

(1980) 09 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 1264 of 1979

Chandrika Sah

APPELLANT

Vs

Additional Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 23-09-1980

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

Citation : (1981) 29 BLJR 305 : (1981) PLJR 124

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Judgement

Hari Lal Agrawal, J.—This application arises out of a proceeding initiated u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and acquisition of Surplus Land) Act, 1961. The petitioner is the purchaser. He has purchased 10 dhurs of land appertaining to original C. S. Plot No. 1059/2519 under Khata No. 302, R. S. Plot No, 779 under Khata No. 296, for a sum of Rs. 1,500/-, from respondents 5 and 6 in Mauza Shingaila now said to be commonly known as Motipur Bazar. Pre-emption was claimed by respondent No. 4 on the ground that he was in adjoining raiyat of the land in question, being owner of the R. S, Plot. No, 778.

The petitioner resisted the claim of pre-emption on the grounds that the land in question was an urban site situated in bazar area in Motipur which was a growing town and that he had purchased it for the purpose of constructing shops. On these grounds he took the stand that the provisions of Section 16(3) of the Act were not attracted to the land in question.

2. The Deputy Collector, Land Reforms, Muzaffarpur West, accepted the above plea of the petitioner and by his order dated 12-12-1974 (Annexure 3) dismissed the case of the pre-emptor. It may, however be mentioned that the pre-emptor could not be present before the Deputy Collector and the order (Annexure 3) was passed exparte on merits. The pre-emptor challenged the said order before the

Deputy Collector himself by filing an application on the ground that in his absence the Deputy Collector could only dismiss his application for default and could not decide the case on its merits. Reliance was placed on an authority of this Court in the case of Kawleshwar Singh and Another Vs. Raghubir Singh and Others, . The Deputy Collector by his order dated 11-9-1973 (Annexure 4) accepted the above contention of the pre-emptor and came to the conclusion that he could not have decided the case of the petitioner on its merits in his absence, and accordingly restored the case for fresh hearing and then passed a fresh order on merits after hearing both the parties vide his order dated 31-3-1977 (Annexure 5). This time both the parties examined several witnesses before the Deputy Collector, particularly with respect to the potentiality of the land in question, and its location he came to the conclusion that the nature of the land was agricultural and in as much as the pre-emptor was undisputedly an adjacent raiyat, his application for pre-emption was allowed. Then an appeal was preferred by the petitioner before the Collector, Muzaffarpur and the Additional Collector by his order dated 29-8-1978 (Annexure 6) dismissed the same.

One of the points that was urged by the petitioner before the Additional Collector was that the order dated 31-3-1977 by the Deputy Collector amounting to reviewing the order passed by his predecessor and in as much as the Act did not confer any power of review on the Deputy Collector, the said order was wholly without jurisdiction and illegal. This argument was met on behalf of the pre-emptor that the petitioner, having taken to such objection before the Deputy Collector, would be deemed to have waived the right of objection on this ground in as much he participated in the proceedings, examined the witnesses and thus having taken a chance of defeating him, could not now turn round and he heard to say, on his losing the said proceeding, that the proceeding itself was without jurisdiction. The Additional Collector accepted this argument of the pre-emptor and he also upheld the order of the Deputy Collector on its merits and dismissed the appeal.

The petitioner then filed a revision before the Board of Revenue but the same was dismissed in limine on the ground of limitation. He has accordingly filed the present writ application and the order of the Revenue authorities has been challenged by him on two grounds, namely, (1) the Deputy Collector had no power to review his order, and (2) the land being urban site the provisions of Section 16(3) of the Act do not apply to the same.

3. A counter-affidavit has been filed on behalf of the pre-emptor (respondent No. 5) wherein it has been contended that the exparte order of the Deputy Collector contained in Annexure 4 was vitiated on account of serious procedural error and, therefore, he had full jurisdiction to recall that order. With respect to the location of the land and its potentialities it has been stated that it was situated at a distance of about four miles from the Motipur Bazar area and it was surrounded on all sides by agricultural lands, save and except a road towards its north, and its description in the Khatian was "Dhanahar".

4. The fact that the power of review is a creation of statute and no Court can exercise this jurisdiction under its inherent powers cannot be disputed and is well settled by a series of decisions of various High Courts including this Court and the Supreme Court. Reference may be given to only two decisions of the Supreme Court in *Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another*, and *Harbhajan Singh Vs. Karam Singh and Others*, .

5. Learned Counsel for the respondents, however, refuted the argument on this score that the impugned order of the Deputy Collector (Annexure 5) could not be said to be, either, in point of fact or in law, an order of review as such and at best it was simply an order of recall under the inherent powers of the authority.

6. Confronted with this situation. Mr. Prabha Shanker Mishra contended that the proceeding before the Deputy Collector being not a proceeding before a Court, the provisions of Order IX or for that matter, even its principles could not be applied to the proceeding. He accordingly contended that the order (Annexure 5) must be set aside on this account. No direct decision could be cited at the Bar, but after examining some authorities which I will presently refer, I am inclined to take the view that although the Deputy Collector might not be acting as such, the Legislature has given specific power to the Collector under the Act and has taken care to provide that his decision. Subject to the right of appeal and revision by the higher Revenue authorities, would be final. The powers therefore, being exercised by the Collector must be held to be quasi judicial and, therefore, although the provisions of Order IX may not be applicable to a proceeding before a Collector, it would nonetheless be governed by principles analogous to those contained in this Order so far as they do not appear to be inconsistent with any scheme or specific rule on the subject.

7. Before dealing with some of the cases which lend support to this view, I may dispose of first an ancillary point that the purchaser would be deemed to have waived to raise any objection on this score, having participated without any objection before the Deputy Collector. In this connection it has already been seen that objection had taken by the petitioner before the appellate authority. Mr. Mishra placed reliance upon the case of *Ram Janam Gareri v. Narbadeshwar Singh and Ors.* 1973 B.L.J.R. 566 where a Sub-divisional Judicial Officer had transferred a case u/s 16(3) of the Act from his own file to the file of the Land Reforms Deputy Collector, which power could be exercised by the Collector of the district. Before the Deputy Collector no objection was taken with regard to the validity of the transfer. Although he had concurrent territorial jurisdiction to decide the same, but in the absence of an order from the Collector of the district he had no jurisdiction to deal with the same. The parties had not taken any objection before him or at any subsequent stage and objection was raised for the first time in this Court in the writ jurisdiction, it was held that simply because this point was not taken by the petitioner at the earlier stages, he could not be shut out from raising the point which goes to the roof of the jurisdiction.

On this authority it was argued that if it is held that the Deputy Collector had no

authority in law to recall his earlier order, then notwithstanding the participation of the petitioner in a subsequent proceeding he cannot be shut out from raising this point by applying the doctrine of waiver. I have however sitting with Shivanugrah Narain, J. doubting the correctness of this decision referred a case on this point to a Full Bench.

8. Be that as it may, it is a well settled proposition of law that if there is an inherent lack of jurisdiction in a Court or authority then no amount of consent can create a jurisdiction in it. In this connection I may refer to the case of *Pioneer Traders and Others Vs. Chief Controller of Imports and Exports Pondicherry*, , where it was observed that where an authority, whether judicial, or quasi judicial has in law, no jurisdiction to make an order, the omission by a party to raise before the authority, the relevant facts for deciding that question, cannot clothe it with jurisdiction.

9. The foregoing discussions now bring me to the consideration of the main question as to whether the Deputy Collector could recall his earlier order. It has been seen that the earlier order dated 11-9-1975 (Annexure 4) was passed in the absence of the pre-emptor who was the author of the proceeding and obviously the Deputy Collector could only have dismissed this application for default, and could not dispose of the same on merits. It is, no doubt, true that the powers of a Tribunal of a special jurisdiction are circumscribed by the statute under which it is constituted and such Tribunal must act within its powers conferred on it by the statute which created it.

The proposition that inherent power can only be implied in Civil Court having general jurisdiction and not by any special Authority constituted under any special statute for a special object, cannot be disputed and one has to turn to the statute itself to find the power either in express terms or by necessary implication. But, in any view, it would not be correct to hold that none of the principles on this account should be held to be applicable to an Authority acting under any special Act or a Tribunal of special jurisdiction, because in that event, they would have no jurisdiction even to dismiss an application for non-prosecution, as such provision is specifically contained in Order IX of the Code of Civil Procedure. The powers which can be exercised under the principles of natural justice must be deemed to be inherent in every Authority either acting under any special statute or a Tribunal of special jurisdiction. Applying this principle, the Bombay High Court in *Zakeria Suleman Vs. The Collector, Yeotmal and Others*, , held that although there was no express provision in the Rent Control Order permitting the Collector or the Appellate Authority to dismiss for default or to restore to file an application or appeal, such a power must be implied under the provisions of the Act.

Then again, the Madhya Pradesh High Court in the case of *Sunderlal Mannalal Vs. Nandramdas Dwarkadas and Others*, , while considering the question as to whether an Election Tribunal can be deemed to have inherent power to restore an election petition dismissed for default held that although the Act did not give

any power of dismissal, it was axiomatic that no Court or Tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared or cared to remain present. The dismissal, therefore, is under an inherent power which every Tribunal possesses and no express provision in the Act was necessary to empower the Court to make the order of dismissal. Proceeding further. it was held:

No doubt the Act does not lay down in so many words that a petition dismissed in these circumstances can be restored; but we take that the inherent powers which every Civil Court exercises are vested in the tribunal. It is the inherent right of a Court to restore proceedings dismissed by it *ex debito justitiae* when sufficient cause has been made out.

10. I find myself, in respectful agreement with the above view and, therefore, would hold that the Daputy Collector was fully competent to recall his earlier order (Annexure 4), as an integral part of the inherent power of every Authority in this regard, and for that matter every authority is entitled to correct its own mistakes and wrong orders.

Taking any other view is bound to work out gross miscarriage of justice and would result in procedural imbalance, leaving the Authority or the Tribunals in a State of vacuum. The first point advanced by Mr. Mishra in challenge of the impugned order of the Deputy Collector therefore, must be rejected.

11. Then remains for consideration the second question as to whether the Act would apply to the land in question which was situated in the Bazar area. There is no warrant for this proposition that the provisions of the Act would have no application to a land simply because it happens to be situated in a Bazar area. It has been observed by several decisions of this Court that the provisions apply even to a land which happens to be situated within a municipal area. Both the authorities, namely, the Deputy Collector and the Additional Collector, on the evidence adduced by the parties have clearly held that the nature of the land was agricultural. Nothing was shown to me that this finding, in any way, was vitiated. The second point, therefore, also has got no substance.

12. The result of the above discussions is that this application must fail and it is accordingly dismissed, but in the circumstances, however, I shall make no order as to cost.