
(1997) 05 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 1715 and 1716 of 1995

Danu Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-1997

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 2(4), 34(1), 34(2), 35
Constitution of India, 1950 — Article 226

Citation : (1998) 1 PLJR 352

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Mahesh Prasad, No. 2, for the Appellant; S.C. III and Awadhesh Pd. Sinha, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—These two writ petitions under Article 226 of the Constitution have been filed for quashing the order of the Research Officer dated 3.3.1994 in Revision Case No. 350 of 1993 as also the order dated 21.12.1994 in Revision Case No. 207 of 1994 whereby he has allowed both the cases. As the dispute involved in both the cases are common between the same parties, therefore they are being disposed of by this order.

2. The main question which has been raised for consideration is whether the Research Officer, being an officer of the rank of Deputy Collector, can exercise revisional powers of the Director, Consolidation, u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (in short "the Act")?

3. Learned Counsel for the Petitioners contended that by the time, in numerous cases, this Court has already pointed out that the Research Officer cannot exercise revisional power of the Director as provided u/s 35 of the Act.

4. In my view, to answer the question more conveniently, it would be useful to

notice some of the provisions of the Act: as per Section 35 of the Act, 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 and decide the proceeding the manner prescribed under that provision.

5. As per Section 2(4) of the Act, "Director of Consolidation" means an officer appointed as such by the State Government to exercise the powers and perform the duties of Director of Consolidation under this Act or the rules and shall include an Additional Director of Consolidation. Section 34(1) of the Act empowers the State Government to delegate any of its power or functions under this Act to any officer not below the rank of a Collector. As per Sub-section (2) of Section 34 of the Act, the Director of Consolidation may, with the sanction of the State Government, delegate any of his powers or functions under this Act to any officer not below the rank of Deputy Collector.

6. Undisputedly, the power to hear appeals against the order passed by the Consolidation authority has been vested with the Deputy Director, Consolidation. It is well known that parties aggrieved against the orders of Deputy Director of Consolidation, will have no other remedy but to file a revision before the Director, Consolidation u/s 35 of the Act. As per Sub-section (4a) of Section 2 "Deputy Director of Consolidation" means an officer not below the rank of Additional District Collector and shall also include Assistant Director of Consolidation.

7. It has not been disputed that Research Officer (Respondent No. 3) is an officer of the rank of Deputy Collector. No doubt, as noticed above, Section 34(2) of the Act enables the Director of Consolidation to delegate any of his powers or functions under the Act with the sanction of the State Government to any officer not below the rank of "Deputy Collector". But keeping in mind that officers exercising powers u/s 35 of the Act are authorised to hear revision applications against the orders of the Deputy Director who as per Sub-section (4a) of Section 2 of the Act cannot be an officer below the rank of Additional Collector. Therefore it would be preposterous to confer revisional power upon an officer of lower rank.

8. For the reasons stated above, I am constrained to hold that Research Officer cannot be delegated with the powers of Director of Consolidation as prescribed u/s 35 of the Act.

9. Therefore, both the writ applications are allowed to the extent indicated above and orders passed by the Research Officer are quashed. Accordingly, I direct that revision applications shall now be heard by the Director of Consolidation himself or any other officer not below the rank of Additional Collector. Since this order has been dictated in presence of both the parties, therefore, attempt should be made by the Director to dispose of the matter without any unnecessary delay.