

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.600 of 2016

In

Civil Writ Jurisdiction Case No.6092 of 2009

1. Bikram Paswan

2. Sitabi Paswan

Both sons of Late Jogi Paswan.

3. Bhagi Devi, Daughter of Late Khusi Paswan

4. Bhogi Paswan, son of Late Khubi Paswan

All resident of Village-Nemua, Post Office-Ram Dutt Patti, Police Station and District- Supaul.

... .. Petitioners-Appellants

Versus

1. The State of Bihar.

2. The Director of Consolidation, Bihar (Patna).

3. Sri Hari Kishore Singh, son of Late Mithileshwar Prasad Singh, resident of Village+Post Office-Sukhpur, Police Station and District- Supaul.

.... Respondent 1st Set-Respondent 1st Party

4. Joteshwar Paswan, S/o Late Shanti Paswan.

5. Ram Lochan Paswan (since deceased and substituted by following legal heirs)

5A. Chedani Devi, Wife of Late Ram Lochan Paswan.

5B. Raj Kumar Paswan, Son of Late Ram Lochan Paswan.

5C. Laxmi Devi, Daughter of Late Ram Lochan Paswan.

All resident of Village-Malhani, Post Office-Malhani, Police Station and District- Supaul.

6. Satrugan Paswan, son of Bhogi Paswan, resident of Village-Malhani, Post Office-Sukhpur, Police Station and District- Supaul at present residing in Village-Bara, Post Office-Ekma, Police Station and District-Supaul.

.... Respondent 2nd Set-Respondent 2nd Party

7. Sudama Devi, Wife of Sri Asarfi Paswan, resident of Village-Nemua, Post Office-Ram Patti, Police Station and District- Supaul.

.... Respondent 3rd Party-Respondent 3rd Party

... .. Respondents

Appearance :

For the Appellants : Mr. Mahendra Prasad Singh, Advocate

For the Respondent No.3: Mr. Pramod Mishra, Advocate

Mr. Pramod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 05-04-2018



Heard learned counsel for the appellants and counsel for the private respondent No.3.

Appeal has been preferred under Letters Patent by the appellants against the order dated 29.01.2016 passed by the learned single Judge in C.W.J.C. No. 6092 of 2009 since the learned single Judge refused to interfere with the impugned order, which was order dated 13.02.2009 passed in Consolidation Revision Case No.179 of 2007 by the Director of Consolidation, Bihar. The impugned order was Annexure-5 to the writ application.

The reason for these appellants to get aggrieved, who were also petitioners before the learned single Judge, was that the application, filed by the respondent No.3 in the present appeal, before the Director, Consolidation under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, was entertained against allotment of a *Chak*, which had attained finality way back in the year 1986. After the allotment of the *Chak*, the parties came into the possession and had been in peaceful possession of the land in question for 21 years.

After more than 21 years, private respondent No.3 suddenly wakes up and files an application under Section 35 of the Consolidation Act raising certain grievance against the decision of allotment of the *Chak* by the Subordinate Consolidation



Authorities. An objection was raised that a settled position cannot be unsettled like this. There is no proper explanation as to why such matter is being entertained after 21 years, but instead of passing any order on such extraordinary delay and the reason or justification, the Director, Consolidation, goes ahead and virtually decides the right, title and interest of the parties in the purported exercise of power of revision vested in him under Section 35 of the Act.

It is also in public interest and purpose that there has to be some correlation between the time an application is moved before the revisional authority and the decision which was taken, which is subject matter of challenge. Since more than two decades had already passed, a settled position cannot be unsettled at the convenience of a party on mere asking merely because an extraordinary and unbridled power has been vested in the Director under Section 35 of the Act. Such power, no doubt, has been vested and has been held to be a valid power for exercise in the interest of justice, but such power cannot be exercised at any point of time even if there are delay of decades or may be a century when somebody decides that a decision rendered by the subordinate forum of consolidation hierarchy has committed some error in the process and procedure in adjudicating the matter.



Reliance has been placed by the learned counsel for the private respondent on the decision rendered by a Division Bench in the case of ***Ram Sundar Chaudhary and Others vs. Ram Nath Chaudhary and Others***, reported in **2003 (2) PLJR 184**. The proposition, which has been laid down by the Division Bench in the case is not the issue of argument in the present case. It is the manner in which the revision application has been entertained in such a casual manner and without even whispering a word as to why such revision application is being entertained on the spacious plea that since the private respondent No.3 lived in Patna, therefore, he had no idea and knowledge about the land in question having been allotted as a *Chak* in favour of the appellants.

Such begotten kind of explanations do not stand the scrutiny of judicial conscience and, therefore, the Director, Consolidation, has in a very casual manner undone what had been done 21 years ago, which is shocking to the conscience of the Court.

In view of the same, the impugned order dated 29.01.2016 passed by the learned single Judge in C.W.J.C. No. 6092 of 2009 refusing to interfere with the order dated 13.02.2009 passed in Consolidation Revision Case No. 179 of 2007 is required to be interfered with. Both the orders passed in the writ as well as



in the Consolidation Revision Case No. 179 of 2007, therefore, are required to be quashed and are quashed.

Appeal is allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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