
(1993) 07 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 6306 of 1992

Dattatray Nath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1993

Acts Referred:

Citation : (1993) 07 PAT CK 0012

Final Decision : Allowed

Judgement

S.B. Sinha, J.

1.This application is directed against an order dated 26-5-1992 passed by the Commissioner, Saran Division Chapra in Case No. 87/1991-92 whereby dismissed the revision application filed by the petitioner on the ground that after coming into force of the Bihar Tenants Holding(Maintenance of Records) Act, 1973 (hereinafter referred to as "the said Act") he had no jurisdiction to entertain a second revision application.

2. The subject-matter of the present writ application is 4 kathas 6 dhurs of land in Khesra No. 1011 appertaining to Khata No. 145 of village Matihania in the district of Gopalganj.

3. The petitioner claims himself to be landlord of the recorded tenant of the said land. It has been contended that at the time of revisional survey one Shyam Narayan Pandey and Vidya Nand Pandey were in actual possession on a cash rental of Re. 1 and their names had been also found place in the revisional survey settlement records of right as Shikimidars.

4. The petitioner has contended that however the original raiyat obtained possession from the Shikmidar and thus had been cultivating the land himself.

5. It has further been contended that the name of the petitioner was also noted in Register II of the State and a Jamabandi was created in his name at the time of vesting of these estates in the State of Bihar under the Bihar Land Reforms

Act.

6. The petitioner has contended that he had all along been paying rent to the State of Bihar and had also entered into several transactions in relation thereto.

7. The Respondent No. 7 however filed an application before the Circle Officer u/s 48(D) of the Bihar Tenancy Act. In the said application inter alia, a prayer was made that necessary corrections in the records of right be made after taking deposit of 24 times of the cash rental of the disputed land. Thereupon a case being Jamabandi Correction Case No 1 of 1988-89 was started.

8. According to the petitioner in the said proceeding a forgery was committed and an application purported to bear his signature was filed therein. Thereafter a case records were sent to the Land Reforms Deputy Collector, Chapra for opening of Jamabandi in the name of Respondent No. 7 upon cancellation of the Jamabandi standing in the name of the petitioners.

9. The Sub-divisional Officer who was at that time Incharge of the Office of the Land Reforms Deputy Collector passed an order to the said effect which is contained in Annexure 5 to the writ application.

10. The petitioner thereafter filed a revision application before the Additional Collector, Gopalganj being Jamabandi Revision No. 2 of 1990 which was transferred to the Court of Collector, Gopalganj on the basis of an application filed by the respondent No. 7. By an order dated 28-11-1991 the said revision application was dismissed. The petitioner preferred a second revision application which has been dismissed by the Commissioner Saran Division Chapra by an order dated 26-5-1992 as contained in Annexure-7 to the writ application.

11. The question which now arises for consideration is as to whether the second revision before the Commissioner was maintainable?

12. Admittedly, the proceeding in this case was initiated on 5-1-1988 i.e. prior to coming to force of the said Act as the said Act came into force with effect from 2-10-1990 by reason of a notification published in Official Gazette on 18-1-1991.

13. The learned Counsel appearing on behalf of the respondent No. 7, however, submitted that repeal of Section 17 of the Act by reason of the Amending Act of 1983 amounts to change in procedural law and thus the same will have a retrospective effect.

14. Prior to coming into force of the said Act, the matters relating to mutation were governed apart from the relevant Tenancy Acts applicable to specified areas, under the Mutation Manual.

15. Clause 10 of the Mutation Manual reads thus:

appeals--An appeal should be filed against the order of the Anchal Adhikari within a period of 30 days from the date of the order; a revision petition will be before the Collector, or the Additional Collector within a period of 60 days from

the date of the appellate order a second revision petition may be entertained by the Divisional Commissioner within a period of 60 days from the date of the order passed by the Collector provided the Commissioner is satisfied that there are adequate grounds for entertaining a second revision petition.

16. From a bare perusal of the aforementioned Proviso it would be evident that a right of appeal and revision vested in a party to the lis in terms thereof.

17. It is true that a mutation proceeding is not a judicial proceeding, but there cannot be any doubt that they are administrative proceeding involving civil consequences.

18. It is now well-known that in view of the decision of the Supreme Court of India that there exists a thin line of demarcation between quasijudicial orders and an administrative orders involving civil or civil consequences.

Reference in this connection may be made to U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, .

19. In that view of the matter, the rights vested in the party under the provision of Mutation Manual cannot be taken away except in accordance with the provisions of a Statute. It is true that Mutation Manual do not have the Statutory force. [See Shanti Devi v. the State of Bihar 1993(1) BLJR 118.] However, a right to move the high bodies by way of appeal and revision must be held to have conferred a right upon the suitor is embodied on the principles of natural justice and would also come within the purview of the Doctrine of Legitimate Expectation.

20. The said Act(Bihar Act No. 28 of 1975) received the assent of President of India on 5-5-1975 and published in the Bihar Gazette on 20th August, 1975.

21. In terms of Section 1(iii) of the said Act, the same was to come into force on such dates and in such area as the State Government by a notification in the official Gazette publishes, and different dates could be appointed in the different areas of the State.

By reason of a notification dated 8-1-1991, the said Act was made applicable in the entire State of Bihar with effect from 2-10-1990.

22. The said Act is, thus prospective in nature.

23. Chapter III of the said Act deals with the matters relating to mutation. Section 15 provides for appeal and Section 16 provides for a revision.

24. A right of appeal is a substantive right and not a procedural right.

25. In Colonial Sugar Refining Co. v. Irving, 1905 Appeal Cases(Privy Council) it has been observed as follows;

To deprive a suitor in a pending action of an appeal to a superior Tribunal which belonged to him as of right, is a very different thing from regulating procedure.

In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new Tribunal. In either case, there is an interference with existing rights contrary to the well-known general principle that Statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

26. This aspect of the matter has also been considered by the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, wherein it has been held as follows:

That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

The right of appeal is not a mere matter of procedure but is a substantive right.

The Institution of the suit carries with the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

The right of appeal is vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised. When the adverse judgment is pronounced. Such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

This vested right of appeal can be taken only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise.

27. A revisional Court in effect and substance exercises an appellate jurisdiction. In law, thus no distinction exists between an appellate jurisdiction and revisional jurisdiction except in so far as the same provides for a right of the appellate or revisional authority to consider the matter in terms of the provisions contained therein.

28. By the appellate Court, the entire subject-matter of the lis can be re-considered, whereas the revisional Court may have to exercise a limited jurisdiction depending upon the phraseology used in the Statute.

29. This aspect of the matter has also been considered by the Supreme Court in *State of Bombay Vs. Supreme General Films Exchange Ltd.*, *Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others*, and *Jose Da Costa and Another Vs. Bascora Sadasiva Sinai Narcornim and Others*.

30. It is, therefore, not correct to contend that the right of appeal was not a substantive right and a mere procedural right.

Reference in this connection may be made to *Bhim Singh v. Mohanlal Agrawal*

1991 BBCJ 459, wherein upon consideration of various other decisions, it has clearly been held that a right of appeal vested in a person cannot be taken away.

31. However, my attention was drawn to the decision of the Supremo Court in India Insurance Co. Ltd., v. Smt. Shanti Mishra Adult 1976 SC 237, wherein it has been held that by merely making a change of the forum i.e. change in adjectival or procedural law, a person's right is not infringed.

32. The said decision in my opinion, is not applicable in this case as by reason of the provisions of the said Act, the revisional forum have not been changed.

33. By reason of the provisions of the said Act, forum of revision has not been changed, but the same is sought to be taken away inasmuch as admittedly in terms of the said Act, no provision for second revision exists.

34. The said Act deals with right and obligations of the parties as also various authorities.

It would appear that Chapter II imposes an obligation upon the Anchal Adhikari to prepare a continuous Khatian and ledger, Such a provision did not exist in the Mutation Manual. The continuous Khatian and tenant's ledger are to be so prepared and to be sent to the S.D.O. and Collector.

35. Sub-section (iv) of Section 3 of the Act reads thus:

To supply information about the lands in respect of which and about the tenant in respect of whom, additional rents would have to be assessed for new cultivation after the last settlement and also about tenants, who, for one reason or the other, might have escaped assessment of rent.

36. Sections 4 to 13 of the said Act impose obligations upon the various courts and authorities to give information to the Anchal Adhikari in relation to the matters enumerated therein.

37. The provisions of Section 14 which deals with the mutation can be invoked only upon receipt of the notice under Sections 4, 5, 6, 7, 8 and 10 or application under Sections 11 or 12 of the Act or a report u/s 13.

38. Section 15 provides for an appeal only against an order passed u/s 14(2).

39. Section 15(3) of the Act provides a finality clause to the order of appellate order subject to result in revision.

40. From a comparison of the provisions of Mutation Manual and the said Act, it would, therefore, appear that the procedures laid down under the said Act in relation to mutation are absolutely different from the provisions of Mutation Manual.

41. By reason of the said Act new rights and obligations have been created and the forum for redressal of grievances have also been provided for thereby.

42. In this situation, it is wholly absurd to contend that the right of second revision as contained in Clause 10 of the Mutation Manual has been taken away either expressly or by necessary implication only because provision for second revision as contained in Section 17 of the said Act stood repealed by reason of Ordinance No. 62 of 1982 which was subsequently repealed by Bihar Act 3 of 1983.

43. It is true that in *Nageshwar Singh v. Rajmani Kuer* 1986 BBCJ 364 a Full Bench of this Court inter alia held that after the repeal of Section 17, a second revision is not maintainable. However, in that decision the question did not arise for consideration as the said Act admittedly at the relevant time was not applicable in the Hazaribagh District.

44. In any event as noticed hereinbefore the Full Bench other questions of law and the decisions of the Supreme Court which have been considered hereinbefore were neither considered nor discussed.

45. This Court is bound by the decision of the Supreme Court in view of Article 141 of the Constitution of India.

46. The Full Bench as noticed hereinbefore also did not consider the relevant statutory provisions of the said Act creating new rights and obligations nor considered the question that mutation of somebody's in the Register would arise only in terms of the provision as contained in Section 14 of the Act and not otherwise.

47. As in this case, the proceeding was not initiated in terms of the Section 14 of the Act, the question of preferring any appeal against an order u/s 14(2) or 15 of the Act or a revision petition in terms of Section 16 of the Act did not arise.

48. As noticed hereinbefore, the mutation proceeding could be initiated only upon preparation of final khatian and tenant's ledger in terms of Section 3 of the said Act.

49. It is, therefore, clear that where a proceeding has been initiated under the Mutation Manual, requirements of Section 3 or other provisions occurring in Chapter II of the said Act were not to be complied with.

50. *Ram Chandra Ram's* case must thus, be held to have been rendered per incuriam. In any event, the same is a obiter dicta and does not create any binding precedent.

51. Reference in this connection may be made to *Md. Jainul Ansari v. Md. Khalil* 1990(2) PLR 378, *Md. Nazimuddin v. State of Bihar* 1990(2) BLJR 505, *Central Coal Field Ltd. v. State of Bihar* 1993 (1) BLJR 617 and *Durga Pada Banerjee v. Smt. Sushmita Banerjee* 1993 (1) BLJ 313.

In *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, it has clearly been held that a decision is not an authority for the proposition of law

which not canvassed before it. As the decisions of the Privy Council and the Supreme Court and other relevant provisions which are necessary for the purpose of construction of the provisions of the said Act were not brought to the notice of the Full Bench, the same in our opinion, does not create any binding precedent.

52. In this view of the matter, this application is allowed, the impugned order dated 26-5-1992 as contained in Annexure-7 to the writ application is quashed and the matter is remitted back to the Commissioner for a fresh decision in accordance with law.

R.N. Prasad, J.

53. I agree.