

(1997) 10 PAT CK 0040
In the Patna High Court
Case No : L.P.A. 1029 of 1997

Arun Kumar Sinha and Another

APPELLANT

Vs

Suresh Prasad and Others

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Bihar Tenants Holdings (Maintenance of Records) Act, 1973 — Section 16, 17
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1997) 2 PLJR 996

Hon'ble Judges : Dharmpal Sinha, J; B.P. Singh, J

Bench : Division Bench

Advocate : Chakravarti Singh and Wakil Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

1. We have heard counsel for the Appellants and we are satisfied that the judgment and order of the learned Judge is fully in accordance with law. No interference is called for.

2. It is not in dispute that the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 (hereinafter to be referred to as "the Act") earlier provided for two revisions one by the Collector of the district u/s 16 of the Act and the other by the Commissioner u/s 17 of the Act. u/s 16 of the Act the Collector of the district was authorised, on an application made to him in this behalf, or for the purpose of satisfying himself as to the legality or propriety of any order made under the Act or the rules made thereunder by any authority or officer, to call for and examine the record of any case pending before or disposed of by such authority or officer and pass such order as he thought fit. In the case of an application by a party, aggrieved by any order, such a revision was maintainable if it was filed within 30 days. The right u/s 16 of the Act has remained unaffected and the Appellants have availed of such remedy provided under this provision.

3. Section 17 of the Act is expressed in different terms. u/s 17, the

Commissioner of the Division could call for the record of any case which had been decided under the Act by the Court of the Anchal Adhikari or the Land Reforms Deputy Collector or the Collector, and in which either no appeal had been preferred therefrom or no appeal lay, and if it appeared to the Commissioner that such officer had acted without jurisdiction, or in excess of jurisdiction vested in him by law; or had failed or improperly refused to exercise a jurisdiction so vested in him; or has acted in the exercise of his jurisdiction illegally or with material irregularity, then he could after giving reasonable notice to the parties concerned to appear before him, and after hearing the parties concerned, pass such order in the case as he thought fit.

4. The Act was amended by Bihar Act 28 of 1975 and Section 17 was omitted. The learned Judge has found that after the omission of Section 17, the Commissioner's power to call for the record of any case under that Commissioner was not maintainable. Counsel for the Appellants relying upon a judgment of this Court reported in Dattatray Nath Pandey Vs. The State of Bihar and Others submitted that right of preferring a second revision could not be taken away. That judgment, however, makes a clear observation that either by express words or by necessary implication the legislature by enacting a law may take away such jurisdiction, and the remedy may be barred, as the legislature is fully competent to do so. In the instant case, we have no doubt that by deleting Section 17, by legislative enactment, the legislature has made its intention quite clear. The learned Judge has found that deletion of Section 17 has only prospective effect. In the instant case, the Commissioner purported to have exercised powers u/s 17 in the year 1992, when the amending Act being Bihar Act 28 of 1975 had come into effect in March, 1983 omitting Section 17 from the Act. It cannot be said in these facts that by the impugned judgment the omission of the section has been given retrospective effect.

5. We have no doubt that if the Appellants claimed a right of appeal, much could be said in favour of their submission. In the instant case, however, the right claimed by them is a right to prefer a revision and not an appeal. Assuming that a right of revision may at issues, depending upon the words of the enactment, be equated with a right of appeal, it is still to be seen as to whether such a right has been taken away by a statute. u/s 16, the Collector may act on his own, or on an application made to him in this behalf by any person, provided he files a revision within 30 days from the date of the order. We will assume that Section 16 does confer upon the Appellants a right of revision. It is, however, not disputed that the right u/s 16 was exercised by the Appellants. The real question is whether Section 17 confers upon the Appellants a right of revision or appeal.

6. In our view, no right of revision or appeal is conferred upon any party by Section 17. Section 17 only vests in the Commissioner of a division, a power to call for a record of any case decided under the Act by the Court of Anchal Adhikari, or by the Land Reforms Deputy Collector, or the Collector. This power has to be exercised only in cases where either no appeal lies against the

aforesaid order or where no such appeal has been preferred. The jurisdiction vested in the Commissioner of a division is not ordinary appellate jurisdiction, and the limitation placed upon the exercise of jurisdiction, leaves no room for doubt that the exercised powers u/s 17 of the Act akin to the powers exercised by a revisional Court u/s 115 of the Code of Civil Procedure. We will therefore not be justified in equating power of the Commissioner u/s 17 of the Act with appellate powers. Moreover, there is nothing in Section 17, which confers a right upon any person to move the Commissioner, though it cannot be disputed that on coming to know about any matter, whether on his own or on the application of any party, the Commissioner could exercise his jurisdiction u/s 17. This section, however, has been omitted by Bihar Act 28 of 1975 with effect from March, 1983. After March, 1983, the Commissioner could not exercise that jurisdiction.

7. Section 17 is an enabling provision vesting in the Commissioner authority to correct orders passed by the named authorities in that section on the grounds specified therein. It does not vest any right in any person to file a revision before him. Once that power is taken away from the Commissioner by a legislative enactment, no party could complain that his right to move the Commissioner had been taken away. The amendment brought about, does not divest any person of any right, but is in the nature of divesting the authority vested in the Commissioner u/s 17 of the Act. If the Commissioner does not have the power to pass such orders no party can complain that he has been deprived of his right to move the Commissioner.

8. We find ourselves in agreement with the learned Judge, who allowed the writ petitions and set aside the impugned order, which was passed in exercise of jurisdiction vested u/s 17 of the Act, which provision had been omitted from the statute book in March, 1983.

9. Both the appeals are dismissed.