

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12753 of 1993

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Bipin Bihari Sahi, son of Late Ram Ashish Sahi, resident of village Rampur,
P.S. Aurai, District Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Consolidation Officer, Muzaffarpur
3. Deputy Director of Consolidation, Bihar, Patna
4. Director of Consolidation, Bihar, Patna
5. Joint Director of Consolidation, Muzaffarpur
- 6(a) Shiv Priya Devi, wife of Late Krishna Kumar Sahi, resident of village Rampur, P.S. Hathauri, District Muzaffarpur
- 6(b) Uday Prakash Sahi, son of Late Krishna Kumar Sahi resident of village Rampur, P.S. Hathauri, District Muzaffarpur
- 6(c) Chandra Prakash Sahi son of Late Krishna Kumar Sahi, resident of village Rampur, P.S. Hathauri, District Muzaffarpur
- 6(d) Ved Prakash Sahi son of Late Krishna Kumar Sahi, resident of village Rampur, P.S. Hathauri, District Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Vijay Kr. Verma Mr. Akhileshwar Singh
For the private respondent		Mr. V.R.P. Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

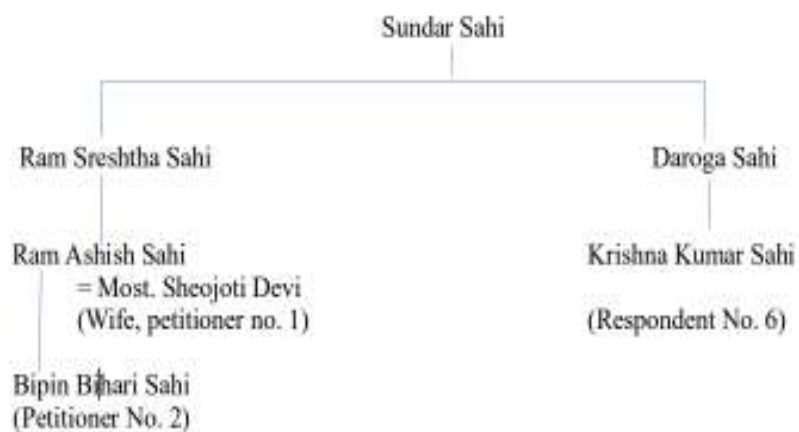
Date : 30-04-2019

In the present writ application, the petitioner has put to challenge an order dated 09.08.1993/12.08.1993, passed by the Joint Director of Consolidation, Muzaffarpur in Revision Case No. 978 of 1990, whereby he has set aside an order dated 06.04.1990, passed by the Deputy Director of Consolidation in Appeal Case No. 76 of 1989 under Section 10(6) of the Bihar



Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Act').

2. The material facts, which are relevant for adjudication of the case are not in dispute. This is not in dispute that the petitioners and the private respondents are/were members of a joint Hindu *Mitakshara* family. A short genealogical table, which is also not in dispute, given in paragraph 3 of the writ application, is extracted hereinbelow:-



3. Whereas, it has been the case of the petitioner that there had been no partition between the branches of Ram Sreshtha Sahi and Daroga Sahi, private respondents claim that there had been a partition. It has been asserted in the writ application that a title suit was filed by the original petitioner no.1 (since deceased) for partition claiming half of her share in the joint family property and for correction of the revisional



survey entries after having noticed that the survey authorities, in collusion with Krishna Kumar Sahi (since deceased, respondent no.6), had got the survey records of some of the joint family lands, incorrectly prepared in his favour. By operation of Section 4 (c) of the Act, the suit so filed stood abated. An objection was filed under Section 10(2) of the Act before the Consolidation Officer, Aurai, for correcting the wrong entries in *Chak* Register and for recording the lands of revisional khata nos. 21, 22, 264 and 265 of village Rampur, P.S. and Anchal Aurai, in the district of Muzaffarpur, in the joint names of the petitioners and respondent no.6 to the extent of $\frac{1}{2}$ (half) each. The Consolidation Officer, however, by an order dated 03.09.1976, rejected the objection so raised by the petitioners. This is also to be noted that an appeal was preferred against the order of the Consolidation Officer, giving rise to Appeal No. 288 of 1976, which was dismissed by an order dated 15.07.1978 passed by the Deputy Director of Consolidation, Muzaffarpur. The revision petition filed by the petitioners against the said appellate order dated 15.07.1978 also came to be dismissed by the Director of Consolidation by an order dated 24.12.1979, passed in Revision Case No. 809 of 1978. The petitioners thereafter had challenged the order of the revisional authority by



filing a writ application before this Court, which gave rise to CWJC No. 668 of 1980. This Court, relying on two other decisions, allowed the writ application by a judgment and order dated 19.03.1985, reported in **1985 BBCJ 431 (Sheojoti Devi and another vs. The State of Bihar and others)**, holding in paragraph 10 as follows:-

“So far the order passed by the appellate authority in Annexure-2 is concerned, it must be said that the appellate authority has also failed to decide the issues involved in the case. After having found that there was no partition in the family in the year 1930, which was the case of respondent no.6, there could be no reason for holding that the partition might have taken place between the year 1954 and 1969 inasmuch as it was nobody’s case. In any event he was not only to partition the joint holdings as envisaged under Section 8A of the Act but was also required to decide the question regarding the respective title of the parties in respect of the other holdings recorded in separate names. In a case of this nature the Consolidation authorities are required to decide whether there was an earlier partition and if the conclusion is that there was no earlier partition and the family remained joint then to decide whether any holding



recorded in the name of an individual member of the family was joint family property or a separate acquisition of that person. Neither the appellate nor the revisional authority have tried to decide the present dispute in this manner. The appellate and the revisional orders contained in Annexures 2 and 3 are, therefore, fit to be quashed and set aside.” (Emphasis added)

4. After having held as above, this Court had remanded the matter back to the Consolidation Officer to consider the entire matter afresh, after noticing the parties and affording them a reasonable opportunity of being heard. It was in the background of the remand made by this Court in the judgment in the case of **Sheojoti Devi** (supra) that the Consolidation Officer passed an order afresh dated 10.07.1989. The Consolidation Officer did not find any infirmity in the revenue records and, thus, turned down the objection of the petitioners under Section 10 (2) of the Act. It was against this order dated 10.07.1989, passed by the Consolidation Officer, Aurai that an appeal was preferred, giving rise to Appeal Case No. 76 of 1989 under Section 10(6) of the Act. The Deputy Director of Consolidation, upon appreciation/re-appreciation of materials on record, recorded his finding that the private



respondents could not establish their case of partition having taken place in the joint family in 1930. Accordingly, the Deputy Director of Consolidation, by his order dated 06.04.1990, holding the joint status of the Hindu *Mitakshara* family, held the petitioners and respondent nos. 6 entitled for half share each. A revision application thereafter was filed before the Joint Director of Consolidation, Muzaffarpur under Section 35 of the Act, giving rise to Revision Case No. 978 of 1990, which has been allowed by the order dated 09.08.1993, reversing the orders of the Consolidation Officer and the Deputy Director, Consolidation. The said order dated 09.08.1993 is under challenge in the present writ application.

5. Mr Vinay Kirti Singh, learned senior counsel, appearing on behalf of the petitioner, has made a very short submission and has contended that the Joint Director of Consolidation, while reversing the order passed by the court of Deputy Director of Consolidation in appeal has not at all discussed as to how the said findings were unsustainable and required interference. He has submitted that though the revisional court has referred to rival cases of the parties before him, but has not at all discussed and assigned reasons in his order impugned as to why the order of the appellate authority



required interference. He has accordingly submitted that the impugned order of the revisional authority is unsustainable being unreasoned and cryptic.

6. Mr. V.R.P. Singh, learned counsel, appearing for the private respondents, on the other hand, has argued that the disputed question of partition could not be adjudicated upon in a consolidation proceeding under the Act. He has attempted to defend the order passed by the Joint Director of Consolidation in the revisional proceeding on the ground that the revisional court has noticed all the facts and circumstances and respective cases of the rival parties, before reaching his conclusion and allowing the revision application.

7. I have carefully perused the impugned order, passed by the Joint Director of Consolidation, which is at Annexure-3. I find substance in the submission made by Mr. Vinay Kirti Singh, learned counsel for the petitioner that the said order does not reflect any application of mind. The revisional court has just referred to the rival cases of the contesting parties and without discussing the merits of their respective cases and without assigning any reason as to why the judgment and order of the appellate court could not be sustained, has passed the impugned order, reversing the



findings of the appellate authority.

8. It is noticeable that there is specific finding recorded by the appellate court based on his appreciation of evidence, adduced in the consolidation proceeding on behalf of the parties that the private respondents could not establish their case that there was a partition in the family in 1930. Without meeting the said finding of the appellate authority and without assigning any reason why the said finding was incorrect, in my opinion, the revisional court could not have reversed the decision of the appellate authority.

9. The giving of reasons is one of the fundamentals of good administration even in respect of administrative orders, observed Lord **Denning M.R. in Breen v. Amalgamated Engg. Union**, reported in **(1971) 1 All ER 1148**. In **Daya Ram vs. Raghunath**, reported in **(2007) 11 SCC 241**, the Supreme Court has noticed with approval the following observation made in case of **Allexander Machinery (Dudley) Ltd. Vs. Crabtree**, reported in **(1974) 1 CR 120:-**

“ Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrive at.”



10. The Supreme Court observed that spelling out reasons for the order made is one of the salutary requirements of natural justice.

11. In the State of **Rajasthan Vs. Sohan Lal**, reported in **(2004) 5 SCC 573**, the Supreme Court has observed that the giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. The said view came to be reiterated subsequently in the case of **Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd.**, reported in **(2010) 13 SCC 336**. In case of **S.N.Mukherjee Vs. Union of India** reported in **(1990) 4 SCC 594**, the Constitution Bench of the Supreme Court observed that the purpose of disclosure of reasons is that people must have confidence in the judicial or quasi-judicial authorities, which minimizes the chances of arbitrariness. The Supreme Court in the said case of **S.N.Mukherjee Vs. Union of India** (supra) has added that recording of reasons in support of a decision is an essential requirement of the rule of law, even if it is an order of affirmation.

12. In case of **Board of Trustee of Martyrs Memorial**



Trust Vs. Union of India, reported in **(2012) 10 SCC 734**, the Supreme Court reiterating the earlier view, has observed that a slipshod consideration or cryptic order or decision without due reflection on the issue raised in a matter, may render such decision unsustainable.

13. The submission of Mr. V.R.P. Singh, learned counsel for the private respondents that the consolidation court cannot adjudicate upon question of partition in the joint family property and respective shares of the members of the family is unacceptable, in view of the decision of this Court in case of **Sheojoti Jyoti Devi** (supra), relevant portion of which has been quoted hereinabove, whereby the matter was remanded back to the Consolidation Officer.

14. The revisional court, under the scheme of the Act, is a final court of fact. It is the duty of the revisional authority to examine, discuss and record his finding(s) on the basis of the materials on record, which has not at all been done in the present case.

15. The impugned order dated 09.08.1993/12.08.1993 (Annexure-3), passed by the Joint Director of Consolidation, Muzaffarpur, is thus unsustainable in the light of the aforementioned discussions and is accordingly set aside. The



matter is remitted back to the Director of Consolidation, Bihar, Patna, to pass an order afresh, after giving the parties due opportunity of hearing, in accordance with law.

16. This writ application is, thus, allowed with the direction, as above.

17. There shall be no order as to cost(s).

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	NIL
Uploading Date	18. 05.2019
Transmission Date	

