(1965) 01 PAT CK 0011

In the Patna High Court

Case No : Misc. Judicial Case No''s. 705, 706 and 707 of 1961

Bibi Khairun Nisa — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 11-01-1965

Acts Referred:
Bihar Tenancy Act, 1885 — Section 103, 103A(2)
Civil Procedure Code, 1908 (CPC) — Section 115
Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 3

Citation : AIR 1965 Patna 382

Hon'ble Judges : R.L. Narasimham, C.J;G.N. Prasad, J

Bench : Division Bench

Advocate : Prem shankar Sahay, for the Appellant; Govt. Pleader and S. Sarwar Ali, for the Respondent

Final Decision : Dismissed

Judgement

1. Miscellaneous Judicial Cases Nos. 705, 706 and 707 of 1961 are disposed of in one judgment. In these petitions under Articles 226 and 227 of the Constitution the order of the Additional Collector of Bhagalpur setting aside the order patted by the Land Reforms Deputy Collector and directing the re-hearing of the matter after giving notice to the parties and taking evidence in their presence is under challenge. During the course of the settlement proceedings in village Bhai Gaon in the district of Bhagalpur a draft record of right was prepared and the Block Development Officer directed that the petitioner''s name should be recorded notwithstanding the objection raised by opposite parties Nos. 3 and 4 in respect of the khatas in dispute. On appeal, the Land Reforms Deputy Collector upheld the order of the Block Development Officer. The dispute was then taken up before the Additional Collector and it was registered as a miscellaneous revision. The learned Collector observed that the lower court has not dealt with the documentary evidence produced by the appellant before him (here opposite parties 3 and 4) and hence he remanded the case for re-hearing for taking evidence produced by the parties and for decision according to law.

2. Mr. Sahay for the petitioner urged that the order of the Deputy Collector was passed u/s 103A(2) of the Bihar Tenancy Act and as no right of revision has been conferred on the Collector either by the said Act or by the rules made thereunder, the Collector had no jurisdiction to admit the revision petition and remand the case for re-hearing. In support of his contention, he relied on a recent judgment of the Supreme Court reported in State of Bihar v. Ram Dayal 1962 BLJR 385 where it was held that a revenue officer (settlement officer in that case) had no power to review an order passed by the Assistant Settlement Officer, The question of the revisional jurisdiction of the Settlement Officer was not in issue in that case and hence that decision will not be of help to us. Mr. Sahay then relied on the recent amendment made to Section 103A of the Bihar Tenancy Act by the Bihar Tenancy (Amendment) Act, 1962 by which Sub-sections (3) and (4) were inserted in that section and power of revision against the order of the revenue officer was conferred on superior revenue officers and a provision was also made for an appeal in the prescribed manner. But merely because the legislature stepped in and expressly conferred powers of revision against orders passed u/s 103A of the Bihar Tenancy Act, it does not necessarily follow that as the law stood prior to the date of the amendment, there was no power of revision. For that purpose we have to examine carefully the provisions of the Bihar Tenancy Act, the rules made thereunder by the Government and also the rules and instructions issued by the Board of Revenue under the authority conferred by these rules,

3. Sub-section (2) of Section 103A says that when objections are filed after draft publication they shall be "considered and disposed of according to such rules as the State Government may prescribe". In pursuance of this provision and the other provisions of the Act the State Government have made rules, and Rule 1 of the said rules says that in carrying out the provisions of the rules the Revenue Officers shall have regard to the instructions of the Board of Revenue so far as such instructions are consistent with the rules. Rule 2 further says that "except where otherwise provided for by law or by these rules" all proceedings and orders of the Revenue Officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue, and the proceedings and orders of each Revenue Officer under this Act shall be subject to the supervision and control of the Revenue Officers to whom he may be declared by the Board of Revenue to be, for the purposes of this Act, subordinate. It is not challenged that the Land Reforms Duty Collector is a subordinate of the Additional Collector while exercising his functions under the Bihar Tenancy Act. Hence, by virtue of Rule 2, read with Sub-section (2) of Section 103A, the Land Reforms Deputy Collector, while considering and disposing of objections, is subject to the supervision and control of the Additional Collector, "except where otherwise provided for by law or by the rules", My attention has not been drawn to any provision either in the Bihar Tenancy Act or in the rules made thereunder which expressly takes away this right of supervision and control. It is in recognition of this power of supervision

and control that in Chapter III of the Bihar Survey and Settlement Manual, 1959, it is mentioned that a Deputy Collector or a Sub-Deputy Collector exercising powers as Assistant Settlement Officer shall be under the general control of the Collector. Again, in the Miscellaneous Rules by the Board of Revenue, Bihar, in 1958, in Rule 3 it is stated as follows:

"A higher authority has all the powers of any lower authority and, further, may, with or without appeal, modify or reverse any orders passed by a lower authority in a matter primarily within the competence of the lower authority, unless, by any law, the orders of the lower authority are final."

4. Thus, on a scrutiny of Section 103A (2) of the Bihar Tenancy Act and Rules 1 and 2 made under that Act, along with Chapter III of the Bihar Survey and Settlement Manual, 1959, and Rule 3 of the Board''s Miscellaneous Rules, 1958, the following conclusion emerges. The Collector has general powers of supervision and control over the work of a Deputy Collector done under the provisions of the Bihar Tenancy Act, except in respect of those functions which by law are declared to be final and also except where otherwise provided for by law. It is in recognition of this principle that in Sri Thakur Radha Krishnaji Vs. Ramkhelawan Singh and Others, and Raghuraj Prasad Singh Vs. Basudeo Singh and Others, (which were properly cited by Counsel for the petitioner), it was held that inasmuch as the orders of a Collector u/s 112B of the Bihar Tenancy Act and Section 40(6) of the said Act were expressly declared final by the Act itself, the Board of Revenue cannot interfere in exercise of its powers of superintendence. But those decisions have obviously no application here because Sub-section (2) of Section 103A does not say that the order of the Revenue Officer while disposing of objections shall be final.

5. It is not necessary for the disposal of this petition to exhaustively discuss the true scope and content of the powers of supervision and control conferred on superior revenue authorities over the actions of their subordinate Revenue Officers. Mr. Sahay, however, urged that the powers of superintendence and control must be limited to administrative functions only. Not only is there no authority in support of this contention, but the very language of Rule 2 of the Bihar Tenancy Rules is opposed to such a view As already pointed out, that rule says that all proceedings and orders of Revenue Officers under the Act shall be subject to supervision and control. Hence, even judicial or Quasi-judicial proceedings and orders of Revenue Officers will be subject to the supervision and control of superior revenue authorities, subject to the limitations already mentioned. This power is somewhat akin to the power of superitendence conferred on High Court under Article 227 of the Constitution, which has now been interpreted to include not only administrative superintendence but also superintendence over judicial matters. It is true that this power cannot be equated to the power of an appellate authority, but at the same time it will not be proper to say that it is limited to interference in jurisdictional matters only on the analogy of Section 115 of the Civil Procedure Code. The power must from its

very nature be very wide and will be subject only to self-imposed restrictions, depending on the nature of the order passed and the rights affected, the nature of the irregularity or illegality and various other relevant factors. It is true that the Additional Collector had registered the petition before him as a "Miscellaneous Revision" petition. But the name given by him is immaterial.

6. It cannot also be said that in the circumstances of this case the Additional Collector should not have interfered. The Deputy Collector did not discuss the relevant claims of the parties, but merely stated after hearing the arguments of the lawyers and examining the papers produced by the parties, that he was of opinion that opposite party No. 3 was not able to establish his claim. No reasons are given for taking this view. Nor is there a discussion of the nature of the evidence adduced by the parties. Under such circumstances the learned Additional Collector rightly pointed out that he was not satisfied that due consideration was paid to the documentary evidence produced by opposite party No. 3 and hence remanded the case to the lower court for re-hearing and for taking the evidence produced by the parties and for decision according to law. He could certainly pass an order of this type in exercise of his powers of supervision and control.

7. We are, therefore, not inclined to interfere. The petition is, therefore, dismissed, but, in the circumstances, without costs.

