

(2019) 07 JH CK 0206
In the Jharkhand High Court
Case No : Writ Petition(C) No. 58 Of 2017

Anokha Devi

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 — Section 60
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0206

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Aashish Kumar, Sachin Kumar, Surabhi

Final Decision : Dismissed

Judgement

This writ petition is under Article 226 of the Constitution of India, whereby and whereunder the order dated 04.10.2016 passed by the Commissioner, Santhal Pargana Division, Dumka, in Revenue Misc. Review No. 08/2010-11, is under challenge.

It is the case of the petitioner that the Zamabandi was opened in the record of rights in the name of one Sukar Rout during last settlement operation known as Gantzer's settlement. By virtue of the said settlement the predecessor in interest of the petitioner as also the petitioner were put in possession. One Vijay Kumar Singh, respondent no.4, has made an objection during the survey settlement operation which was registered as Objection Case No. 2 of 2008 and was disposed of by the competent authority vide order dated 16.01.2010, against which the petitioner preferred an appeal being Revenue Misc. Appeal No.08/2010-11 before the Commissioner, Santhal Pargana Division, Dumka, which was also disposed of but, according to the petitioner, without providing any opportunity of hearing to him and therefore, the petitioner has preferred review, invoking the jurisdiction conferred under Section 60 of the Santhal Parganas Tenancy Act, 1949. However, the authority has disposed of the review by

rejecting the same vide order dated 04.10.2016, without assigning any reason and therefore, the order dated 04.10.2016 having been passed without assigning any reason, is not sustainable in the eye of law.

Mr. Sachin Kumar, learned counsel, who has appeared on behalf of respondent no.4, one of the contesting respondents has submitted that the scope of review is very limited and therefore, the Divisional Commissioner in exercise of power of review has declined to interfere with the original order by making observation in the said order that detailed order has already been passed in exercise of power of appeal as conferred under the statute.

It has been informed to this Court that respondent nos. 5, 6 and 7 are related with the petitioner and hence, they are not contesting respondents.

Having heard the learned counsel for the parties and before going into the legality and propriety of the impugned order this Court deem it fit and proper to deal with the provision of review as stipulated under Section 60 to the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, which reads as under:

"60. Review.-(1) The Commissioner may, for sufficient reasons to be recorded in writing, review any order which has been passed by himself or a predecessor in exercise of any power conferred by this Act.

(2) An officer subordinate to the Commissioner shall not review any order made by him or by a predecessor, except for the purpose of correcting a clerical error or other error or, manifestly the result of an oversight, without previously obtaining,-

(a) in the case of a Deputy Collector or a Sub-divisional Officer, the permission of the Deputy Commissioner; and

(b) in the case of the Deputy Commissioner or the Additional Deputy Commissioner, the permission of the Commissioner."

It is evident from the aforesaid provision that the Commissioner may review any order but, by recording the sufficient reason in writing.

Mr. Sachin Kumar, learned counsel appearing for respondent no.4 has submitted that the authority has declined to interfere by not entertaining the review because as per the provisions made under Section 60 to the Act, 1949 there is no requirement to stipulate any reason, since the reason is required to be assigned in case the review would be allowed.

This Court is of the view that appeal or review or revision is a creation of statute and unless provided, the authority cannot act as an appellate or review or revisional authority.

It is also not in dispute that power of review is to be exercised by the original authority, who has passed the order. Further review cannot be entertained in the garb of appeal since the scope of review is very limited and that can only be exercised if there is error apparent on the face of record or any fact which ought

to have been considered by placing it before the competent court or authority but, could not have been placed inspite of due diligence of the party.

The question falls for consideration in this writ petition is that since the power of review as has been stipulated to the Commissioner under Section 60 stipulates that the Commissioner may, for sufficient reasons to be recorded under writing, review any order which has been passed by himself or predecessor in exercise of any power conferred by the Act.

It is no doubt that the contents of the provisions is that the Commissioner is required to assign reason to be recorded in writing in reviewing the order but, simultaneously, it is also to be looked into from other angle i.e. in absence of any reason in an order passed even by the administrative authority or the quasi-judicial authority, the order cannot be said to be proper in the eye of law.

It is not in dispute that without any reason the order is said to be in violation to the principles of natural justice and assigning the reason in the order is only required to be assigned in order to know the mind of the authority that what led authority in rejecting either appeal or review or revision. Further the appellate or review or revisional authority is not required to assign the detailed reasons but, at least brief reasoning is required to be assigned.

Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of Siemens Engineering & Manufacturing Co. of India Ltd. Vrs. The Union of India and Anr, reported in (1976) 2 SCC 981 at para 6, which reads as under:-

"6. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai V. Testeels Ltd."

The Hon'ble Apex Court in the case of S.N. Mukherjee Vrs. Union of India, reported in (1990) 4 SCC 594 at para 39 has been pleased to inter alia, hold as under:-

"39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities."

Judgment rendered by the Hon'ble Apex Court in the case of Divisional Forest Officer, Kothagudem & Ors. Vrs Madhusudhan Rao reported in (2008) 3 SCC 469

at para 19, which reads as under:

"19. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least some reasons for rejecting the appeal preferred by the respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State. Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khammam wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

In view of the aforesaid legal provision and when this Court has gone across the impugned order has found that the Divisional Commissioner in exercise of power of review has declined to interfere by rejecting it merely on the ground that the Commissioner, Santhal Pargana Division, Dumka has passed a detailed order which requires no interference. Question herein is that the review only lies against an order passed by the authority and that must be with the reason but, when the review petition is being filed by any party being aggrieved with the order passed under the statutory power conferred to exercise as revisional authority, it is incumbent upon the said authority to assign the reason of not finding the case for review and merely saying that a detailed order has already been passed will not be sufficient for the reviewing authority in exercising the power of review.

As has been submitted by Mr. Sachin Kumar, learned counsel by referring to the provision of Section 60 of the Act, the question would be that if only in case of review sufficient reason is to be recorded in writing and if the authority is not exercising the power of review by rejecting the petition no requirement of reason under provision is there then it would lead nothing but, miscarriage of justice and therefore, the general principle of assigning the reason in an order, either by the administrative or the quasi-judicial is required to be contained in the impugned order.

Therefore, in the considered view of this Court and by putting reliance upon general principle of assigning the reason in absence thereof the order will not be said to be in consonance with the principles of natural justice and in that view the impugned order suffers from inherent defect. Accordingly, the same is quashed.

In the result the matter is remitted back before the revisional authority for

passing an appropriate order in accordance with law by providing an appropriate opportunity of hearing to the parties and strictly following the principles of review.