

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.591 of 2024**

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Sheo Murat Tiwary Son of Late Deo Narayan Tiwary Resident of Village  
Belaon, Police Station- Bhagwanpur, District- Kaimur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar.
2. The Director, Consolidation Headquarter, Bihar, Patna.
3. The Joint Director, Consolidation Headquarter, Bihar, Patna.
4. The Consolidation Officer, Bhagwanpur, Kaimur
5. Bhairon Tiwary Son of Late Deo Narayan Tiwary, resident of Village Belaon, Police Station- Bhagwanpur, District- Kaimur.
6. Ram Murat Tiwary Son of late Deo Narayan Tiwary, resident of Village Belaon, Police Station- Bhagwanpur, District- Kaimur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate  
Mr. Praveen Ranjan, Advocate  
For the Respondent/s : Mr. Standing Counsel-16

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**

ORAL ORDER

2      02-05-2024                      Heard Mr. Sanjeev Kumar Singh duly assisted by Mr.

Praveen Ranjan, learned counsel for the petitioner and the State.

2. The present writ petition has been preferred for  
grant of following relief:-

*“For quashing the order dated 05.07.2023*

*passed in BLT case no. 115/2020 by learned  
Member, Bihar Land Tribunal, whereby the  
application of the petitioner challenging order  
dated 02.08.2019 passed in Consolidation  
Revision case no. 241/2018 has been rejected on  
non-est grounds.*

*ii. For further setting aside of order dated*



*02.08.2019 passed by Joint Director, Consolidation (HQ), Bihar, Patna in Consolidation Revision case no. 241/2018, whereby the claim of respondents no. 5 & 6 has been allowed directing for preparation of chak khatiyani in joint name of all brothers, without setting aside order dated 14.06.1982 passed by Consolidation Officer in Consolidation case no. 07/1981-82.*

*(iii) In consequent thereof, for affirming the order dated 14.06.1982 passed by Consolidation Officer in Consolidation case no. 07/1981-82, whereby the claim of the petitioner has been found to be valid and direction has been issued to make necessary correction in the records, recording the name of the petitioner in place of his mother and father.*

*(iv) For any other order/orders for which petitioner is entitled for in the facts and circumstances of the case.”*

3. Learned counsel for the petitioner submits that he and the respondent Nos. 5 and 6 are full brothers, sons of late Deo Narayan Tiwary.

4. The case of petitioner is that he and respondent



Nos. 5 and 6 are full brothers, being the sons of late Deo Narayan Tiwary. The partition took place between them prior to revisional survey operation and the suit land was allotted in the share of petitioner (Sheo Murat Tiwary) and he as also the respondent nos. 5 and 6 were making payment of water rent and rent receipt was issued by the State Govt. separately.

5. During revisional survey operation, by mistake of survey authority, the disputed land was recorded in the name of the parents of the petitioner and the respondent 5 and 6. The petitioner filed Case No. 07 of 1981-82 before Consolidation Officer, Bhagwanpur for making necessary correction in survey khatian who after hearing him and holding local enquiry and having found the possession of the petitioner over the suit land vide order dated 14.06.1982 allowed the case. No appeal or revision was filed against aforesaid order and the same attained finality.

6. After lapse of 28 years, the respondents set filed Consolidation Revision Case No. 235 of 2010 before the Director Consolidation (HQ) Bihar, Patna who vide an order dated 05.11.2014 sent the case to Consolidation Officer, Bhagwanpur for disposal in accordance with law.

7. The Consolidation Officer issued notice to both the



parties. During the pendency of case, the respondents filed application before Consolidation Officer, Bhagwanpur to expunge the name of Prabhawati Devi and prayed for inclusion of some other land of the case which was rejected vide an order dated 28.07.2016.

8. Thereafter, the respondent nos. 5 and 6 filed Consolidation Revision Case No. 241 of 2018 before the Joint Director, Consolidation (HQ), Bihar, Patna, who vide an order dated 02.08.2019 allowed the claim. The same was thereafter challenged before the Bihar Land Tribunal.

9. The case of the respondent nos. 5 and 6 is/are that they are own brothers.

10. Further, no partition took place between the petitioner and the respondents. The consolidation khatian of ancestral land was jointly prepared in the name of petitioner and the respondent Nos. 5 and 6, Sheo Murat Tiwary, Bhairo Tiwary and Ram Murat Tiwary.

11. This followed the mutation of names in the Govt. Serista whereafter the petitioner and the respondents are jointly started paying the rent of the ancestral land bearing Khata No. 23 (area 11.29 acres) to the State Govt and obtaining rent receipts of the same. As the disputed land is joint family



property of petitioner and respondent nos. 5 and 6 survey khatian of disputed land was rightly prepared in the names of their father and mother.

12. The petitioner filed application before the Consolidation Officer, Bhagwanpur vide Consolidation Case No. 07 of 1981-82 for correction of revisional survey khatian, which was prepared in the name of father of both the parties. The Consolidation Officer after holding local inspection found the possession of family of Deo Narayn Tiwary and accordingly vide an order dated 14.06.1982 ordered for necessary correction of R.S. Khatian in the name of petitioner treating him as member of joint family. It is principle of Hindu Undivided Family Property that possession of one co-sharer is the possession of all the co- sharers.

13. Thus there was no need to file appeal or revision against aforesaid order of Consolidation Officer after necessary correction by the Consolidation Officer in R.S. Khatian in the name of petitioner by order dated 14.06.1982. However, later on dishonesty cropped up in the mind of petitioner with respect to disputed land. Thereafter, the respondent nos. 5 and 6 filed Consolidation Revision Case No. 235 of 2010 before the Director, Consolidation (HQ), Bihar, Patna who vide an order



dated 05.11.2014 sent the case to Consolidation Officer, Bhagwanpur.

14. The Consolidation Officer dismissed the case vide an order dated 28.07.2016 holding that correction of R.S. Khatiyani by court is not within his jurisdiction. The respondent nos. 5 and 6 thereafter filed Consolidation Revision Case No. 241 of 2016 before the Joint Director Consolidation (HQ), Bihar, Patna against order of Consolidation Officer who held that the petitioner (Sheo Murat Tiwary) did not file any document with regard to partition in the family. The Revisional Court after perusing the consolidation khatiyani of land in dispute in the joint name of all the brothers and rent receipt issued with respect to 11.29 acre of land of Khata No. 23 allowed the revision application vide an order dated 02.08.2017 directing the Consolidation Officer to prepare consolidation khatiyani allotting equal share to all the co-sharers. The consolidation khatiyani was accordingly corrected in compliance of order passed by Joint Director Consolidation in the name of all three brothers namely, Sheo Murat Tiwary, Bhairon Tiwary and Ram Murat Tiwary by the Consolidation Authority.

15. Aggrieved, the petitioner moved before the Bihar Land Tribunal in BLT Case No. 115 of 2020.



16. After going through the facts of the case and the submissions put forward by the parties 'the BLT' vide a reasoned order dated 05.07.2023 dismissed the petition put forward by the petitioner and the reasons have been assigned in paragraphs 16 to 25 which read as follows:-

*"16. Having heard the parties and from perusal of the impugned order as well as statement made in the main petition, counter affidavit, reply to the counter affidavit and supplementary counter affidavit, this Tribunal finds that petitioner and opposite parties are own brothers. They are sons of late Deo Narayan Tiwary. It is admitted case that consolidation khatiyani of ancestral land was jointly prepared in the name of petitioner and opposite parties (all the brothers). Photocopy of consolidation khatiyani is annexed as Annexure-A to the counter affidavit filed by opposite party no. 1. The name of petitioner and opposite parties have been jointly mutated in Govt. Serista and they have been jointly paying rent of ancestral land of Khata No. 23 to the State Govt and getting rent receipt. Photocopy of Govt, rent receipt of the year 2013-14 is enclosed as Annexure-B to the counter affidavit filed by opposite party no. 1. The revisional survey khatiyani was prepared in the name of father and mother of petitioner and opposite parties.*

*17. This Tribunal finds that petitioner has filed petition before Consolidation Officer,*



*Bhagwanpur vide Consolidation Case No. 07 of 1981-82 for correction of R.S. Khatiyani in which land in dispute has been recorded under illegal possession of father of petitioner. The Consolidation Officer after holding local inspection found possession of family of petitioner over the land in question for last 30 years and accordingly ordered for correction in R.S. Khatiyani in the name of petitioner. The Consolidation Officer held in the order that local people stated before him that land in question have been coming in peaceful possession of family member of petitioner and on the basis of aforesaid submission finding possession of family member of petitioner, the Consolidation Officer has held in the order that land in question have been coming in possession of petitioner for last 30 years and accordingly ordered for necessary correction in R.S. Khatiyani.*

*18. The case of opposite party no. 1 as per statement made in Para- 1 of the counter affidavit that there was no need to file appeal or revision against aforesaid order of Consolidation Officer because consolidation khatiyani was corrected in the name of petitioner treating him member of joint family. This is principle of Hindu Undivided Family property that possession of one co-sharer is the possession of all the co-sharers. But dishonesty came in the mind of petitioner with respect to disputed land. Thereafter, opposite parties 1 set*



*filed Consolidation Revision Case No. 235 of 2010 before Director Consolidation (HQ), Bihar, Patna who by order dated 05.11.2014 sent the case to Consolidation Officer, Bhagwanpur for disposal in accordance with law. The Consolidation Officer by order dated 28.07.2016 dismissed the case stating that correction of khatian by this court is beyond his jurisdiction. Thereafter, opposite parties filed Consolidation Revision Case No. 241 of 2018 before Joint Director Consolidation, Bihar, Patna.*

*19. The Joint Director Consolidation has heard petitioner and opposite parties. The Revisional Court has held in the order that petitioner has not produced any document in the court in support of his claim that partition has taken place in the family. The Revisional Court has mentioned in the order that consolidation khatian has been prepared in the name of all three brothers and rent receipt is also issued in joint name of all three brothers (petitioner and opposite parties).*

*20. The opposite party no. I has mentioned in Para-10 of the counter affidavit that consolidation khatian of ancestral property measuring area 11.29 acre of land appertaining to Khata No. 23 has been prepared in joint name of all three brothers and rent receipt was also issued in joint name of all three brothers.*

*21. The petitioner has not produced any*



*document in this Tribunal to show that partition has taken place between all the three brothers prior to revisional survey operation. It is admitted position that R.S. Khatiyani has been prepared in the name of father and mother of petitioner and opposite parties. The petitioner had filed petition before Consolidation Officer vide Consolidation Case No. 07 of 1981-82 for correction of consolidation khatiyani wherein father of petitioner and opposite parties were shown as in illegal possession over the land in question, which was allowed by the Consolidation Officer. From order passed by Consolidation Officer in Case No. 07 of 1981-82 (Annexure-3) it is apparent that learned Consolidation Officer has considering the land in dispute to be in possession of family of petitioner for last 30 years ordered for necessary correction in consolidation khatiyani. It further appears that aforesaid order was passed in favour of petitioner on the basis of application filed by the petitioner. The other brothers of petitioner (O.P. Nos. 1 and 2) were not made party in aforesaid case. The learned Joint Director Consolidation has held in the impugned order that as per principles of Hindu Law petitioner and opposite parties have equal share in land in question and ordered for correction in consolidation khatiyani by recording name of all three brothers with respect to disputed land indicating equal share to all of them.*



22. This Tribunal finds that in compliance of order passed by Joint Director Consolidation in Consolidation Revision Case No. 241 of 2018 necessary correction has also been made in consolidation khatian, which has been enclosed by opposite party no. 1 as Annexure-D to the counter affidavit. Counsel for petitioner has relied on judgment of Hon'ble High Court reported in 2011(3) PLJR 542 (Bhanumati Devi vs. The State of Bihar & Ors.), which was affirmed by Division Bench of Hon'ble Patna High Court vide order dated 13.08.2013 passed in LPA No. 1166 of 2011 (Rajendra Prasad vs. The State of Bihar & Ors.) that the matter settled as far back in year 1982 cannot be challenged after 28 years in Revisional Court.

23. This Tribunal finds that the aforesaid order was challenged before Hon'ble Supreme Court in Civil Appeal No. 4378 of 2016 arising out of SLP (C) No. 37032 of 2013. The Hon'ble Supreme Court by judgment dated 19.04.2016 held that "The difficulty appears to have arisen on account of an observation made by the High Court which gives an impression as if the issue of Chak Khatian by the Consolidation Officer earlier in favour of the decree-holder, respondent herein, has attained finality. That observation was in our opinion wholly unnecessary. The true position is that the issue of any Khata had to await the final determination of the litigation between the parties".



24. *In the instant case learned Joint Director Consolidation has not set aside the earlier order passed by Consolidation Officer in Case No. 07 of 1981-82. The learned Joint Director Consolidation has only ordered to make necessary correction in consolidation khatiyan in terms of aforesaid order to record the land in dispute of Khata No. 233 and 234 for total 65 decimal in joint name of all three brothers because no partition has taken place till date among the brothers and chakbandi khatiyan has been prepared in joint name of all brothers and rent receipt is also issued in joint name of all brothers. The learned Joint Director Consolidation has held in the order that petitioner has not filed any document to show that family partition has taken place among the brothers prior to revisional survey operation. Similarly no any document has been filed by the petitioner in this Tribunal to prove that family partition among brothers has taken place prior to revisional survey operation. It is admitted case that in revisional survey land in dispute was recorded in the name of father and mother of petitioner and opposite parties.*

25. *Therefore, this Tribunal does not find any illegality in the impugned order passed by Joint Director Consolidation (HQ) Bihar, Patna in Consolidation Revision Case No. 241 of 2018 dated 02.08.2019.*

*This application is accordingly dismissed.”*



17. Still aggrieved, the present petition.

18. Learned counsel for the petitioner submits that the delay in approaching the Court by the respondents should have been taken into consideration by the respondents/BLT and in that background, the orders passed by 'the BLT' need to be interfered with.

19. Learned State counsel on the other hand submits that a perusal of the order would show that 'the BLT' had reason for coming to the conclusion that the petition is fit to be dismissed inasmuch as the petitioner being the *karta* of the family, his name got incorporated. The report of the Revenue Officials clearly show that upon inquiry, the local people informed that the land in question is in peaceful possession of the family members of the petitioner and nowhere it was informed to be in the exclusive possession of the petitioner.

20. This Court has also taken note of the orders of the Consolidation Officer, the Joint Director, Consolidation as also 'the BLT' and is in complete agreement with the findings of 'the BLT'.

21. The petitioner in the present case failed to produce any document before 'the Tribunal' as also before this Court to show that a partition indeed took place between the brothers



prior to the revisional survey operation. They belong to the same parents. Though the Consolidation Officer passed an order in his favour, he being the '*karta*' of the family, the same was rightly construed to be on behalf of the family. In that background, both the Joint Director, Consolidation and 'the B.L.T. were fully justified in passing the orders under challenge i.e. the order dated 02.08.2019 in Consolidation Revision Case no. 241 of 2018 and by 'the BLT' is/are just and proper and the orders need no interference.

22. The writ petition stands dismissed.

**(Rajiv Roy, J)**

Adnan/-

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