

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2869 of 2015

1. Paras Nath Jha Son of Late Yogendra Jha
2. Govind Kumar Jha Son of Late Yogendra Jha
3. Chandan Kumar Jha Son of Late Nawal Kishore Jha
All are resident of village - Rupasipur, P.S. Mahnar, District -
Vaishali, Presently residing at village - Pauram, P.S. Hayaghat, District -
Darbhanga

... .. Petitioners

Versus

1. The State Of Bihar
2. The Deputy Director, Consolidation, Vaishali at Hajipur
3. The Consolidation officer, Mahnar, PS and Circle office - Mahnar, District -
Vaishali
4. The Member, Administrative, Bihar Land Tribunal, Patna
..... Respondent 1st Set
5. Ram Prit Rai
6. Ram Dayal Rai
7. Shiv Dayal Rai All S.No. 5 to 7 are sons of Late Ram Sharan Rai resident of
village - Panapur, Makhkhanpur, PS and Circle office - Mahnar, District -
Vaishali
8. Devendra Nath Thakur Son of Surya Narayan Thakur
9. Birendra Kumar Thakur Son of Surya Narayan Thakur
10. Rakesh Chandra Thakur Devendra Nath Thakur
11. Lalit Narayan Thakur Devendra Nath Thakur All S.No. 8 to 11 are resident
of village - Karnauti, at Present residing at village - Rupasipur, P.S. Mahnar,
District - Vaishali
..... Respondent 2nd Set

... .. Respondents

Appearance :

For the Petitioners	:	Mr. J. S. Arora, Senior Advocate
		Mr. Jitendra Kumar, Advocate
For the Respondent State:		Mr. Ajay Bihari Sinha, SC-19
For Respondent Nos.5 to 7:		Mr. Naresh Chandra Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH



ORAL JUDGMENT

Date : 17-06-2019

An order, passed by learned Member (Administrative), Bihar Land Tribunal, dated 29.12.2014, in B.L.T. Case No. 08 of 2014 is being assailed in the present writ application. The dispute before the Tribunal arose out of a consolidation proceeding under Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act'). The learned Member of the Tribunal by the impugned order has affirmed the order, dated 27.03.2009, passed by the Director, Consolidation, Bihar in Consolidation Revision Case No.181 of 2008, whereby the Director, Consolidation, had upheld the decision of the Deputy Director, Consolidation, holding title over land in question, in favour of the respondents 2nd Set, on the ground of their adverse possession.

2. Certain facts are not in dispute relating to the land in question appertaining to revisional survey plot No. 222, 223 and 224, under Khata No.34, admeasuring 1.33 acre, situate at Mauza Raupasipur, Thana No. 594 in the district of Vaishali. The aforesaid land was acquired by Yogendra Jha through a gift deed, dated 19.11.1972, executed by Most. Chullah Kunwar. Petitioners No. 1 and 2 are sons of said Yogendra Jha and petitioner No.3 is



the grandson of said Yogendra Jha and son of Nawal Kishore Jha. Yogendra Jha had, admittedly, three sons, namely, Nawal Kishore Jha, Paras Nath Jha (petitioner No.1) and Govind Kumar Jha (petitioner No.2). An agreement of sale was executed in respect of the said land in favour of respondents 2nd Set on 03.01.1989, which is also not in dispute. It is the case of these petitioners that a sum of Rs.2,28,450.00 was agreed upon between the parties to be the consideration amount out of which only Rs.81,101.00 was paid by respondents 2nd Set at the time of execution of the sale agreement and the rest was required to be paid before 15.06.1989. It is also their case that the agreement to sale categorically provided that in the event of non-payment of the remaining amount, the advance amount shall stand forfeited. There was no clause for handing over possession of the land in the agreement to sale and no possession was handed over to the respondent 2nd Set, of the land, at any point of time, petitioners contend. It is the specific case of the petitioners that the remaining amount of consideration was not paid to them by the respondent 2nd Set at any point of time.

3. The petitioners have also asserted that they subsequently transferred part of the land through various registered sale deeds in favour of the respondent 2nd Set and delivered to the vendees, possession over the said land in 1998 and 2008.



4. The stand of the contesting respondents as taken in the affidavit, on the other hand, is that the remaining consideration amount was paid to the petitioners and the required prior permission was obtained from the Consolidation officer under Section 5 of the Act. In support of this plea, annexures to the counter affidavit have been brought on record. The said annexures do not, however, establish that prior permission was obtained, as contemplated under Section 5 of the Act, in my view. It is also the case of the contesting respondents that they were put into possession as part performance of the agreement of sale. There is, thus, denial by the contesting respondents No. 5 to 7 of the plea of petitioners that they were not given possession and they had not paid the remaining amount. There does not appear to be any dispute that a registered sale deed was executed by the petitioners in respect of the lands in question in favour of the contesting respondents No. 5 to 7.

5. As has been noted at the outset, the agreement to sale was executed on 03.01.1989. The contesting respondents filed an application on 17.12.1997 before the Deputy Director, Consolidation, for correction of *chakbandi khatiyan*, on the basis of agreement to sale dated 03.01.1989, which was allowed within two weeks on 31.12.1997 by an *ex-parte* order. They, thereafter,



filed Mutation Case No. 170 of 2008-09 on 02.06.2008 for mutating the lands in their favour, which was allowed by the Circle Officer, Mahnar, on 17.07.2008 on the strength of the order, dated 31.12.1997, passed by the Deputy Director, Consolidation. According to the petitioners, on the other hand, since they were unaware of the order dated 31.12.1997 passed by the Deputy Director, Consolidation, in 2008, when the respondents started creating hindrance in peaceful possession and engagement of the vendees of these petitioners, the petitioners filed a revision application before the Director, Consolidation, giving rise to Consolidation Revision Case No.181 of 2008.

6. There is also an assertion in the writ application that a proceeding under Section 144 of the Code of Criminal Procedure, initiated at the instance of respondent No.11, was decided by the Sub Divisional Magistrate, merely on the basis of the order passed by the Deputy Director, Consolidation.

7. The Director, Consolidation, set aside the order dated 31.12.1997 as beyond jurisdiction by his order dated 27.03.2009, after accepting the contention that the Deputy Director did not have any jurisdiction to entertain a petition under Section 10(2) of the Act rather he had power under Section 10(6) of the Act to hear an appeal against an order passed by the Consolidation Officer. It



is quite peculiar, however, that after having set aside the order of the Deputy Director, the Director, Consolidation, proceeded to decide the dispute of title and declared title of the contesting respondents on the ground of adverse possession, after recording his finding that the possession of the said respondents was uninterrupted, continuous and running over for more than statutory period of 12 years.

8. The said order of the Director, Consolidation, has been affirmed by the Tribunal by impugned order dated 29.12.2014.

9. I have heard Mr. J.S. Arora, learned senior counsel appearing on behalf of the petitioners and Mr. Naresh Chandra Verma, learned counsel representing the contesting respondents. Learned State counsel has also been heard.

10. Mr. Arora has relied on the decision of the Supreme Court in case of ***Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Ors.***, reported in (2014) 1 SCC 669, to contend that in the first place, the Director Consolidation, did not have the occasion to deliberate upon the question of adverse possession and, in any case, the plea of an adverse possession can be taken as defence only. Paragraph 8 of the decision in case of ***Gurudwara***



Sahib (supra), has been relied on and is being quoted hereinbelow : -

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

11. It is abundantly clear from the above that an application filed by contesting respondents No. 5 to 7 before the Deputy Director, Consolidation, for correction of the entries in *Chak Khatiyani* is the foundation of both the orders passed by the revisional Court and the Tribunal. The Deputy Director, admittedly, did not have the authority to entertain the application, which he had entertained and passed an order within two weeks of making of the application, without even noticing the petitioners, who had executed the agreement of sale. The foundation itself being incompetent, revisional authority, i.e., the Director, Consolidation, ought not to have proceeded any further to decide the disputes between the parties. Before the Director, Consolidation, an order passed by the Deputy Director, in 1997, without his jurisdiction, behind the back of the petitioner, was under challenge. Mr. Arora is correct in his submission that the



revisional Court ought not to have proceeded to decide title on the basis of adverse possession, in the facts and circumstances noted above.

12. This aspect has not been looked into by the learned Member (Administrative), Bihar Land Tribunal, in the impugned order dated 29.12.2014. In view of the discussions as above, all the three orders, passed by the Deputy Director, Consolidation, dated 31.12.1997, the Director, Consolidation, dated 27.03.2009 in Consolidation Revision Case No.181 of 2008 and Bihar Land Tribunal in B.L.T. Case No. 08 of 2014 dated 29.11.2014 are set aside.

13. This writ application is allowed.

14. It goes without saying that the parties shall be at liberty to approach appropriate forum in accordance with law for adjudication of their disputes.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	29.06.2019
Transmission Date	N/A

