(2011) 06 PAT CK 0050

Patna High Court

Case No: CWJC No. 8737 of 2009

Kaushal Kishore Mishra and Others		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

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 Khatiyan 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.