

Ram Sundar Chaudhary and Others Vs Ram Nath Chaudhary and Others

Court: Patna High Court

Date of Decision: Feb. 4, 2003

Acts Referred: Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 " Section 10A, 2(4), 34, 35

Citation: (2003) 2 PLJR 184

Hon'ble Judges: R.S. Garg, J; Nagendra Rai, J

Bench: Division Bench

Advocate: Ajit Kumar Ojha and Nutan Mishra, for the Appellant; T.K. Jha and Shobha Nath Jha, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is barred by limitation.

2. After hearing learned Counsel for the parties and taking into consideration the averments made in the limitation petition, we are satisfied that

sufficient ground has been made out to condone the delay. Accordingly, the delay in filing this appeal is condoned.

3. This appeal is directed against the order dated 2.2.2001 passed by the learned single Judge, whereby he has allowed the writ application filed

by the writ Petitioners Respondents and set aside the order dated 22.6.1999 passed by the Deputy Director, Consolidation, Purnea in favour of

the Appellants, who were Respondent Nos. 4 and 5 in the writ application, in exercise of power u/s 35 of the Bihar Consolidation of Holdings and

Prevention of Fragmentation Act (hereinafter referred to as the "Act").

4. In view of the nature of order which we propose to pass, it is not necessary to go into the factual matters in detail.

5. During consolidation proceeding chak was prepared in the name of the writ Petitioners Respondents. The Appellants did not challenge the said

order before the appellate authority but filed revision u/s 35 of the Act, which was allowed in their favour by the Deputy Director, Consolidation by

order dated 22.6.1999.

6. Learned single Judge allowed the writ application primarily on the ground that the revision application u/s 35 of the Act was not maintainable in

view of the fact that the said order was not challenged by the Appellants before the appellate authority.

7. The question as to whether revision application can be directly filed u/s 35 of the Act without taking recourse to the remedy of appeal or not

was considered by the Full Bench of this Court in the case of *Seikh Haidar Zan Vs. Md. Yusuf Ansari and Another*, , and this Court has held that

the bar created by Section 10A of the Act is not applicable to the exercise of revisional power u/s 35 of the Act and the revisional court has

jurisdiction to entertain the revision application and pass suitable order for doing complete justice between the parties. It was further held that the

power u/s 35 of the Act is an independent power unfettered or undisturbed by any other provision.

8. In view of the aforesaid judgment of this Court, the view taken by the learned single Judge that the revision application was not maintainable is

not correct and accordingly, the impugned order passed by the learned single Judge is set aside.

9. The revisional order has been passed by the Deputy Director of Consolidation in exercise of power u/s 35 of the Act. The Director of

Consolidation has been defined u/s 2(4) of the Act which means an officer appointed as such by the State Government to exercise the powers and

perform the duties of Director of Consolidation under this Act which includes an Additional Director of Consolidation and a Joint Director of

Consolidation. The Deputy Director of Consolidation has been defined in Section 2(4a) of the Act who is different from the Director of

Consolidation as per the definition.

10. However, without going into the larger question as to whether the Deputy Director of Consolidation could be vested with the power of the

Director of Consolidation in view of the provisions contained u/s 34 of the Act, in the facts of this case, we are of the view that the matter should

be heard by the Director, Consolidation. We have also gone through the order of the Deputy Director of Consolidation and we find that he has not

given any definite finding. On this ground also, the order of the Deputy Director of Consolidation is vitiated in law.

11. Accordingly, the impugned order passed by the Deputy Director of Consolidation, as contained in Annexure-1 to the writ application, is set

aside and the matter is remitted to the Director of Consolidation, who will hear the parties and take final decision in the matter in accordance with

law.

12. In the result, this appeal is allowed.