

Farid Singh Vs. State and ors

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Court : Patna

Decided On : Aug-30-2013

Appellant : Farid Singh

Respondent : State and ors

Judgement :

Patna High Court CWJC No.6537 of 1992 dt.30-08-2013 IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.6537 of 1992

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Farid Singh son of Garbhu Singh, resident of village + P.O.-Ismailpur, via Hazipur in the district of Vaishali. Petitioner/s Versus 1. The State of Bihar 2. The Joint Director, Consolidation, Muzaffarpur 3. Deputy Director of Consolidation, Vaishali at Hazipur 4. Ganga Singh son of late Tilu Singh 5. Smt. Meena Devi, daughter of Ganga Singh Nos. 4 & 5 are residents of village + P.O.-Ismailpur, via Hazipur in the district of Vaishali. Respondent/s

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Appearance : For the Petitioner/s : Mr. Ashutosh Jha, Advocate Mr. Narendra Pandey, Advocate For the Respondent Nos. 1 to 3 : Mr. Rajesh Kumar Verma, S.C. 27 Mr. R. K. Verma, A.C. to S.C. 27 For the Respondent Nos. 4 & 5 : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA ORAL

JUDGMENT

Date:

30. 08-2013 Heard learned counsel appearing on behalf of the petitioner and learned State counsel appearing on behalf of respondent Nos. 1 to 3. However, despite service of notice, none has appeared on behalf of respondent Nos. 4 and 5.

2. The petitioner is aggrieved by the order dated 10.5.1992 (Annexure-2) passed in Consolidation Revision Case No. 1025 of 1990 by the respondent Joint Director of Consolidation, Muzaffarpur, whereby the claim of right and title of respondent Nos. 4 & 5 with respect to the lands under dispute has been allowed.

3. Learned counsel appearing on behalf of the petitioner submits that after preparation of registers of lands under Section 9(2), statement of principles under Section 9A and their publication under Patna High Court CWJC No.6537 of 1992 dt.30-08-2013 Section 10(1) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short Act), no objection was filed by respondent Nos. 4 and 5 under Section 10(2) of the Act with respect to the entry made in favour of the petitioner. It has further been contended that after publication of draft consolidation scheme of holdings of lands, no objection was filed by the aforesaid respondents even under Section 12 of the Act.

4. It is highlighted on behalf of the petitioner that when the Mouza was confirmed under the provisions of the Act, then after a long time, respondent Nos. 4 and 5 filed a petition under Section 33A of the Act before the respondent Assistant Director of Consolidation, Vaishali, which was rejected by an order dated 16.4.1990 (Annexure-

1) passed in Misc. Case No. 148 of 1989. Respondent Nos. 4 and 5, being aggrieved by the aforesaid order, filed aforesaid Consolidation Revision Case No. 1025 of 1990 under Section 35 of the Act, which was allowed by the impugned order dated 10.5.1992 (Annexure-2) and issues of right and title between the parties have been decided, which according to him, is wholly without jurisdiction.

5. As noticed above, despite service of notice, none has appeared on behalf of respondent Nos. 4 and 5. No counter affidavit has been filed on behalf of any of the respondents.

6. Section 33A of the Act empowers the Consolidation Officer or the Assistant Director of Consolidation to make correction of clerical or arithmetical error apparent on the face of the record with respect to the entry made in the relevant records prepared under the provision of the Act. Section 33A of the Act does not provide for determination of dispute of right and title with respect to a particular plot of land between the parties.

7. Since, respondent Nos. 4 and 5 did not file any Patna High Court CWJC No.6537 of 1992 dt.30-08-2013 objection under Section 10(2) or 12 of the Act, therefore, petition filed on their behalf under Section 33A of the Act was rightly rejected by the respondent Assistant Director of Consolidation, Vaishali. The respondent Joint Director of Consolidation, Muzaffarpur, has exceeded his jurisdiction in deciding the right and title of the parties raised in terms of Section 33A of the Act. After confirmation of Mouza in question, he could not have embarked upon deciding the right and title of the parties with respect to the lands under dispute purportedly in exercise of his powers under Section 35 of the Act. The impugned order dated 10.5.1992 (Annexure-2) is the result of improper exercise of powers under Section 35 of the Act by the respondent Joint Director of Consolidation, Muzaffarpur, which cannot be sustained in law.

8. For the reasons recorded above, the impugned order dated 10.5.1992 (Annexure-2) passed in Consolidation Revision Case No. 1025 of 1990 by the respondent Joint Director of Consolidation, Muzaffarpur, is hereby set aside.

9. In the result, the writ petition stands allowed to the extent indicated above. However, there shall be no order as to costs. (Birendra Prasad Verma, J) sudip/-

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