

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2152 of 2019**

Shiv Shankar Paswan, son of Ram Nandan Paswan, resident of village-  
Bhavdepur, Police Station Riga, Sitamarhi

... .. Petitioner

Versus

1. The State of Bihar Through The Collector, Sitamarhi.
2. The Joint Director Consolidation, Muzaffarpur
3. The Deputy Director, Consolidation, Sitamarhi
4. Shishir Sinha, S/o- Sardindu Narayan Sinha, R/o- village- Bhawdeopur, P.S.- Riga, Sitamarhi
5. Prasoon Sinha, S/o- Late Bimlendu Narayan Sinha, R/o- village- Bhawdeopur, P.S.- Riga, Sitamarhi

... .. Respondents

**Appearance :**

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For the Petitioner/s | : | Mr. Ashok Kumar<br>Mr. Vinod Kumar |
| For the State        | : | Mr. Sangh Mitra Ghosh, AC to GP 15 |
| For Resp. Nos. 4 & 5 | : | Mr. Prabhat Kumar                  |

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL ORDER

4      15-02-2019                      Certain important dates need to be taken note of at the very outset before referring to the relief, which the petitioner has sought and the ground which he has taken to sustain the said relief.

The dispute relates to a piece of land ad-measuring 27 decimals, recorded as R. S. Plot No. 1972, R. S. Khata No. 797, of village Bhawadeopur, in the district of Sitamarhi, corresponding to old Plot No. 1626, which was recorded as *Gair Mazarua Aam* and after abolition of Zamindari, new Survey Plot No. 1972 was carved from the cadestral survey plot No. 1626 and was recorded in the name of State of Bihar. In the



year 1989, a Misc. Case No. 887 of 1989 was filed on behalf of respondent no. 4, seeking correction of wrong revisional survey entry in respect of the said 27 decimals of land, which, according to him, was wrongly recorded in the name of State of Bihar. The Consolidation Officer, Riga, finally allowed the Misc. Case No. 887 of 1989 by an order, dated 22.02.1993, with a direction to the revenue authorities to correct the entry of the said land in the name of contesting private respondents. No appeal was preferred against the said order, dated 22.02.1993. There was subsequent Rent Fixation Case No. 2 of 2002-03, registered for fixation of rent in respect of said land. A direction was thereafter issued by the competent authority for preparation of rent roll in the name of contesting private respondents. The writ petitioner, 13 years after passing of the order, dated 22.02.1993, by the Consolidation Officer, Riga, filed Appeal Case No. 1 of 2006, challenging the order passed by he Consolidation Officer, Riga. The Deputy Director, Consolidation, Sitamarhi, entertained the appeal and by order, dated 01.10.2008, set aside the order, dated 22.02.1993. The private respondents herein preferred Revision Case No. 05 of 2009, against the order of the Deputy Director, Consolidation, Sitamarhi, before the Joint Director, Consolidation,



Muzaffarpur, who, by order, dated 25.01.2010, affirmed the order of the Deputy Director, Consolidation, Sitamarhi, and rejected the revision application with a finding that since the cadastral survey plot no. 1626 had been recorded in the name of State of Bihar and revisional survey plot no. 1972 has been carved out of cadastral survey plot no. 1626, entry of revisional survey plot no. 1972 in the name of the State of Bihar was correct. The Joint Director, Consolidation, after having affirmed the order passed by the Deputy Director, Consolidation, remanded the matter back to the Deputy Director, Consolidation, for holding minute examination of the original records of rent fixation case after obtaining it from the Office of the Deputy Collector Land Reforms, Sitamarhi. Aggrieved by the said order of the Joint Director, Consolidation, the private respondents preferred writ petition, giving rise to CWJC No. 9777 of 2010, before this Court, which came to be disposed of by an order, dated 28.01.2015, with a liberty to them to approach the Bihar Land Tribunal for grant of appropriate relief. The private respondents accordingly approached the Bihar Land Tribunal by filing B.L.T. Case No. 1188 of 2015, which has been allowed by the Tribunal, by order, dated 04.04.2016, passed by the Chairman of the Tribunal, assigning following



reasons, in paragraphs 9 and 10:-

“9. The State of Bihar did not file any counter affidavit and the Opp. Party No. 4 has also not filed any counter affidavit. In this view of the matter, all statements made in the present application, have remained uncontroverted. Counsel for the Opp. Party No. 4 stopped appearing on different dates and on the final date of hearing also, he remained absent. In this view of the matter, I find that first jurisdictional error had been committed by the Deputy Director, Consolidation, who entertained the appeal filed by a stranger after 13 years of the order, passed by the Consolidation Officer. So far the revisional court is concerned, it partially considered the entry made in the cadastral survey khatiyā as well as in the revisional survey khatiyā. The remarks columns of the cadastral survey khatiyā and revisional survey khatiyā recording possession of the ancestors of the petitioners over the disputed land, was completely ignored. The possession of petitioners’ ancestors had been supported in the enquiry report, conducted by the Circle Officer and also by the Consolidation Officer. Considering the fact that the petitioners have remained in continuous possession of these lands for several years, rent fixation had been



made in their favour and rent was also being paid by the petitioners with respect to the disputed land, there was no evidence on the record that the lands in question have ever been in possession of any other person, than the petitioners. The order passed by the Consolidation Officer, in that view of the matter, was proper, reasonable and in accordance with law. So far, the orders, passed by the Deputy Director, Consolidation and the Joint Director, Consolidation are concerned, these orders have been passed against the evidence on the record, as such fit to be set aside.

10. Accordingly the impugned order dated 25.01.2010, passed by the Joint Director, Consolidation, Muzaffarpur in revision case No. 5/2009 is set aside and the order passed by the Consolidation Officer, Riga dated 22.02.1993 passed in Objection Case No. 887/1989 is affirmed. The name of the petitioners is directed to be entered with respect to 27 decimals land of revisional survey plot No. 1972 (sic. 1872) in revisional survey records as well as in the consolidation records.”

The petitioner has challenged the said order, dated 04.04.2016, passed by the Tribunal, in BLT Case No. 1188 of



2015. The petitioner claims that he is a citizen of India and, therefore, he has right to espouse the cause of State of Bihar as the land, in question, is in fact land of the State of Bihar. It is case of the petitioner that neither the contesting private respondents nor their predecessors have ever been in possession of the land, which was being used by the public and report submitted before the Deputy Collector Land Reforms about the possession of the petitioner is incorrect.

Assailing the impugned order, it has been stated in paragraph 27 of the writ petition as follows:-

“27. That it is respectfully submitted that Hon’ble Bihar Land Tribunal has passed the order without hearing the petitioner as the petitioner has not received any notice or the notice has not been properly served upon the petitioner by the Hon’ble Tribunal.”

It is evident from the said statement in paragraph 27 that the petitioner is evasive in respect of his stand whether he had notice about the hearing of the case before the Tribunal or not. It has also been stated that the petitioner was not given opportunity of being heard by the Tribunal and the order is *ex parte*.

Learned Counsel appearing on behalf of the



petitioner, has submitted that the order passed by the Tribunal is beyond jurisdiction because on the date of passing of the order, the matter was pending before the Deputy Director, Consolidation, Sitamarhi, in Appeal Case No. 1 of 2006.

This is not in dispute that the State of Bihar did not question the correctness of the decision of the Consolidation Officer, Riga, dated 22.02.1993. It was at the instance of this petitioner that 13 years after passing of the said order, an appeal was registered and subsequent developments took place.

As has been noticed, the petitioner has stated in paragraph 27, that he had not received any notice or 'notice had not been properly served on him by the Tribunal'. It has been, however, specifically recorded in the order of the Tribunal that notice was issued to the petitioner (Opposite Party No. 4 before the Tribunal), who had appeared, filed vakalatnama, but remained absent on different dates. It has also been recorded that even counter affidavit was not filed on his behalf in the said proceeding before the Tribunal. In such circumstance, based on application of respondent no. 4 and 5 herein, the Tribunal proceeded to decide the matter on merit.

In paragraph 30 of the writ application, it has been stated that there is an error of record in the order of the Tribunal,



in paragraph 2, wherein it has been recorded that counter affidavit was not filed by the petitioner before the High Court in CWJC No. 9777 of 2010.

I have perused paragraph 2 of the order of the Tribunal and there is no mention of the fact that there was no counter affidavit filed by this petitioner in CWJC No. 9777 of 2010.

It has been stated in paragraph 31 of the writ application as follows:-

“31. That it is relevant to mention here that the private respondent has mislead the Hon’ble Tribunal by placing some of the material facts which has non concern with their case and therefore, the confusion has been created in the minds of Tribunal pass the impugned order.”

The statement made in paragraph 31 is completely vague. There is no mention how the Tribunal was misled by placing some of the material facts which had no concern with the case and as to how any confusion was created in the mind of the Tribunal to pass the impugned order. The said statement, therefore, cannot be accepted for deciding the present case.

An argument has been made that since the matter was remanded to the Deputy Director, Consolidation, Sitamarhi, by



order of the Joint Director, Consolidation, Muzaffarpur, Dated 25.01.2010, which was impugned before the Tribunal, the Tribunal ought not to have entertained the said application. The said stand of the petitioner to this effect is absolutely misconceived and misplaced. The Tribunal has jurisdiction to entertain an application made against final order passed under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

In the present case, the Joint Director, Consolidation, Muzaffarpur, acting as revisional authority, disposed of the revision application finally, affirming the order of the Deputy Director, Consolidation, Sitamarhi. The order, which was passed by the revisional authority, is apparently final. The maintainability of the proceeding before the Tribunal, in my view, therefore, cannot be questioned.

The petitioner, apparently, is not claiming his own right and title over the land in question. He has, in fact, questioned the title of the contesting private respondents in respect of the disputed land, as is evident from the stand which has been taken on behalf. The question of title cannot be gone into in a proceeding under Article 226 of the Constitution of India. It is noteworthy that no person other than the petitioner



nor the State of Bihar has put to challenge the title of the  
contesting private respondents in respect of the disputed land.

In view of the above, in my opinion, this application  
cannot be entertained and is, accordingly, dismissed.

Before I part with, I may only observe that the  
question of title can be adjudicated only in a duly framed suit  
before a competent Court of civil jurisdiction.

**(Chakradhari Sharan Singh, J.)**

Prabhakar Anand/-

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