

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.675 of 2013

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Bans Narayan Dubey Son Of Late Chandrika Dubey Resident Of Village-
Baispura, Police Station- Karghar, District- Rohtas Sasaram

... .. Petitioner

Versus

1. The State Of Bihar
2. The Joint Director Of Consolidation, Bihar, Patna
3. Kashi Nath Dubey Son Of Late Rajinder Dubey Resident Of Village-
Baispura, Police Station- Karghar, District- Rohtas Sasaram

... .. Respondents

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Appearance :

For the Petitioner :	Mr. Jyoti Ranjan
For the Respondent State:	Mr. Kumar Kamal Nayan, AC to SC-28
For the Pvt. Respondent :	Mr. Rewti Kanti Raman
	Mr. Mahesh Prasad No. 2
	Mr. Ajay Pathak

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

12 06-08-2019 An order, dated 20.03.2009, passed by the learned Joint Director, Consolidation, Bihar, Patna, in Revision Case No. 37 of 2000, exercising power under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, has been put to challenge in the present writ application.

I have heard learned counsel appearing on behalf of the petitioner and learned counsel representing the State as well as the private respondent.

The facts, for the present adjudication, are not much in dispute. It is evident from the impugned order, dated



20.03.2009, that the Joint Director entertained a revision application, filed by the contesting private respondent Kashi Nath Dubey, against an order dated 09.04.1990 passed by the Consolidation Officer, Kargahar, Rohtas. The petitioner and the private respondent No. 3 have common ancestors. Admittedly, no objection was raised during the publication of registers of lands and settlement of principles as stipulated under Section 10 of the Act. Section 10A states that no objection in respect of any entry made in the map or registers prepared under Section 9 of the Act or the statement of principles prepared under Section 9A of the Act relating to the consolidation area, which might or ought to have been raised under Section 10 of the Act, but has not been raised, shall be raised or heard at any subsequent stage of consolidation proceeding. Admittedly, no such objection was raised on behalf of private respondent and after 10 years of passing of the order by the Consolidation Officer under Section 10 of the Act, he filed his revision under Section 35 of the Act before the Director, Consolidation, which came to be allowed by the impugned order dated 20.03.2009.

Learned counsel appearing on behalf of the petitioner, assailing the impugned order, has submitted that ignoring the fact that respondent No. 3 had the remedy of appeal, against the



order of the Consolidation Officer passed in 1990, without filing any appeal, he straightaway filed the revision application ten years after passing of the order, which has been wrongly entertained and allowed by the Joint Director Consolidation, Bihar.

It has been further argued that it was incumbent upon the Joint Director, Consolidation, to have assigned the reasons why he was entertaining the revision application despite there was no objection raised by respondent No. 3 before the Consolidation Officer.

Mr. Rewti Kant Raman, learned counsel appearing on behalf of respondent No. 3, on the other hand, has submitted that power of the Director, Consolidation/Joint Director, Consolidation, under Section 35 of the Act, is wide and supervisory in nature. According to him, no limitation period has been prescribed for making an application under Section 35 of the Act nor power under Section 10A of the Act can take away power of the Director of revision under Section 35 of the Act.

He has placed reliance on a decision of this Court in the case of *Ram Sundar Chaudhary and Ors. vs. Ram Nath Chaudhary and Ors.*, reported in 2003(2) PLJR 184, to



contend that the revision application can be directly filed under Section 35 of the Act without taking recourse to remedy of appeal and bar created by Section 10A of the Act is not applicable for invoking provisions of Section 35 of the Act.

Submission made on behalf of respondent No. 3 that revisional power of the Director, under Section 35 of the Act, is not at all affected by the bar, under Section 10A of the Act, is unexceptionable. This view has been taken by the Full Bench of this Court in case of *Seikh Haidar Zan vs. Md. Yusuf Ansari and Anr.*, reported in **2000(2) PLJR 338** and has been relied on subsequently in Division Bench decision in case of *Ram Sundar Chaudhary* (supra). The said Full Bench decision in case of *Seikh Haidar Zan* (supra) was subject matter of consideration before recent Special Bench in case of *Chourasia Devi vs. The State of Bihar & Ors.* (C.W.J.C. No. 5416 of 1983 and another analogous matter). The Full Bench, in case of *Chourasia Devi* (supra), referring to Full Bench decision in case of *Seikh Haidar Zan* (supra), has held in paragraph 8 as follows :

“8. Thus, the unanimous view of the Full Bench categorically ruled that Section 10A of the Act does not operate as a bar in the exercise of the revisional jurisdiction under Section 35 of the Act. The question, therefore, stands answered squarely by the aforesaid Full Bench and after



having gone through the provisions, we also concur with the same and do not find any reason to disagree with the view taken by the Full Bench in the aforesaid case of Seikh Haidar Zan (supra).”

Further, Section 35 of the Act does not prescribe any period, during which a revisional application is to be filed. Language of Section 35 of the Act is quite wide and empowers Director, Consolidation, to call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the legality of the proceeding or as to the correctness or propriety of an order passed by such authority either on his own motion or on the application of any party or on request being made by any subordinate authority.

However, from the impugned order, I find that the Director, Consolidation, has not at all discussed in impugned order, the effect of Section 10A of the Act. Though it was within his jurisdiction to have passed appropriate orders on the basis of materials available before him, consider the legality and propriety of the orders passed by the authorities under him, he had a duty to consider failure on the part of respondent No. 3 to raise objection under Section 10(2) of the Act. What is noticeable from the impugned order is that the Joint Director, Consolidation, has completely overlooked the bar under Section



10A of the Act. The matter would have been entirely different had he considered this aspect and in the facts and circumstances of the case, he could have arrived at a conclusion that despite the bar under Section 10A of the Act, it was in the interest of justice to exercise his power under Section 35 of the Act in the facts and circumstances.

Further, though Section 35 of the Act does not prescribe for any period of limitation within which revision application can be filed or the Director, Consolidation, can *suo motu* proceed to consider legality or propriety of an order passed by the Consolidation authorities, in the present case, the application was filed nearly 10 years after passing of the order before the Director, Consolidation, under Section 35 of the Act. Absence of period, prescribed under Section 35 of the Act for making an application, will not mean that a revision application can be filed at any point of time and the power can be exercised whenever the Director wishes to exercise. There must be reasonable period within which such application can be entertained or such power can be exercised. What should be revisionable period, will surely depend upon the facts and circumstances of each case. Power, which the Director exercised, is of general superintendence, supervision and control



over the Consolidation authorities. He can entertain belated claims, if there is explanation available. My opinion finds support in Division Bench decision of this Court reported in case of *Shyam Bihar Upadhyay and others vs. The State of Bihar and others*, reported in 1985 PLJR 42, paragraph 10 of which reads under under : -

“10. Coming to the facts of the present case, it is an admitted position that respondents 6 to 8 did not file any objection under section 10(2) of the Act. As such, the bar prescribed under section 10-A operated against them. They could not have taken an objection in respect of the entry under section 12(2) because sub-section (2) of section 12 opens with the words “subject to the provisions contained in Section 10A.” The Consolidation Officer, while allowing that objection by his order dated 12.2.1983, overlooked the bar imposed by section 10-A of the Act. As such, that order cannot be sustained. The Director of Consolidation did not notice this aspect of the matter while dismissing the application of the petitioners. The matter would have been different if in exercise of his revisional jurisdiction he had come to the conclusion that in the facts and circumstances of the case it was only just and proper that respondents 6 to 8 should have been allowed to file an objection for the ends of justice. But, as none of the aforesaid questions has been considered by the learned Director, Consolidation, I am left with no option but to allow this application and set aside the order dated 5.3.1984 passed by him. The application is, accordingly, allowed. The revision application shall be heard afresh and shall be disposed of in accordance with law in light of the observations made above.”



Even writ Courts, exercising power of judicial review, under Article 226 of the Constitution of India, refuse to entertain belated claims in the absence of any plausible explanation.

For the reasons above, I am of the view that the impugned order of the Joint Director, Consolidation, requires interference by this Court. The impugned order, dated 20.03.2009, passed by the Joint Director, Consolidation, in Revision Case No. 37 of 2000, is accordingly quashed. The matter is remanded back to the Director, Consolidation, for passing an order afresh.

This application is allowed.

(Chakradhari Sharan Singh, J)

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