

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14729 of 2019

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Bharat Ojha S/o Late Indrajit ojha, Resident of Village- Baraka Singhanpura,
P.O.- Barka Singhanpura, P.S.- Simari, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar Through Collector, Buxar.
2. The, Joint Director Consolidation Bihar, Patna.
3. Abhay Raj Ojha, S/o Late Surendranath Ojha, Resident of Village- Barka Singhanpura, P.O.- Barka Singhanpura, P.S.- Simari, District- Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey, Adv.
	:	Mr. Kumar Gaurav, Adv.
	:	Mr. Bambam Sharma, Adv.
For the State/s	:	Mr. Md. Khurshid Alam (AAG-12)
	:	Mr. Nutan Sahay, AC to AAG-12
For the Respondent No.3:	:	Mr. Abhishek, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-08-2023

Heard learned counsel for the petitioner, counsel
for the State and counsel for the private respondent No.3.

2. The present writ petition has been filed for quashing the order dated 14.09.2018 passed by Bihar Land Tribunal in B.L.T. Case No. 1106 of 2016 and also the order dated 22.09.2016 passed by Joint Director, Consolidation, Patna in Revision Case No. 89 of 2015.

3. Counsel for the petitioner submits that the land in dispute is R.S. Khata No. 402, R.S. Plot No. 178 having its area 0.68 Decimal corresponding to C.S. Khata No. 198, C.S. Plot No. 118 area 38 Decimal and C.S. Plot No. 119 area 30 Decimal

at Mauza- Paigambarpur, Revenue P.S. No. 88 Anchal- Simar,
District- Buxar.

4. Counsel submits that the aforesaid land was originally belongs to Dumraon Raj. The then Ex-landlord of Dumraon Raj namely, Beni Prasad Kuar has settled the land in favour of petitioner's father, namely, Indrajeet Ojha through Patta Kabuliyat in the year 1915 itself and handed over possession to him. Since then, the father of the petitioner started paying rent to the then Ex-landlord and at the time of vesting of Jamindari, Ex-landlord has submitted return in Case No. 38 of 1954 dated 03.05.1954 with respect to land in question in favour of the petitioner. Accordingly, the name of petitioner's father, namely, Indrajeet Ojha has entered in the record of rights (Register-II) and Jamabandi has also been created in his name and since then, he is paying the rent to the Government of Bihar.

5. Counsel further submits that in the revisional survey records of right, his said land was recorded as Anabad Bihar Sarkar in the R.S. Khatian, but the petitioner was continued in the possession of the said land. Counsel submits that when the consolidation operation has started in his village, then he has filed an application being Consolidation Case No. 23 of 1991 with a prayer to correct the wrong survey entry and

vide order dated 21.03.1991, the Chak Khatiyani was prepared in the name of the petitioner for the said land.

6. Counsel further submits that the Circle Officer, Simri on the basis of order passed by the Consolidation Officer, has fixed the rent by virtue of Rent Fixation Case No. 01 of 2006-07. He further submits that the order was finally passed in Rent Fixation Case No. 01 of 2006-07 vide order dated 16.05.2007 in favour of the petitioner and on the basis of same, Jamabandi No. 80 was opened in the name of petitioner in Register- II and since then, he is paying the rent.

7. Counsel further submits that he has also taken Bank loan for agricultural purposes on the said land. He further submits that he has also got electric connection over the said land for agricultural purpose and opened shop over the said land in the name of "Jyoti Khad Bandar".

8. Counsel submits that the private respondent has directly filed an application before Consolidation Director being Consolidation Revision No. 89 of 2005 challenging the order dated 21.03.1991 passed in Consolidation Case No. 23 of 1991 claiming his title over the land on the ground that same has been settled with him by the ex-landlord and he used to pay rent to ex-landlord after vesting the estate to the State of Bihar. The

said revision application was dismissed vide order dated 22.09.2016, but the revisional court at the time of rejecting the revision application of private respondent No.3 being petitioner in revision case, has also rejected the claim of the petitioner being opposite party in revision case which he has filed by virtue of reply in the revision application. Against the said order, the petitioner has preferred the Bihar Land Tribunal and B.L.T. has also rejected the claim of the present petitioner, therefore, he has preferred the writ petition.

9. Counsel submits that the rejection of the claim of the petitioner by the revisional authority, is basically illegal. Counsel also submits that respondent No.3 has filed a Title Suit No. 269 of 1995 for declaration of his right and title over the disputed land.

10. Counsel for the State submits that there is no need of interference in the order either passed by the revisional authority or passed by Consolidation Officer, due to the reason that in the revisional survey, the disputed land has been recorded in the R.S. Khatiyar as Anabad Bihar Sarkar.

11. Counsel for the private respondents has filed a separate counter-affidavit and submits that the petitioner has filed the present writ petition in order to grab the Government's

land which is being used by the local villagers since long. He submits that the revisional survey khatiyani was prepared in the name of the State of Bihar and no one raised objection during revisional survey operation. He further submits that at the stage of Section 10 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, no one has raised objection then entertainment of objection at the stage of Section 10(A) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 cannot be entertained. He also raised objection that the petitioner's father got settlement of the land from ex-landlord then, there was no need of filing rent fixation case by the petitioner in his name. He submits that the Rent Fixation Case No. 01 of 2006-07 was not related to the petitioner. Counsel submits that the Title Suit No. 269 of 1995 was filed by the private respondent no.3.

12. Upon considering the documents and hearing the pleadings, the question which is necessary to be discussed for adjudication of this case is as follows:-

whether the revisional authority at the time of deciding the revision shall allow or reject the case of the revisionist or he is empowered to decide the claim of the O.P. who is defending his stand in revision case?

13. In view of this court, the answer to the above question is that the revisional authority while testing the revision i.e. the case of the revisionist, shall either allow the revision or dismiss the revision. The revisional court has rightly dismissed the revision, but in view of this court, his one line finding rejecting the Opposite Parties/ respondent's plea is bad in law and that aspect has completely been ignored by the B.L.T. in its order.

14. The State of Bihar has filed a supplementary counter-affidavit dated 17.07.2023 in which a categorical stand has been taken that Rent Fixation Case No. 01 of 2006-07 was filed by the petitioner and it was decided in his favour up to the level of S.D.O. Dumraon. In this view of the matter, the contention of private respondent No.3 that Rent Fixation Case No. 01 of 2006-07 is not related to the petitioner is not correct and, therefore, the plea of respondent No.3 is not accepted.

15. Counsel for the petitioner in response to the counter affidavit filed by respondent No.3 submits that Title Suit No. 269 of 1995 has been filed by respondent No.3 and the said title suit has already been dismissed for default due to non-prosecution and against the said order, no application for restoration of the title suit has been filed and presently, it

become time barred.

16. With regard to the Title Suit No. 269 of 1995 filed by the respondent, counsel for the petitioner submits that it has already been dismissed for default due to non-prosecution. Upon query from the counsel for the respondent, whether any restoration has been filed or not? Counsel in reply submits that no restoration has been filed. As such, the dismissal of title suit shall also become the subject to limitation.

17. In the light of the above discussion, this court hereby reached at the conclusion that the order dated 14.09.2018 passed by B.L.T. Case No. 1106 of 2016 is not in accordance with law and, therefore, set aside. So far as the order dated 22.09.2016 passed by revisional authority in Consolidation Revision Case No. 89 of 2015 is concerned, it is also set aside only up to the extent that the revisional court has no right to reject the claim of opposite parties (petitioner's plea) by way of giving one line finding and this part as mentioned in order dated 22.09.2016 passed in Consolidation Revision Case No. 89 of 2015 is hereby set aside. However, the rest part which has been passed with respect to dismissal of revision with regard to revisionist, the order dated 22.09.2016 passed in Consolidation Revision Case No. 89 of 2015 shall sustain.

18. The finding of Bihar Land Tribunal is also incorrect in the light of supplementary counter-affidavit filed by the State by which it is crystal clear that *Lagan-Nirdharan* Case No. 01 of 2006-07 was decided in favour of petitioner.

19. With the aforesaid direction, the present writ application stands allowed.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
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