(1972) 08 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1920 of 1970

Baso Mahto — APPELLANT

Vs

Hari Mahto and Others — RESPONDENT

Date of Decision : 04-08-1972

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 35
Bihar Tenancy Act, 1885 — Section 103A(3)

Citation : AIR 1973 Patna 182

Hon'ble Judges : S. Akbar Husain, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Jugal Kishore Prasad, Nawal Kishore Prasad Sharma and Surendra Prasad Sinha, for the Appellant; Bindeshwari Prasad Sinha, Ratneshwar Nath Verma, Kameshwar Narayan Singh and K.P. Varma, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Although the facts are not clearly stated in the writ application, but, at the time of the hearing, on the basis of the statements in the writ application, the supplementary affidavit and the counter-affidavit and the annexures, the following facts emerged.

2. Shree Baso Mahto, who is the petitioner in this writ application, is the brother of Shree Hari Mahto, Respondent No. 1. Respondents Nos. 2 and 3 are sons of Respondent No. 1 and Respondent No. 4 is the wife of Respondent No. 1. The family possessed of certain lands. The record of rights in respect of those lands was being prepared as per Section 8 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act XXII of 1956 -- hereinafter referred to as the Act). In the draft record of rights, which was prepared by the Revenue Officer under Chapter X of the Bihar Tenancy Act, 1885, land comprised in three plots, bearing Nos. 1071, 1340 and 1620, measuring 0.42 acre was entered in the name of Hari Mahto. The petitioner filed an objection u/s 103-A

(1) of the Bihar Tenancy Act The Consolidation Officer, who was acting as the Revenue Officer preparing the draft record of rights, allowed the objection by his order dated the 2nd August, 1964 (a copy of which is Annexure ''2'' to the writ application). Respondent No. 1 went up in appeal to the Addl. Collector of Patna, but the Additional Collector, finding that the appeal directly could not be taken to him from the order of the Revenue Officer, directed the matter to go to the specially empowered Revenue Officer, under subsection (3) of Section 103-A of the Bihar Tenancy Act. By a notification dated the 15th June, 1964 (a copy of which is Annexure ''7'' to the writ application) the Deputy Collector, Land Reforms, was specially empowered to be the Revenue Officer for the purpose of Sub-section (3) of Section 103-A. The order of the Additional Collector, transferring the case to the Deputy Collector, Land Reforms, is dated the 10th September, 1964 (Annexure ''8'').

The Deputy Collector, Land Reforms, allowed the appeal, which, in effect, was allowing the revision u/s 103-A (3), by his order dated the 15th October, 1965 (Annexure ''6''). From this order, the matter was taken by the petitioner to the Additional Collector in appeal under Sub-section (4) of Section 103-A of the Bihar Tenancy Act, as it stood at the relevant time. The Additional Collector was the prescribed appellate authority by a notification dated the 26th August, 1964 (Annexure ''4''). By his order dated the 8th October, 1969, (Annexure ''5''), the Additional Collector allowed the appeal. Respondent No. 1 took up the matter in further appeal to the Commissioner of the Patna Division, but the Commissioner, by his order dated the 25th August, 1970 (Annexure ''9''), held that the appeal before him was not maintainable. Thereafter, Respon dent No. 1 invoked the State Government''s power u/s 35 of the Act. The Additional Secretary of the State Government by his order dated the 24th October, 1970 (Annexure ''10''), has interfered with the order of the Additional Collector and set it aside. The petitioner has come up to this Court for the quashing of Annexure ''10''.

3. In our opinion, in a matter like this, the State Government had no authority to call for and examine the records of the Additional Collector or the Revenue Officer in exercise of its power u/s 35 of the Act. The preparation of the record of rights is a preparation u/s 8 of the Act, but that section refers to the preparation of the record of rights in accordance With Chapter X of the Bihar Tenancy Act, The order of the Revenue Officer or the Additional Collector under the various sub-sections of Section 103-A of the Bihar Tenancy Act cannot be an order under the Act to enable the State Government to interfere with it. The proviso to Section 8 of the Act provides--

"Provided that the State Government may, by rules made in this behalf, make such modifications in the provisions of the said Act and Regulation as may be necessary for the expeditious preparation of the record of rights."

Rules have been framed in accordance with the proviso. It would appear from Rule 6 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Rules, 1958, that certain sections in Chapter X of the Bihar Tenancy Act have been excluded in the matter of procedure for preparation of record of rights. The object is to prepare the record of rights expeditiously. By a recent amendment, even Section 103-A of the Bihar Tenancy Act has been excluded. But, at the relevant time, that section was operative in the preparation of the record of rights in accordance with Section 8 of the Act. But, then the point to be emphasised is that in such a situation it is difficult to accept the contention put forward on behalf of Respondent No. I that the State Government would have the power to call for and examine the records of the Revenue Officer or the Additional Collector and interfere with their orders made during the stage of the preparation of the record of rights u/s 8 of the Act. The order dated the 24th October, 1970 (Annexure ''10''), therefore, must be set aside.

4. Learned Counsel for Respondent No. 1 thereupon drew our attention to the patent illegality committed by the Additional Collector in his order dated the 8th October, 1969 (Annexure ''5''). The order of the Additional Collector seems to be chiefly based on the ground that the Deputy Collector, Land Reforms, could not revise the order of the Revenue Officer under Sub-section (3) of Section 103-A of the Bihar Tenancy Act, beyond the period of three months. The limitation of three months was introduced in Sub-section (3) by Bihar Act 1 of 1967. It is a well-established proposition of law that the law of limitation is a procedural law -- it affects only those proceedings which are started when such a law comes into force. It is plain, in this case, that Respondent No. 1 had moved the Additional Collector, which matter was referred by him to the Deputy Collector, Land Reforms, at a point of time when the period of limitation was not there. For the sake of justice, therefore, it is necessary to set aside the order of the Addl. Collector and remand the appeal to him for a fresh disposal on merits with law.

5. In the result, this writ application is allowed, the order of the State Government dated the 24th October, 1970 (Annex-lire ''10''), is set aside, so also the order dated the 8th October, 1969 (Annexure ''5''), of the Additional Collector is quashed, and the Revenue Appeal No. 254 of 1965-66 is remitted back to the Additional Collector of Patna for a fresh disposal in accordance with law in the light of this judgment. It is made clear thai though Sub-section (4) of Section 103-A of the Bihar Tenancy Act has been deleted by Bihar Act VII of 1969, but, since this appeal is an appeal which was filed at a point of time, when it was competent to be filed, it will be deemed to be pending from before and will have to be disposed of in accordance with the law as it then existed There will be no order as to costs.

