

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.10546 of 2003

MANOHAR THAKUR, son of Late Jagarnath Thakur, R/o Village –
Tajpur Bujurg, P.S. Mahua, District – Vaishali Petitioner

Versus

1. THE STATE OF BIHAR,
2. The Director Consolidation, Bihar, Patna,
3. The Dy. Director Consolidation (Head Quarter), Bihar, Patna,
4. The Dy. Director, Vaishali,
5. The Consolidation officer, Mahua, District Vaishali Respondents 1st Set,
6. (a) Doman Thakur, S/o Fudena Thakur @ Dhorha Thakur,
(b) Bigan Thakur, S/o Fudena Thakur @ Dhorha Thakur,
(c) Bigani Devi, D/o Fudena Thakur @ Dhorha Thakur,
7. Suresh Thakur, S/o Late Bisheshwar Thakur, both residents of Village –
Tajpur Bujurg, P.O. Bishanpur Bejha, P.S. Mahua, District – Vaishali
..... Respondents IInd Set,
8. Mostt. Ilaichi Devi, W/o Late Dwarik Thakur,
9. Smt. Dharmsheela Devi, wife of Harendra Thakur,
10. Gauri Shankar Thakur, S/o Late Jagarnath Thakur,
11. Shatrughana Thakur, S/o Late Jagarnath Thakur, All residents of
Village – Tajpur Bujurg, P.O. Bishanpur Bejha, P.S. Mahua, District –
Vaishali Respondents IIIrd Set.

For the Petitioner:- Mr. Madheshwar Singh, Advocate.
For the State:- Mr. Pramod Kumar, AC to SC I,
For the Respondent No. 6(a):- Mr. Ratan Kumar Sinha, Advocate.

3. 31.08.2009. Heard learned counsel for the petitioner,
learned counsel for the State and learned counsel
appearing on behalf of Respondent No. 6(a).

Despite service of notice to other
Respondents no. 6(b), 6(c), and 7 to 11, no body had
appeared on their behalf.

The petitioner is aggrieved by the order
dated 4.7.2000, passed by the Deputy Director
Consolidation (Head Quarter), Bihar, Patna, Respondent

No. 3, whereby the earlier passed by the Dy. Director Consolidation, Vaishali under Section 33A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, (hereinafter referred to as 'the Act') had been set aside and direction was given to delete the names of the respondents / opposite parties therein including the petitioner of this case from the chak khatiyan.

Learned counsel for the petitioner had confined himself to a short question of law at the time of hearing of this case. It has been submitted on behalf of the petitioner that the Dy. Director Consolidation (Head Quarter), Bihar, Patna was not the competent authority under the Act to hear and decide the petition for the reason that such power has been vested in the Director Consolidation.

Learned counsel for the petitioner had placed his reliance upon the decisions of this Court in **Ramotar Yadav & Ors. Vs. The State of Bihar & Ors., [2001 (1) PLJR 266]** as well as **Rajdeo Rai & Ors. Vs. The State of Bihar & Ors., [2002 (3) PLJR 633]**.

It had been submitted by the learned counsel

for the respondents that the order passed by the Dy. Director Consolidation, Vaishali was also bad and illegal due to the reason that under Section 33A of the Act, he could have only resorted to corrections of clerical or arithmetical mistakes only but any correction in the khatiyān was not permissible under law.

In my opinion this case can be disposed of on the short question of law as raised on behalf of the petitioner.

It has been held in **Ramotar Yadav & Ors.** (supra) and **Rajdeo Rai & Ors.** (supra) as well as **Jhuri Bind & Ors. Vs. The State of Bihar & Ors., [2007 (4) BBCJ V-563]** that the Dy. Director Consolidation does not fall within the definition of Director of Consolidation, as has been defined under Section 2(4) of the Act. This has also been held that the concurrent authority cannot decide the merit in appeal or revision.

The terms “Director of Consolidation” has been defined under Section 2(4) of the Act as under:-

‘Sec. 2(4).- “Director of Consolidation” means the officer appointed as such by the State Government to exercise the powers and perform the duties of Director of

Consolidation under this Act or the rules made thereunder and shall include an Additional Director of Consolidation and a Joint Director of Consolidation.’

It is quite apparent from the aforesaid definition that the terms “Director of Consolidation” do not include a Deputy Director Consolidation.

A conjoint reading of Section 35 as well as Section 2(4) of the Act reveals that the power of revision can be exercised either by the Director of Consolidation himself or, at best, the Addl. Director or the Joint Director Consolidation but surely not by Deputy Director.

The entire scheme of justice delivery system revolves upon the fundamental principle of fair play. The fundamental frame of such fair play or rule of law is that the concurrent authority cannot decide the merit of the matter in appeal or revision. In the present case, the order impugned suffers from two fatal defects. Firstly, the Dy. Director Consolidation is not authorised to hear and decide the revision under Section 35 of the Act. Secondly, he being a concurrent authority of the Dy. Director Consolidation, Vaishali, whose decision was

given under Section 33A of the Act, was under challenge in the revision was not competent to decide the same.

The respondent no. 6(a) has filed a counter affidavit. Learned counsel for the aforesaid respondent submitted that since both the orders had not been passed by one and the same person, the fact that the same had been passed by concurrent authorities would not render the revisional order without jurisdiction.

I do not find force in the submissions made on behalf of the respondents.

In view of the above this Court is constrained to hold that the impugned order dated 4.7.2000, passed by the Dy. Director Consolidation (Head Quarter), Bihar, Patna, as contained in Annexure-1, is without jurisdiction and, thus, the same is hereby set aside. The matter is remitted back to the Director of Consolidation for deciding the issue afresh within a period of six months from the date of receipt / production of a certified copy of this order after affording opportunity of hearing to the parties

It is made clear that this Court has not formed any opinion with regard to merit of the cases of

respective parties. The respondents would be free to raise the question with regard to legality or validity of the order passed under Section 33A of the Act by the Deputy Director, Vaishali.

Accordingly, this writ application is allowed.

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(Dr. Ravi Ranjan, J.)

