

(2017) 09 PAT CK 0031

PATNA HIGH COURT

Case No: 1296 of 2015

Mungeshwar Yadav & Ors

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision: Sept. 20, 2017

Acts Referred:

- Constitution of India, Article 226 - Power of High Courts to Issue certain writs
- Code of Civil Procedure, 1908, Order 22 Rule 4 -
- Bengal Tenancy Act,

Hon'ble Judges: Ajay Kumar Tripathi, Rajeev Ranjan Prasad

Bench: DIVISION BENCH

Advocate: Shivanand Prasad Sinha, V.M.K sinha

Judgement

1. Heard learned counsel for the parties.

2. The appellants in the present case are aggrieved by the judgment dated 07.12.2012 passed by learned Single Judge of this court in CWJC No. 4544/1992. By the impugned judgment the learned Single Judge has been pleased to set aside the revisional order dated 26.03.1992 passed by the Joint Director, Consolidation in Revision Case No. 169/1998 (Annexure-1 to Writ Application).

3. The grievance of the writ petitioners was that the Revisional Authority had interfered with the findings of facts which were settled by the order of the Consolidation Officer (Annexure-8 to the writ application) and appellate order (Annexure-9 to the writ application). The original writ petitioners were one Yogendra Singh (petitioner no.1) and the sons of Late Mathura Singh as also son and daughters of Late Bhuneshwar Singh. It is made clear that Yogendra Singh, Late Bhuneshwar Singh and Late Mathura Singh happened to be the three sons of Late

Narsingh Narain Singh. On the other hand, the private respondents no. 5 & 6 Patna High Court LPA No.1296 of 2015 dt.20-09-2017 who were the contesting respondents happened to be the two sons of Late Chhathu Yadav, one of the sons of one Bihari Gope.

4. It appears from the records that during the ongoing consolidation in village Kendua, P.S. Gurua in the district of Gaya under the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the "Act"), an objection under Section 10(2) was filed for the first time by respondent no. 5 & 6 of the writ petition against recording of name of the ancestor of the Writ petitioners in the draft documents in line with the revisional survey records which gave rise to case No. 4/1986. Thus, a dispute arose pertaining to C.S. Khata No. 18, C.S. Plot No. 84 corresponding to R.S. Plot No. 136 (0.86 acres), C.S. Plot No. 110 corresponding to R.S. Plot No. 146 (0.57 acres), C.S. Plot No. 47 corresponding to R.S. Plot No. 242 (0.12 acres), C.S. Plot No. 61 corresponding to R.S. Plot No. 251 (0.15 acres) and C.S. Plot No. 320 (1.27 acres) in all 2.97 acres of land.

5. The case of the objectors (respondent nos. 5 & 6 in the Writ) was that the disputed land was their ancestral property. According to them, the plot in question under Khata No. 18 was divided in several plots and those were initially recorded in the name of their ancestor's name Bihari Gope son of Late Girdhari Mahto in old Survey Khatian and in Register-II also the name of Bihari Gope (grand father of respondent no. 5 & 6) was entered for which rent was fixed in his name. They relied upon photocopy of the old Khatian, rent receipt and copy of Raibandi Case No. 10/1921-22 in which these lands were shown in the share of the ancestor of these respondents. The respondents further claimed that the petitioners were neither raiyat nor their names were entered in Register-II. They are the heirs of the ex-landlord and they have no concern with the aforesaid Khata No. 18.

6. The writ petitioners contested the objection under Section 10(2) of the Act before Consolidation Officer. According to the petitioners the land in question were recorded in the name of one Faggu Gope in the Cadastral Survey Khatian. The said Faggu Gope was unable to pay land rent, therefore, he surrendered the land in favour of the ex-intermediaries. According to the petitioners, by the time Faggu Gope surrendered the land in favour of ex-intermediaries there was a collectorate partition amongst the ex-intermediaries, but inadvertently the land in question was shown in the name of one Bihari Gope in the collectorate partition. Because there was no basis for showing the name of Bihari Gope, the said Bihari Gope executed a Sada Wazidava in favour of the ex-intermediaries admitting therein that the same belonged to the ex- intermediaries. The petitioners claimed that since the value of the land was less than Rs. 100/, a Sada Wazidava was executed as it required no registration.

7. It is stated that subsequently the ex-intermediaries settled the said land along with other land in favour of Late Bhuneshwar Singh father of writ petitioner nos. 4 to 7 and Bachchu Singh (petitioner no. 3) by a Hukumnama. It is further case of the petitioners that after settlement Late Bhuneshwar Singh and Bachchu Singh were paying rent to the ex-landlord and after vesting of Zamindari, in the field Gujarat. Bhuneshwar Singh and Bachchu Singh were found in possession. A proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was initiated and the Land Reforms Deputy Collector (in short the "LRDC") called upon the said Bhuneshwar Singh to file return and accordingly return was submitted.

8. Further during revisional survey operation also the land in dispute was recorded in the name of Bhuneshwar Singh. In the return filed before the LRDC also these land were shown possessed by the said Bhuneshwar Singh and his family. During the verification of returns the Anchal Adhikari, Gurua under Rule 8 of the Bihar Land Ceiling Rules submitted a report showing that the land in dispute along with other land were held by Bhunesnwar Singh and his family members. A copy of the said report was enclosed as Annexure-5 to the writ application. The Ceiling proceeding was later on dropped holding that the total area of land possessed by the land holder were 59.97 acres of Class-III land which was less than the units required to be allotted to the land holder who had five adult members. The petitioners filed a number of documents such as the copy of Bazidawa, Hukumnama, Cadastral Survey Khatiyani, return under the Ceiling Act and Rules, verification report of Anchal Adhikari, rent receipt granted by ex-landlords, canal purchase, revisional survey purchase, report of Anchal Adhikari, rent receipts granted by State of Bihar and Chakbandi Khatiyani.

Order of Consolidation Officer

9. The Consolidation Officer considered the case of the parties and after considering the documentary evidences on the record finally held that from the materials on the record referred above and the entry in the Revisional Survey/haal Survey, it appears that the Opposite Parties (writ petitioners) were in possession of the land and the entry in the survey was made accordingly. The objectors had not taken any recourse to law to challenge the said survey entry. The Consolidation Officer held that the claim of the objectors was based on only Saabit Khatiyani whereas the claim of the opposite parties (petitioners) were confirmed from the entries in the records since 1927. the Consolidation Officer recorded a finding on possession in favour of opposite parties (Writ petitioners). The objection was, therefore, rejected by the Consolidation Officer with the aforesaid findings.

Appellate Order

10. The objectors preferred an appeal under Section 10(6) of the Act before the Deputy Director, Consolidation. appellate authority also went through the records and submissions of the parties. The appellate authority specifically considered the claim of the objectors as to possession but did not find the same in favour of the objectors-appellants. The appellate authority relied on the materials inter alia the spot verification conducted by the Consolidation Officer and finally held that from the Jamabandi Receipt return and records of ceiling case etc. It appears that Bihari Gope executed the Bazidava. The rent receipts produced by the opposite parties-petitioners were also containing the details of plot number, whereas the rent receipt produced by the objector-appellant did not contain the plot number. Thus, both the Consolidation Officer as well as Appellate Authority held the right, title and possession of the opposite parties who were the writ petitioners.

Revisional Order

11. The Revisional Authority upset the concurrent findings of the Consolidation Officer and the Deputy Director, Consolidation on both the question of title as well as possession. The order of revisional authority was challenged in the writ petition on the grounds amongst others that the revisional authority reversed the findings but without pointing out any patent illegality in the order passed by the two competent authorities. The revisional authority did not even look into the fact that in the revisional survey the name of Bhuneshwar Singh and his family were recorded and the same was not challenged any time prior to filing of the objection under Section 10(2) of the Act by private respondent no. 5 & 6.

Impugned Judgment

12. The learned Single Judge by the impugned judgment allowed the writ application by setting aside the revisional order dated 26.03.1992, as contained in Annexure-1 mainly on the ground that the revisional authority had crossed his jurisdiction under Section 35 of the Act. It appears that during the pendency of the writ application one of the private respondent no. 5 namely Deo Sharan Yadav, one of the son of Late Chattu Yadav died, but this fact was not brought to the notice of the court and he could not be substituted. Although, respondent nos. 5 & 6 were represented but no one appeared on behalf of the respondent nos. 5 & 6. A show cause was earlier filed on their behalf but the learned Single Judge recorded that no counter affidavit has been filed on behalf of the State or private respondent nos. 5 & 6.

13. A perusal of the impugned judgment shows that the main contention advanced on behalf of the petitioners were with regard to the scope and ambit of power of the revisional authority under Section 35 of the Act has been found in pari materia with the corresponding provision in U.P. Consolidation of Holdings Act.

14. On behalf of the petitioners, reliance was placed on the judgment of the Hon"ble Supreme Court in Jagu Mallah & Ors. Vs. State of Bihar & Ors reported in 1996 (2) PLJR 924. In the said case the learned Single Judge of this court relied upon the judgment of the Hon"ble Supreme Court in the case of Ram Dular Vs. Dy. Director of Consolidation, Jaunpur & others, reported in 1994 Supp (2) SCC 198. Paragraph-6 of the said judgment has been quoted by the learned Single Judge which has been relied upon to hold and declare that revisional authority under the Act has only power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or propriety of any order other than interlocutory order passed by the authorities under the Act.

15. In considering the correctness to the legality or propriety of the order or correctness of the proceedings or regularity thereof the authority cannot assume upon itself the jurisdiction of the original authority as a fact finding authority, by appreciating itself those facts, de novo. The learned Single Judge, therefore, found that the revisional court was wrong in interfering with the question of facts which were settled by Consolidation Officer and the Deputy Director and both the authorities were consistent with respect to their findings. Challenge in Appeal

16. In appeal before us, the legal heirs of the deceased respondent no. 5 of the writ application and respondent no. 6 have sought to challenge the order passed by the learned Single Judge mainly on two grounds. Firstly, that because respondent no. 5 was not substituted before the writ court the impugned judgment of the learned Single Judge is a nullity, secondly, on the ground that the revisional authority has committed no jurisdictional error in setting aside the order passed by the Consolidation Officer and the appellate authority and therefore, the learned Single Judge was not justified in setting aside the revisional order.

17. Reliance has been placed on the judgment of Hon"ble Supreme Court in the case of Kishun @ Ram Kishun (dead) through L.Rs., appellant Vs. BIhari (D) by L.Rs., respondent reported in AIR 2005 SCC 3799; wherein the Hon"ble Supreme Court accepted the argument of the appellant that the decree in the second appeal was also a nullity, since the same was passed in favour of the deceased appellant against deceased respondents.

18. The appellant before us has further relied upon the judgment of the Hon"ble Apex Court in the case of Sheo Nandan Vs. Deputy Director of Consolidation

reported in (2000) 3 SCC 103; wherein Section 48 of the UP Consolidation of Holdings Act, 1953 which is at pari materia of Section 35 of the Act. The Hon"ble Supreme Court held in paragraph 21 as under:

"21. Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation) but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinize the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authority sub-ordinate to him in a case like the present, where the entries in the revenue records are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under section 48 to reappraise or re-evaluate the evidence on record so as to finally determine the rights of the parties by excluding forged and fictitious revenue increase or entries not made in accordance with law."

19. On the other hand, learned counsel representing the respondents in the present appeal have relied upon the judgment of Hon"ble Supreme court in the case of Custodian, Branches of BANCO National Ultramarino vs. Nalini Bai reported in AIR 1989 SC 1589, to support his argument that in the present case the state of the deceased- respondent no.5 was not without representation even though his legal heirs were not brought on record, admittedly, the respondent no.6 who was brother of respondent no.5 and had filed joint objection under section 10(2) of the Act before the Consolidation Officer was represented, and therefore, the plea of both respondent nos. 5 and 6 were the same and one, no prejudice has been caused to respondent no. 5 only because his legal heirs were not brought on record.

20. Learned Senior Counsel representing the respondents in the appeal further submits that principles of Code of Civil Procedure cannot be strictly applied in a proceeding under Article 226 of the Constitution of India. According to him the Hon"ble Apex Court in the aforesaid judgments has held that the word "legal representative" under Order XXII Rule 4 of C.P.C. has been interpreted and it has been held that a person who in a law represents the state of a deceased person and includes a person who intermeddles with the state of the deceased would also be covered. The definition is inclusive in character and its scope is wide. Both respondent nos. 5 and 6 in the writ application were claiming through the common ancestor Bihari Gope and, therefore, the presence of the respondent no.6 was enough to represent the interest of the deceased respondent no.6 as well.

21. In any case, the learned senior counsel argues that instead of setting aside the impugned judgment on taking strictly legal view, the interest of justice would be served by giving an opportunity of hearing to the legal heirs of the deceased-respondent no.5 of the writ in the present appeal. According to him, the chequered history of litigation in the present case may be taken into consideration to negate argument of the appellants based on principles of nullity.

22. Learned senior counsel further submits that in the case cited by the learned counsel for the appellants, the Hon''ble Supreme Court was dealing with a case in which a decree was passed in favour of a dead person against a deceased person which is not the case here.

23. It is further submission of learned senior counsel for the respondents in appeal that it is consistent view of the Hon''ble Supreme Court that the revisional jurisdiction under section 35 of the Act or section 48 of the U.P. Act could be exercised only when the order passed by the authorities below are found to be perverse. He refers to paragraph 21 of the judgment relied upon on behalf of the appellants and further refers to judgment of the Hon''ble Supreme Court in the case of Ram Dular (supra).

24. Learned senior counsel in order to support the findings of the Consolidation Officer and Deputy Director as regards the title and possession of the late Bhuneshwar Singh relies upon a Division Bench judgment of this Court in the case of Lachhandhari vs. Rajpat Mahaton reported in AIR 1930 Patna 376; wherein the Division Bench took a view that the learned Sub-ordinate Judge had fallen into an error in thinking a Batwara entry under the new Partition Act carries with it a presumption of the same character as is attached to an entry into cadastral or ancestral survey. The Division Bench was of the view that the presumption conveyed by the survey entries arises out a statutory provision in section 103-B of the then Bengal Tenancy Act (New Bihar Tenancy Act). It was held that there was nothing in the Batwara Act to show that the entry therein will carry any such presumption.

25. The submission of learned senior counsel is that in the present case also a mere entry of name of the ancestor of the present appellants in the collectorate partition carries no presumption and cannot be given much weightage as it has been clearly found by both the authorities under the Act that the name of one Faggu Gope was there in the cadastral survey khatiyani and later on in the haal survey, the name of the common ancestor of the present private respondent were entered which was never challenged. The findings recorded by the Consolidation Officer as well as the Appellate Authority were based on the entries made in the survey record coupled with the facts flowing from the land ceiling proceeding in which these lands were found in possession of the common ancestor of the present respondents in the verification report submitted by the Anchal Adhikari. He has also relied upon a

judgment of Full Bench of this Court in the case of Most. Ugni and Another vs. Chhowa Mahton reported in 1968 PLJR 3 (HC). In the said case, the full Bench held in paragraph 6 read with paragraph 16 that the unregistered hukumnama though inadmissible would be looked into to show the nature and character of possession, independent of hukumnama, the rent receipts themselves may be relied upon. Consideration

26. We have considered rival submissions at the Bar and have perused the materials as well as the judgment referred on behalf of both the parties hereinabove.

27. In the facts of the present case, we are unable to accept the submission of learned counsel for the appellants that the order of the learned single Judge be set aside on the ground that the deceased-respondent no.5 was not substituted during the pendency of the writ application.

28. In our opinion, the respondent nos. 5 and 6 were both claiming through their common ancestor Bihari Gope and the claim of respondent nos. 5 and 6 were not separable from each other, even though respondent no.5 had died and was not substituted, respondent no.6 was very much there on the record. This case has a chequered history as litigation is going on for over two decades by now. Therefore, instead of remand at this stage, we are of the view that the legal heirs of deceased-respondent no.5 having joined with respondent no.6 in the present appeal, now when being given opportunity of hearing, the same would suffice for the interest of justice. No prejudice has been caused to legal heirs of deceased-respondent no.5 as their interest and the interest of respondent no.6 were flowing from the common ancestor Bihari Gope. We, therefore, reject this submission of learned counsel representing the appellants.

29. On the merit of the case, we have heard the parties at length. On perusal of the order passed by the Consolidation Officer (Annexure-8 to the writ application) and the order passed by the Appellate Authority (Annexure- 9 to the writ application), we find that both these authorities have relied upon the entries made in the cadastral survey khatian and the facts appearing therein, field bhujarat, the land ceiling proceeding in which verification report of the Anchal Adhikari goes in favour of Bhuneshwar Singh and his family (ancestors of the private respondents in appeal). Both the authorities have relied upon the entries made in haal survey and the rent receipts issued by the ex-landlord as well as the State of Bihar. The rent receipts issued by the State of Bihar are showing the land in question in respect of which rent have been paid. On these documentary evidences the claim of the private respondents were found in their favour both on the question of title as well as possession.

30. On the other hand, the claim of the appellants through their common ancestor

Bihari Gope could not be accepted by both the authorities because there was no consistent evidence on the same. The only basic document for the claim in the name of Bihar Gope was the collectorate partition record, but on the face of the entries in the cadastral survey khatiyani and the haal survey entries coupled with several other documentary evidences, the claim of the appellants was not accepted and it was the respondents in whose favour both title and possession were declared.

31. We have gone through the revisional order passed by the revisional authority. A perusal of the revisional order would show that the revisional authority has reversed the finding of title and possession both without looking into the materials which were taken note of by both the authorities below. There was no perversity in the order passed by the Consolidation Officer and appellate authority. It was not a case where the revisional authority was of the view that the Consolidation Officer or the appellate authority had recorded the finding without any evidence.

32. Thus, the revisional authority was not justified in upsetting the finding of title and possession in favour of the present private respondents. The order passed by the revisional authority is also bad in law on the face of the judicial pronouncements which have been referred to hereinabove, relied upon on behalf of private respondents in appeal. The entry in collectorate partition record in the name of Bihari Gope cannot be given much weightage on the face of the cadastral survey khatiyani, revisional survey khatiyani and entries made in haal Survey which remained unchallenged. The subsequent entries in haal survey goes a long way to show that Bihari Gope had executed a sada Bazidawa. There was no reason for the revisional authority to interfere with the findings of facts. The judgment relied upon on behalf of the appellants and the respondents both are consistent on the point that normally the revisional authority shall not interfere with the findings of fact unless the findings are perverse. The present case was not a case fit to be interfered with by the revisional authority.

33. In the above view of the matter, we are of the considered opinion that the learned Single Judge has committed no error and the impugned judgment is not required to be interfered with.

34. The appeal has no merit and the same is hereby dismissed. There will, however, be no order as to costs.