

## Kaushal Kishore Mishra and Others Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** June 30, 2011

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

Private respondents-2nd set, who are contesting parties have appeared and filed a counter affidavit. The

supplementary affidavit is already filed by the petitioners bringing on record the order dated 21.12.1974 passed by Deputy Director, Consolidation

in terms of Section 13(1) read with Section 13(4) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. It is this order that

was passed in the year 1974 that has now been interfered by the Joint Director, Consolidation, Muzaffarpur in purported exercise of his revisional

jurisdiction u/s 35 of the Consolidation Act, which is not prescribed any period of limitation. The revision application was filed being Revision Case

No. 5 of 2008 challenging the final order that was passed on 21.12.1974. Apart from various other issues raised, learned counsel for the petitioner

submits that the exercise of revisional jurisdiction by the Joint Director, Consolidation after more than three decades is not warranted. He relied on

the judgment of Apex Court in the case of Mansaram Vs. S.P. Pathak and Others, , and in particular para 12 thereof and in the case of State of

West Bengal and Others Vs. Karan Singh Binayak and Others, and in particular para 17 thereof. He submits that the order dated 21.12.1974 was

an order in terms of Section 13(1) of the Consolidation Act whereby Chaks were finally determined and notified. Everybody in the village knew

that the consolidation proceeding in the village stood terminated by this order u/s 13(1) of the Act. No party can say that they were not aware of

the proceedings. The petitioners further submit that the corrections of Revisional Survey Entry were made after due notice to the parties and even

that had been finalized in the year 1974. Now after three decades the private respondents-second set moved the revisional authority taking

advantage of the fact that no period of limitation is provided. A purported condonation application was filed. The condonation application is

appended as Annexure-D to the counter affidavit itself giving explanation as to why the delay in filing the revision application occurred. The

material plea is to be found in para 2 and para 4 thereof, which are quoted hereunder:-

2. That due to ignorance of law and non--information about wrong survey recording earlier these petitioners could not prefer revision.

4. That after obtaining the certified copy of order-sheet of Chakbandi Revision Survey Khatiyani it became transpired to these petitioners that

Abdul Quadir had got wrongly order passed in his favour.

2. Learned counsel for the petitioners with reference to these pleadings submits that nowhere even an attempt has been made to say that the party

was unaware of any order much less order dated 21.12.1974 as passed in the consolidation proceeding. What was said was of a wrong order in

survey entry, which apparently would be in proceeding u/s 108 of the Bihar Tenancy Act, which, as noted above, was concluded in 1974.

3. Learned counsel for contesting private respondents second set submits that there being no period of limitation prescribed and in view of

judgment of this Court that a revision application would be filed directly in terms of Section 35 of the Act. There was nothing wrong in the

application, as filed by him, for revision. When he realized the mistake and the wrong, he immediately moved though it may have taken over three

decades to realize the mistake. He sought to justify the order of the Joint Director passed u/s 35 of the Act on merit. In my view, it is not the

question of jurisdiction but the question of propriety of exercise of jurisdiction after such a long delay. If this is permitted then on the plea that there

is no limitation prescribed and the revisional jurisdiction cover all orders passed under the Act, then there can never be any finality in the matter.

4. In the facts of the present case, it would be seen that Chaks were created, allotted and possession delivered for the village, it cannot be said that

private respondents were not aware of these proceedings. An argument is made that in 1976 the consolidation operations were re-notified

effectively nullifying all proceedings. The answer to this would be if it is already nullified all previous proceedings then there was no question or

need to challenge an order passed in those nullified proceedings. Further if that order of 1974 was being used in the present proceeding when it

was initiated in 1976, it ought to have been challenged immediately and not more than three decades after 1976. Though in terms there is no

limitation as prescribed for exercise of power u/s 35 of the Act, it does not mean that the revisional authority can exercise power at his own will at

any time even after three decades. I may refer to the judgment of the Apex Court in the case of Mansaram vs. S.P. Pathak (supra) the relevant

part thereof is para 12, which is quoted hereunder:-

But as stated earlier, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise

of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily

available in *The State of Gujarat Vs. Patil Raghav Natha and Others*, In that case the Commissioner exercised suo motu revisional jurisdiction u/s

221 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner

exercised revisional jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of

the Commissioner. In the appeal by State of Gujarat this Court declined to interfere holding that inter alia that the revisional power in the absence

of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late. This aspect must be

present to the mind of a House Allotment Officer before just rushing in on an unproved technical contravention brought to his notice contrived by

the successor in interest of the deceased landlord, and evicting the appellant 22 years after his entry and 9 years after his retirement on the short

ground that his entry in the year 1954 was in contravention of Clause 22(2).

5. If provision was similar inasmuch as no period of limitation was prescribed noticing earlier judgment of the Apex Court, the Apex Court held

that even though no period of limitation for exercise of revisional jurisdiction was prescribed it would not be exercised belatedly. Then I may refer

to the judgment in the case of *State of W.B. vs. Karan Singh Binayak (supra)*, which related to correction of records of rights, which is quoted

hereunder:-

It can thus be seen that after the preparation of record-of-rights, not only the appellants did not take any steps and slept over the matter but

various steps as above were taken by the respondents in respect of the land in question. The argument that the proceedings under the ULC Act or

the preparation of record-of-rights were ultra vires and the acts without jurisdiction and, therefore, those proceedings would not operate as a bar

in the appellants invoking inherent jurisdiction u/s 151 CPC by virtue of conferment of such power u/s 57-A of the Act is wholly misconceived and

misplaced. The inherent powers cannot be used to reopen the settled matters. These powers cannot be restored to when there are specific

provisions in the Act to deal with the situation. It would be an abuse to allow the reopening of the settled matter after nearly four decades in the

purported exercise of inherent powers. It has not even been suggested that there was any collusion or fraud on behalf of the writ petitioners or the

erstwhile owners. There is no explanation, much less satisfactory explanation for total inaction on the part of the appellants for all these years.

6. For the reasons, as aforesaid, I hold that the order dated 30.5.2009 (Annexure-6), as passed by Joint Director, Consolidation, Muzaffarpur in

purported exercise of power u/s 35 of the Act in Case No. 5 of 2008 cannot be sustained and has to be quashed.

7. This application is accordingly allowed.

8. However aggrieved parties may have liberty to move appropriate Civil Court of competent jurisdiction for any remedy that they may seek in

accordance with law.