

(2011) 07 PAT CK 0059
In the Patna High Court
Case No : CWJC No. 9928 of 1999

Bishwanath Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(6), 2, 2(4), 34(2), 35

Citation : (2011) 07 PAT CK 0059

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard Mr. Umesh Prasad Singh, learned Senior Counsel appearing in support of the writ petition, Learned Counsel for the State and Mr. Ratna Deep Prasad, Learned Counsel for the private-respondents. As pleadings are complete, with consent of parties this writ petition is disposed of at this stage itself. Challenge is to the order dated 29.6.1999 passed by the Deputy Director of Consolidation, Muzaffarpur passed in Revision Case No. 62/98 affirming the order dated 13.1.1998 passed by the Deputy Director of Consolidation, Vaishali in Appeal No. 1/97.

2. A very piquant situation has arisen in this case. Briefly stated the undisputed facts are that a dispute arising out of consolidation proceedings was taken in appeal in terms of Section 10(6) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as the Act) to the Assistant Director of Consolidation. It was heard and disposed of by Deputy Director of Consolidation exercising the powers of Assistant Director of Consolidation. Petitioner being aggrieved preferred a revision in terms of Section 35 of the Act. That was heard and disposed of by the Deputy Director of Consolidation exercising the powers of Director Consolidation which order is under challenge.

3. Mr. Umesh Prasad Singh, learned Senior Counsel makes brief submissions that once a Deputy Director of Consolidation had exercised appellate jurisdiction in the matter, then the Deputy Director of Consolidation could not exercise revisions! jurisdiction over his own appellate order and such exercise of jurisdiction was bad. This situation, where the appeal is heard by the same authority who then decides to revise its own appellate order, has come about because of piquant situation and scheme obtaining under this Act.

4. First as to the power of Deputy Director to hear appeals. Section 10(6) is quoted hereunder:-

10(6) Any person aggrieved by an order of the Assistant Consolidation Officer or Consolidation Officer under [subsections (3), (4) of (5)] may, within 30 days of such order, file an appeal before the Assistant Director of Consolidation, whose decision, except as otherwise provided by or under this Act, shall be final.

5. A reference to the aforesaid provision would show that an appeal lies before the Assistant Director of Consolidation. The question is how the Deputy Director, Consolidation did hear the appeal. There are two aspects of the matter. First, if one reads the definition of Assistant Director of Consolidation as provided under sub-section (4b) of Section 2, which reads as under:-

(4b) "Assistant Director of Consolidation" means an Officer not below the rank of Deputy Collector appointed as such by the State Government to exercise the powers and perform the duties of an Assistant Director of Consolidation under this Act or the rules made thereunder.

6. One would find that the State Government is authorized to appoint Officers not below the rank of Deputy Collector to exercise the powers and functions of Assistant Director of Consolidation and it is under this power the State Government has notified the Deputy Director of Consolidation to be one such person. Apart from this one may refer to sub-section (4a) of Section 2, which is quoted hereunder:-

(4a) "Deputy Director of Consolidation" means an officer not below the rank of Additional District Collector appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include an Assistant Director of Consolidation.

7. It is provided that the Deputy Director of Consolidation, inter alia, would include Assistant Director of Consolidation. Thus, reading the two provisions aforesaid and the notification issued thereunder, it would appear that the powers and functions of Assistant Director of Consolidation can be exercised by the Deputy Director of Consolidation. It is because of this, apparently, that the Deputy Director of Consolidation heard the appeal in terms of Section 10(6) of the Act.

8. Now, we come to Section 35 of the Act, which is quoted hereunder:-

35. Revision and reference.-The Director of Consolidation may of his own motion or on the application of any party or on reference being made by any subordinate authority, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceeding; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

9. First thing that is to be seen that the power of revision has been conferred on the Director of Consolidation. The second thing that is to be seen is it is a revisional power which is exercised over orders passed by subordinate authorities and third it is a power of superintendence (revisional jurisdiction), but u/s 34(2) of the Act the Director of Consolidation may, with the sanction of the State Government, delegate any of his powers or functions to any Officer not below the rank of Deputy Collector. It is not in dispute that the Director of Consolidation in exercise of its power u/s 34(2) of the Act has delegated his revisional jurisdiction power u/s 35 to, inter alia, Deputy Director of Consolidation. This delegation has been upheld by the Division Bench of this Court in the case of Krishna Singh Vs. The Deputy Director of Consolidation and Others, .

10. The effect of the two delegating notifications one with reference to Section 2(4b) of the Act and the other with reference to Section 34(2) of the Act is that Deputy Director of Consolidation figures as an appellate authority with reference to Section 10(6) of the Act is also the revisional authority u/s 35 of the Act. This is the piquant situation that has arisen in the present case. Unmindful of conflict of jurisdiction, the authorities have proceeded on the strict letter of delegation.

11. Having considered the matter, in my view, this cannot be done. The delegations in either case are authorized and legal but delegation is not denudation. The principal authority delegated with the power by the legislature continues to have the power to adjudicate. Here, where an order was passed in appellate jurisdiction by the Deputy Director of Consolidation then notwithstanding delegation an officer of his rank could not exercise revisional jurisdiction because revisional jurisdiction is a jurisdiction of superintendence over subordinate authority. In such a situation, where the appellate order is passed by the Deputy Director of Consolidation, the revisional jurisdiction has to be exercised by a superior authority may be the Director of Consolidation himself and if there be a valid delegation then u/s 34(2) of the Act it would be Joint Director of Consolidation but in no circumstances the Deputy Director of Consolidation. The same authority cannot exercise the appellate power and the revisional power over the appellate authority himself. Here I may " also point out that Section 2 of the Act is the definition clause. It starts with the expression "In this Act, unless there is anything repugnant in the subject or context". This itself means and provides that the definition given thereunder like subsection (2a) or for that matter sub-Sections (4), (4a) or (4b) thereof cannot be applied

mechanically wherever those expressions are used in the Act. One has to see the subject and the context for the repugnancy being created. In the present case, there is a clear repugnancy or absurdity that arises. That is impermissible.

12. Thus, on this question of jurisdiction alone, the writ petition has to be allowed. The order of the Deputy Director of Consolidation passed in the revisional jurisdiction with reference to Section 35 of the Act cannot, thus, be sustained. It is an order which is *coram non judice* and hence without jurisdiction. It is set aside. The Director of Consolidation before whom the revision was originally filed will either now hear the revision itself and/or transfer it to delegatee not subordinate to Deputy Director but above the Deputy Director who could be Joint Director in terms of definition u/s 2(4) of the Act. The Director of Consolidation would be well advised to take effective steps immediately in terms of powers conferred upon him in terms of Section 34(2) of the Act to remove this dichotomy. The matter is remanded to the revisional Court who would be at liberty to consider and decide the matter upon all submissions raised before him in the matter by all the parties after due notice to them in accordance with law.

13. This writ petition is allowed. Let a copy of this order be sent to the Director of Consolidation, Bihar for necessary action.