director that nature of land in the cadastral survey record was Gairmazarua Aam Rasta is error of record and therefore the order dated 24.09.1991/26.09.1991 passed by Joint Director, Consolidation (Annexure-5) is not sustainable and the same is set aside.

This writ petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.02.2018
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