

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11468 of 1994

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1. Shashi Kant Rai, S/o late Ram Pravesh Rai 2. Shashi Bhushan Rai, 3. Arbind Kumar Sharma, 4. Brij Raj Kumar, all sons of late Narain Rai All r/v – Simri (Dudhi Patty), P.S.-Simri, District- Bhojpur	 Petitioner/s
Versus	
State of Bihar & Ors	 Respondent/s

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Appearance :

For the Petitioner/s : Mr. TRILOKI NATH MAITIN, Sr. Adv.
Mr. Rajiv Kumar Sinha

For the Respondent/s : AC to SC-22
Mr. Bishnu Kant Dubey
Mr. Mithilesh Kr. Rai
Mr. Shreekant Pandey

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 06-03-2018

Heard Mr. T. N. Maitin, learned senior Advocate for the petitioners and Mr. Shreekant Pandey, learned Advocate for the respondents as well as learned counsel for the State.

The petitioners in this writ petition seek quashing of the order dated 26.08.1994 passed by the Deputy Director, Consolidation (Headquarters) setting aside the order of the Assistant Director, Bhojpur passed in Appeal No. 54 of 83-84.

The brief fact, which is relevant for disposal of the case, is that in the Cadastral Survey the lands of Khata Nos. 106 and 107 were recorded jointly in the name of ancestors of the plaintiffs and the



respondents, but during the revisional survey of the land after the death of Shiv Pujan Rai, the lands of both the Khata bearing nos. 106 and 107 were recorded in the name of Jatadhari Rai. The Consolidation Authority prepared the records during the consolidation proceeding under Section 10(1) of the Act in accordance with the entries made in the revisional survey, but the appellate authority partly allowed the appeal making correction in the consolidation records which were recorded according to the entries made during the revisional survey. The respondents preferred consolidation revision bearing nos. 2816/1987, 2817/1987 and 2818/1987. All the revisions were heard together and the Deputy Director, Consolidation (Headquarters) set aside the order of the Assistant Director, Consolidation, Bhojpur for making correction in the record of rights during the consolidation proceeding on the basis of the entries made in the record of rights during the revisional survey.

Mr. T. N. Maitin, learned senior Advocate for the petitioners, submits that the Assistant Director, Consolidation, Bhojpur has rightly ordered for correction of the records of right prepared during the consolidation proceeding on the basis of the record of rights made in the revisional survey because Shiv Pujan Rai and Jatadhari Rai are two brothers. After death of Shiv Pujan Rai, the lands of Khata No. 106 was exclusively recorded in the name of Jatadhari Rai. It has further been submitted that the Deputy Director, Consolidation has got no jurisdiction to hear the revision under Section 35 of the Consolidation Act and



therefore, the order dated 26.08.1994 passed by the Deputy Director, Consolidation (Headquarter) as contained in Annexure-2 is without jurisdiction.

On the other hand, contending the submission of the learned counsel for the petitioners, Mr. Shreekant Pandey, learned counsel for the respondents submits that the lands of Khata Nos. 106 and 107 were duly recorded in the name of the ancestors of the petitioners and respondents. Lands of Shiv Pujan Rai, ancestor of the petitioners, were sold in auction in a money suit and the ancestor of the respondents purchased the land of Khata No. 107, 421 and 106 vide Execution Case No. 704 of 1940. Accordingly, in revisional survey only names of ancestor of the respondents were recorded. The Consolidation Officer also recorded the name of the ancestor of the respondents during consolidation proceeding. It has been submitted that the Director had issued notification, as contained in Annexure-R/3 at page 29, bestowing power to the Deputy Director, Anil Kumar Sinha, Consolidation (Headquarters) to exercise power under Section 35 of the Consolidation Act in view of the power vested in the Director under Section 34(2) of the Consolation Act. It has further been submitted that these questions came up before a Division Bench of this Court in case of **Krishna Singh Vs. Deputy Director of Consolidation & Ors.** reported in **2008(4) PLJR 63**. In this regard para 6 of the aforesaid case reads as follows:

“6. Sub-section(2) of Section 34 of the Act in no uncertain terms



authorizes the Director of Consolidation, with the sanction of the State, to delegate any of his powers or functions under the Act to any officer not below the rank of Deputy Collector. Therefore, by exercise of the power of delegation vested in the Director of Consolidation under sub-section (2) of the Section 34 of the Act, the Director of Consolidation may, with the sanction of the State, delegate his power of revision also to any officer not below the rank of a Deputy Collector. By virtue of the definition given in sub-section (4a) of Section 2 of the Act, Deputy Director of Consolidation cannot be an officer below the rank of Additional District Collector and the rank of Additional District Collector is not below the rank of Deputy Collector. There was, therefore, no difficulty on the part of the Director of Consolidation to delegate his power of revision to the Deputy Director of Consolidation, provided, however, he had in fact made such delegation. For that purpose, we wanted to ascertain whether, in fact, any such delegation was made. We find from Annexure-A to the counter affidavit filed by the State that on 4th September, 1997 the Director of Consolidation, with the sanction of the State, delegated the power of revision to the Deputy Director of Consolidation, Sri Rajendra Prasad Singh, who passed the revisional order, which was challenged in the writ petition.”

Having considered the submissions of both sides and on perusal of records, I find that the Deputy Director in revisions has only ordered to enter the names of those persons/respondents whose names appeared in the records of rights prepared in the revisional survey.

So far as the question of lack of jurisdictions of the



Deputy Director, Consolidation (Headquarters) is concerned, this question has already been set at rest in the case of *Krishna Singh Vs. Deputy Director of Consolidation & Ors.*

From perusal of Annexure- R/3, it appears that the Deputy Director, Consolidation was vested with the power under Section 35 of the Consolidation Act to hear and dispose of the cases filed under Section 35 of the Consolidation Act. The power was vested w.e.f. 5th January, 1994 and the order was passed on 26.08.1994.

Hence, I do not find any merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J.)

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AFR/NAFR	
CAV DATE	N.A.
Uploading Date	17.03.2018
Transmission Date	

