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Court : Patna

Decided On : Feb-06-1997

Judge : R.M. Prasad, J.

Appeal No. : C.W.J.C. No. 2999 of 1986

Appellant : Lal Muni Devi Alias Kumar and ors.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Mr. Deogovind Prasad, Mr. Prasad

Disposition : Application Dismissed.

Judgement :

Radha Mohan Prasad, J.

1. In this writ application prayer is for quashing of the order dated 30.4.85 passed by the Deputy Director, Consolidation, Bihar, Patna, purporting to be in exercise of the revisional power under Section 35 of the Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as 'the Act') in Consolidation Revision No. 1652/81 a true copy whereof has been annexed as Annexure-1 as also the order dated 29.6.81 passed by the Dy. Director of Consolidation, Rohtas in Consolidation appeal case No. 267 of 1978-79, a true copy whereof has been annexed as Annexure-2, which has been affirmed in the

aforesaid revision and further prayer is for confirming the order dated 16.11.78 passed by the Consolidation Officer, Kargahar in Consolidation Case No. 117/78-79, a true copy whereof has been annexed as Annexure-3.

2. In short, the relevant facts are that the dispute relates to land appertaining to survey khata Nos. 49, 122 and 123 equivalent to R.S. Khata No. 172, comprising an area of 7.24 acres. The case of the petitioners is that one Rupkalia, was married to Thakur Mahto, who died leaving no issue. After the death of said Thakur Mahto, Rupkalia married Mahadeo Mahto and the original petitioner Sheobachan Mahto alias Sheobachan Singh is born from them. The cadestral Khata was prepared in the name of Mostt. Rupkalia. A true copy of the C.S. Khata with respect to the disputed land has been annexed as Annexure-4. However, revisional survey khata was prepared in the joint names of Sheobachan Singh and Daulatia, mother of respondent Nos. 5 to 8. The petitioner filed case under Section 106 of the Bihar Tenancy Act against the said survey entries, which was decided against him. The petitioner preferred Revision appeal No. 12 of 1975 before the court of Second Subordinate Judge, Arrah against the aforesaid decision. In the meantime, Consolidation scheme was initiated in the area by issuing notification under Section 3 of the Act. The petitioner claims to have filed an objection, which was registered as Consolidation case No. 103/78-79, which was decided in favour of Sheobachan vide order dated 16.11.68, wherein the Consolidation Officer, Kargahar (respondent No. 4) held that the mother of respondent Nos. 5 to 8 was not in possession of the disputed land and hence, he directed for deletion of the name of respondent Nos. 5 to 8 from the possession of land and further directed that the name of Sheobachan be recorded and Chak be prepared in his name. The mother of respondent Nos. 5 to 8 filed appeal before the Dy. Director Consolidation, Rohtas against the said order of the Consolidation Officer, Kargahar which was registered as appeal No. 267/78-79. The Dy. Director, Rohtas, vide impugned order dated 29.6.81 set aside the order of the Consolidation Officer, Kargahar and allowed the appeal.

3. The original petitioner Sheobachan preferred a revision in the Court of Director of Consolidation, Bihar against the said order dated 29.6.91, which was numbered as Revision Case No. 1562/81. The said revision was finally dismissed vide the

impugned order dated 30.4.85 and he affirmed the order of the appellate authority.

4. This writ application was admitted for hearing on 9.12.85. During the pendency of this case the sole petitioner Sheobachan Singh died and on an application filed on behalf of the legal heirs to expunge his name and to substitute the names of his legal heirs as mentioned in the substitution petition, the prayer for substitution was allowed by this Court vide order dated 19.3.96. Accordingly, the present petitioners, who claim to be the daughters of the original petitioner Sheobachan Singh are prosecuting this case.

5. According to the case of the petitioner, Daulatia is wife of Anup Singh and mother of respondent Nos. 5 to 8. She is daughter of Sheonandan Mahto of village Thakura Kalam P.S. Ramgarh in the district of Rohtas. Anup Singh is a man of village Sohwalia P.S. Kargahar in the district of Rohtas and both Daulatia and Anup Singh are strangers to the family of Rupkalia and not entitled to have any share in the property left by her. It is stated that the aforementioned revisional survey khata was wrongly prepared in the joint name of Sheobachan, the original petitioner and Daulatia, the mother of respondent Nos. 5 to 8. It is also stated that the Pariwarik Pustika of the family (Annexure-5) of Rupkalia does not contain the names of the ancestors of respondent Nos. 5 to 8. The petitioner claims to be in possession of rent receipts granted with respect to the land in question by the ex-landlords from 1346 to 1363 Fasli and also granted by the State of Bihar till 1970 after vesting of the land in the State.

6. The case of respondent Nos. 5 to 8 is that their mother Daulatia is daughter of Rupkalia and her first husband Thakur Mahto and Daulatia and Sheobachan are step sister and bother. Thus, according to their case, both of them have equal share in the property left by Rupkalia.

7. Mr. Deogovind Prasad, learned Counsel for the petitioners submitted that the Director, Consolidation was right in saying that the possession of one co-sharer is the possession of the other, but he failed to appreciate that Daulatia was not the co-sharer of the original petitioner. Rather she is stranger to the family. As such, according to him, no question of ouster of the co-sharer in the present case was involved, he also argued that the entire consolidation proceeding was conducted in

the manner contrary to the provisions contained in Section 9 and 10 of the Act, inasmuch as, there was no opinion of the village Advisory Committee obtained, nor any enquiry or spot verification by any authority, which is essential under Section 9 of the Act was conducted and objection invited before publication of registers of land and statement of principle. It was also submitted by him that the revisional authority has completely omitted to consider the documentary evidence produced by the original petitioner, such as, Pariwarik Pustika, rent receipts, etc. As such, the impugned orders are vitiated on account of non-consideration of the materials produced on behalf of the petitioners. It was further submitted by him that the mere entry in the R.S. Khatian showing Daulatia, mother of respondent Nos. 5 to 8 in joint possession with Sheobachan will not create any right and title of the respondents over the land in question.

8. On the other hand, learned Counsel for the respondents submitted that the so-called objection filed by the original petitioner was much beyond the prescribed period of 45 days and as such, it was not maintainable and barred by Section 10-A of the Act. In this behalf he referred to the statement made in paragraph 23 of the counter-affidavit filed on behalf of the said respondents and also the orders passed by the appellate authority as well as by the revisional authorities (Annexures 1 and 2 respectively. According to him, the petition filed before the Consolidation Officer on 30th November, 77 was one under Section 10-B of the act as it is evident from the order sheets dated 22.6.78, as mentioned in the appellate order (Annexure 2) as well as from the order dated 16.11.78 (Annexure 3) which clearly indicate that the case of the petitioner was entertained under Section 10-B as the suit under Section 106 of the B.T. Act had abated. The learned Counsel submitted that this was a clear misrepresentation of the fact by the petitioners because the suits under Section 106 of the B.T. Act were not abated rather they were disposed of on merit on 7.4.75 by the Revenue Court, against which the petitioner filed Revenue appeal No. 170/75 before the District Judge, Bhojpur, which also was dismissed on 4.4.81. Thus, according to him, the petitioner ought to have agitated the matter under Section 10 (2) of the Act at the appropriate stage, but having not done so, he was not entitled to raise and objection at any subsequent stage of consolidation proceeding in view of the bar imposed by the provision contained in Section 10-A of the Act.

9. Mr. Deogovind Prasad, in reply, submitted that it is true that the original petitioner could have filed objection earlier also, but as the matter regarding entry in the revisional Khatian was subjudice in the appeal preferred against the order passed on his petition under Section 106 of the B.T. Act, he filed his objection after abatement of the said appeal. As such, according to him, the case of the petitioner is squarely covered by the provisions contained in Section 10-B of the act, wherein it is provided that all matters relating to changes and transfer affecting any rights or interest recorded in the registers of land published under Sub-section (1) of Section 10 for which cause of action had not arisen when the proceeding under Sections 8 and 9 were started or were in progress can be raised before the Consolidation Officer within thirty days of the cause of action, but not later than the date of notification under Section 26-A or Sub-section (1) of Section 4-A. Under Sub-section (2) of Section 10B the provision of Sections 8 and 9 are to be applied mutatis mutandis to the hearing and decision of any matter raised under the aforesaid Sub-section (1) are to be considered as if it were a matter raised under the aforesaid section. It was thus, submitted by Mr. Prasad, learned Counsel appearing for the petitioner that the provision relating to bar contained in Section 10-A has no application to the present case.

10. I am unable to accept the said submission of Mr. Prasad. Section 10-B. only gives opportunity to raise objection with respect to the matters relating to changes and transfers affecting any rights or interest recorded in the register of land published under Sub-section (1) of Section 10 for which cause of action has not arisen when proceeding under Section 8 and 10 were started or were in progress. But here is not the case of the petitioner that no cause of action had arisen when the register of land was published under Sub-section (1) of Section 10. The plea that the cause of action for the petitioners arose only after abatement of the Revenue appeal No. 170 of 75 is not sustainable at all. The petitioners had already lost in the suit filed by him under Section 106 of the B.T. Act, which is not claimed to have abated during the consolidation proceeding. In fact, it is the case of the petitioners that the suit was decided against him on merit by the revenue court, against which he had filed the aforesaid Revenue appeal, which was pending and during its pendency the consolidation scheme was started, as is also evident from the orders passed by the Consolidation Officer, the Dy. Director in

appeal and the revisional order. Thus, in my opinion, it has rightly been submitted by the learned Counsel for the respondents that the objection of the petitioner purporting to be under Section 10 (2) and/or under Section 10-B was not maintainable in view of the provisions contained in Section 10-A of the Act creating bar from raising any such objection at any subsequent stage of the consolidation proceedings.

11. Mr. Prasad, learned Counsel for the petitioners then submitted that the Director, Consolidation has been vested with the wide power in revision under Section 35 of the Act to call for and examine the record of any case decided or proceeding taken by any authority for the purpose of satisfying himself and after allowing the parties concerned opportunity of being heard to make such order in the case or proceeding as he finds fit. In this regard he placed reliance on the decision of this Court reported in 1985 BBCJ 176 only recently, I had the occasion to deal with the revisional power of the Director under Section 35 of the Act in the case of Shambhunath Pandey and Ors. v. State of Bihar and Ors. reported in 1996 (2) BLJ 141 and in the said decision relying upon the law laid down by the Apex Court in the case of Ramdular v. Dy. Director of Consolidation, Jaunpur and Ors. reported in : [1994]1SCR735 held that Section 35 of the Act does not intend to give such a wide power to the Director of Consolidation to even vest power in the subordinate authorities, or to justify the illegal order, passed against the express bar under Section 10-A of the Act to re-open the disputes or entries against which no objection had been filed at the stage of Section 10 (2) or under Section 10-C or 10-D or the Act.

12. Section 10-A of the Act completely debars from raising any question in respect of any entry made in the map or register prepared under Section 9 of the Statement of principle prepared under Section 9-A relating to the consolidation are, which might or ought to have been raised under Section 10, but was not raised, at any subsequent stage of consolidation proceeding, Section 10-B provides for a remedy in the matters relating to changes and transfers affecting any rights or interest recorded in revised records, for which cause of action has not arisen at the stage of preparation of records of rights and preparation of registers of land by raising the same before the Consolidation Officer within thirty days of

cause of action but not later than the date of notification under Section 26-A or Sub-section (1) of Section 4-A of the Act. The provisions of Sections 8 and 9 are to apply mutatis mutandis to the hearing and in taking decision of any such question raised. Section 10-C of the Act provides for republication of register of lands, etc. In certain cases (with which we are not concerned) under which after expiry of the specified period of exemption as provided in Section 5-A, but before the publication of the draft scheme of consolidation under Sub-section (1) of Section 12, the register of lands prepared under Sub-section (2) of Section 9 and the statement of principles prepared under Sub-section (3), (4), (5) and (6) of Section 10, pertaining to the units concerned are to be re-published in the manner prescribed and any person may within twenty days of such re-publication file before the Asst. Consolidation Officer objection in respect thereof disputing the correctness and nature of entries in the register of lands or in the statement of principles, if cause of action for such objections has arisen after publication of the register of lands and the statement of principles under Sub-section (1) of Section 10. Section 10-D of the Act gives special power to the Deputy Director of Consolidation for re-publication of the register of lands if he is satisfied that larger number of raiyats on or under raiyats could not avail the opportunity to file their objections under Sub-section (2) of Section 10 of the Act after recording reasons in writing and any person may within twenty days of such re-publication, file before the Assistant Consolidation Officer objection in respect thereof disputing the correctness of entries in the register of lands or in the statement of principle of in both, notwithstanding the provisions of Section 10-A.

13. Under Section 10-B the provisions of Sub-section (2), (3), (4), (5), (6) and (7) of Section 10 are applied mutatis mutandis to the objection of any matter raised under Section 10-C and 10-D, but imposes restriction is re-opening the dispute decided earlier in accordance with the provisions of Sub-section (3), (4), (5) or (6) of Section 10 on re-publication of registers of land or the statement or principle or both. Section 11 of the Act lays down the manner in which the draft scheme shall be prepared and Section 12 of the Act provides for publication of draft of consolidation scheme. At this stage again an opportunity is given to the raiyat but subject to the bar under Section 10-A to file an objection within thirty days disputing the propriety and correctness of the entries in the draft consolidation

scheme or abstracts furnished therefrom. Section 12A of the Act provides the manner in which the objections received are to be disposed of after the expiry of the period specified in Section 12. The said provision also provides for a remedy to the aggrieved persons for filing an appeal before the Asst. Director of Consolidation within thirty days against the decision taken under Section 12-A, Section 12-B empowers the Consolidation Officer or the Assistant Director of Consolidation to direct the Consolidation Officer or the Asst. Consolidation Officer to review the draft scheme in which he is satisfied that proper allotment of land to the raiyat or the under-raiyat is not possible without revising the draft scheme, after recording reasons in writing and after giving opportunity to various raiyats. Section 13 of the Act empowers the Assistant Director of Consolidation to confirm the scheme submitted before him if no objection is filed against the draft scheme under Section 12 or if the objections are filed and disposed of under Section 12-A and then to publish the confirmed draft publication scheme in the village.

14. From the aforementioned provisions, it is evident that except in the cases covered by Section 10-B, 10-C, 10-D and Section 12-B and the manner provided therein with respect to allotments made under Section 11 not modified under Section 12-A and confirmed under Sub-section (1), the entries in the extract under Sub-section (1) of Section 12 are to be treated as final allotment orders for the raiyats and under-raiyats concerned under Sub-section (3) of Section 13 of the Act and under Section 14 of the Act the Consolidation Officer is to fix the date with effect from which the final consolidation scheme is to come into force and shall modify the same in the unit in the prescribed manner, whereafter the raiyats or under-raiyat shall be entitled to possession of the plots allotted to him and for the trees etc. shall be liable for payment to the former raiyat thereof amount, determined in the manner prescribed. Section 15 relates to grant of certificate of transfer and under Section 16 the confirmed scheme is to be treated as final public record of rights.

15. Thus, except in the cases covered by Section 10-B, 10-C and 10-D, which all deal with the situations notwithstanding the bar imposed under Section 10A from raising objection or being heard at any subsequent stage of consolidation proceeding, no objection with respect to any entry made in the map or registers

prepared under Section 9 or the statement of principles prepared under Section 9-A relating to the Consolidation area, which might or ought to have been raised under Section 10, but was not raised, can be raised at any subsequent stage of the consolidation proceeding before any other authority in view of the bar under Section 10-A of the Act. It cannot be doubted that revisional power of the Director of Consolidation under Section 35 of the Act to call for and examine the record of the case decided or any proceeding taken for the purpose of satisfying himself as to the regularity of the proceeding or as to correctness or legality of any order passed by such authority in the case or proceeding in part of the consolidation proceeding, inasmuch as, under the said provision the Director has been vested with the power to call for and examine the record of the case decided or even during the proceeding.

16. Thus, it is difficult to construe that the provisions of Section 35 vests wide power in the Director of Consolidation to exercise the powers of various authorities under the aforementioned provision, who are themselves debarred from exercising such power in view of the provisions contained in Section 10-A of the Act. I am quite conscious that in the case of Sheo Kumar Thakur, reported in 1985 PLJR 395 and in the case S.B. Upadhyaya v. State of Bihar, reported in 1985 BBCJ 176, this Court held that the Director is vested with very wide power under Section 35 of the Act, which can be exercised by him even suo motu or on an application by any party and that such exercise of power is not at subsequent stage of consolidation proceeding' as there is no non-obstante clause in Section 10-A. But the Supreme Court in its recent decision in the case of Ramdular v. Dy. Director of Consolidation, Jaunpur and Ors. reported in : 1994 ECR 343 (SC) while considering the scope of similar power under Section 48 of the U.P. Consolidation of Holdings Act, 1954 held that the Director under the said provision had power to satisfy himself as to the legality of the proceeding or as to the correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness or legality or propriety of the order or correctness of the proceeding or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself all the facts de novo. The aforementioned Division Bench judgment of the Court have not dealt with this situation.

17. If the power of the Director under Section 35 of the act is construed to be so wide as is contended by the learned Counsel for the petitioner, it would amount to giving him sanction to usurp the jurisdiction of the original authority as a fact-finding authority by appreciating for itself all the facts de novo, even though is completely barred by Section 10-A of the Act. In fact, Section 35 of the Act does not contain any non-obstante clause like the one contained in Section 10-D, nor does it deal with any changed circumstances, as contemplated under Section 10-A, 10-B, 10-C and 10-D of the Act. had it been the intention of the Legislature to vest such a wide power in the Director of Consolidation to ignore an bar or limitation provided for filing objection, appeal etc. at different stages, then under Section 35 the power in the director would have been vested by incorporating non-obstante clause in the said provision itself. In my opinion, the object of Section 35 of the Act is to empower the Director of Consolidation to see that the subordinate courts are not acting arbitrarily and illegally in exercise of their jurisdiction but not to assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself all the facts de novo, as has been held by the apex court in the aforementioned case of Ramdular (supra), whereafter the aforementioned Division Bench judgments of this Court are per incurium.

18. Thus, it has rightly been held by the appellate authority as well as the revisional authority that the objection filed by the petitioner was not maintainable in view of the bar contemplated under Section 10-A of the Act, as he had not raised nay objection at the appropriate stage under Section 10 (2) of the Act. Besides this, on merit also I do not find substance in the submission of the learned Counsel for the petitioners. I find from the orders passed by the appellate authority as well as the revisional authority that all the documents file by the parties have been considered by them and their findings on facts are based upon consideration of the documents including the order passed by the revenue court in the suit under Section 106 of the B.T. Act.

19. It is well settled that the High Court in exercise of power under Article 226 of the Constitution does not normally interfered with the concurrent findings of the facts arrived at by the authorities under the Act and thus, in view of the concurrent findings on facts arrived at by the appellate authority as well as the revisional

authority. I do not feel inclined to interfere with the same even on merit in the writ jurisdiction of this Court specially when no error on merit has been brought to my notice. The writ application is thus, dismissed, but without costs. However, after the close of the consolidation operation in the area in question the petitioners will be at liberty to take any appropriate action as is permissible in law for getting their right, title and interest established.

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