(1977) 01 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1569 of 1972

Devendra Prasad Gupta APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-01-1977

Acts Referred:

Bihar Tenancy Act, 1885 — Section 103A, 103A(3), 104G
Bihar Tenancy Rules, 1886 — Rule 63A, 76
Constitution of India, 1950 — Article 226

Citation : AIR 1977 Patna 166 : (1978) 26 BLJR 87 : (1977) 10 PLJR 576 : 1977 PLJR 576 : AIR 1977 Pat 166??

Hon'ble Judges : Nagendra Prasad Singh, J;B.S. Sinha, J

Bench : Division Bench

Advocate : Gorakh Nath Singh, for the Appellant; Chandreshwar Jha, for the Respondent

Final Decision : Allowed

Judgement

Nagndra Prasad Singh, J.—This is an application under Articles 226 and 227 of the Constitution filed on behalf of the petitioner for quashing a resolution dated the 21st September, 1972 of the Additional Member, Board of Revenue, a copy whereof is Annexure 1 to the writ application. By the impugned resolution, the respondent-Additional Member, Board of Revenue has set aside an order dated 3-7-1969 passed by the respondent Charge Officer, a copy whereof is Annexure 5 to the writ application.

2. It appears that in the district of Saharsa steps for preparation of record of rights in accordance with the provisions contained in Chapter X of the Bihar Tenancy Act, 1885 (hereinafter to be referred to as ''the Act'') were taken and the respondent Assistant Settlement Officer prepared a draft record of rights which was published in the prescribed manner. Respondent No. 6 filed an objection which was heard by the said Assistant Settlement Officer, and the, by his order dated 29-5-1969, corrected the said draft publication by deleting the

name of the petitioner in respect of several plots which had been shown in his possession in the draft publication. A copy of the said order is Annexure 2 to the writ application. Being aggrieved by the said order, this petitioner filed an application which was addressed to the Settlement Officer, Saharsa making a grievance about the order dated 29-5-1969 and praying therein that he should be given opportunity to produce relevant materials, as the correction on the objection filed by respondent No. 6 had been made without hearing the petitioner. The Charge Officer who was a revenue officer specially appointed by the State Government, on 3-7-1969, passed the following order on the application filed by this petitioner:

"Heard.

The A. S. O. is allowed to reopen the case and dispose in accordance with law after hearing all the parties concerned.

Sd. P.K. Singh, C.O. 3-7-1969."

A copy of the application of the petitioner along with the orders passed thereon, as aforesaid, is annexed to the supplementary affidavit filed on behalf of the petitioner and has been marked as Annexure 5. It is said that this order dated 3-7-1969 was passed by the respondent Charge Officer without hearing respondent No. 6. Respondent No. 6 also filed an application for review of this order before the Charge Officer concerned, but before any final order could be passed on that application, the dispute was heard by the Assistant Settlement Officer before whom the petitioner as well as respondent No. 6 appeared and the Assistant Settlement Officer, by his order dated 25-7-1969, only partially corrected the draft publication of the record of rights, i. e., the accepted some of the objections raised by respondent No. 6, but rejected the same in respect of the remaining plots. A copy of the said order is annexed as Annexure 3 to the writ application. The petitioner as well as respondent No. 6 being aggrieved by order dated 25-7-1969 filed two revision applications before the Charge Officer, under Sub-section (3) of Section 103-A of the Act. The Charge Officer, however, allowed the revision application filed on behalf of the petitioner, but dismissed that filed on behalf of respondent No. 6, by his order dated 1-2-1971. A copy of the said order is Annexure 4 to the writ application.

3. It is an admitted position that respondent No. 6 filed applications by way of appeals to the Commissioner, Bhagalpur Divison as then Saharsa district was within his jurisdiction (we are informed now it is within the jurisdiction of the Commissioner, Kosi Division). It appears that the Commissioner, Bhagalpur Division dismissed the appeals in limine on 30-11-1971 saying that other remedies were available to respondent No. 6. Thereafter, respondent No. 6 filed revision applications before the Member, Board of Revenue which were heard by the Additional Member, Board of Revenue who passed the impugned order on 21-9-1972, as already, stated above. The Additional Member, Board of Revenue by the impugned order came to the conclusion that on 3-7-1969 (Annexure 5)

the Charge Officer could not have remanded the matter to the Assistant Settlement Officer for a fresh consideration after hearing the parties. According to him, this order amounted to an order of review which was not sanctioned by the provisions of the Act. In this connection, it may be mentioned that respondent No. 6 had not moved the Board of Revenue against the order dated 3-7-1969. He had approached the Board of Revenue for quashing the order dated 1-2-1971 passed by the Charge Officer and order dated 30-11-1971 passed by the Commissioner, Bhagalpur Division.

4. Learned counsel appearing for the petitioner has submitted that there is an error apparent on the face of the resolution of the Additional Member, Board of Revenue when he has held that order dated 3-7-1969 was not sanctioned by the provisions of the Act. In support of this contention, learned counsel has placed reliance on the different sections under Chap. X of the Act which relate to preparation of record-of-rights and settlement of rents. Before I discuss the points at issue, it will be advisable to give the legislative history of Section 103-A and certain other sections under that Chapter. Prior to 1963, Section 103-A was as follows:--

"103-A. Preliminary publication, amendment and final publication of record-of-rights--(1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the State Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been in-coporated with the record u/s 104-F, Sub-section (3), the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under Sub-section (1) or Sub-section (2) for different local areas, estates, tenures or parts thereof."

By Act I of 1963 a new Sub-section (3) and a new Sub-section (4) were added and the original Sub-section (3) was made as Sub-section (5). The newly added Sub-sections (3) and (4) by Act I of 1963 were as follows:--

"(3) A Revenue Officer specially empowered by the State Government in this behalf, may, on application or of his own motion, at any time after the publication of the draft record-of-rights and before its final publication, after reasonable notice to the parties concerned to appear and be heard in the matter, revise any entry in such draft or any order or decision under this section, whether made by himself or by any other Revenue Officer.

(4) An appeal shall lie, in the prescribed manner and to the prescribed officer,

from any order passed under Sub-section (3)."

In the year 1967, the aforesaid Sub-section (3) was again amended by Act I of 1967. The main difference appears to be only this that for filing revision a period of limitation of three months was prescribed. In the year 1969, by Act VII of 1969, sub-s. (4), which had been introduced in 1963, was deleted. At the relevant time, Section 103-A was as follows:

"103-A. Preliminary publication, amendment and final publication of record-of-rights--(1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the State Government may prescribe, and if a settlement of land revenue is being or is about to be made the Settlement Rent-roll has been incorporated with the record u/s 104-F, Sub-section (3) the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) A Revenue Officer specially empowered by the State Government in this behalf, may, on application made to him within three months of any ;''order or decision on any objection made under Sub-section (1) or on his own motion after giving reasonable notice to the parties concerned to appear and be heard in the matter, revise at any time before the final publication of the record of rights any such order or decision, whether made by (himself or by any other Revenue Officer.

(4) (Omitted by Act VII of 1969).

(5) Separate draft or final records may be published under Sub-section (1) or Sub-section (2) for different local areas, estates, tenures Or parts thereof."

In view of Sub-section (3) of Section 103-A it has to be held that a Revenue Officer specially empowered by the State Government within three months of any order or decision on any objection may under Sub-section (1) or on his own motion revise at any time before the final publication of record-of-rights, any order whether made by himself or by any other Revenue Officer. According to the learned counsel, in view of this sub-section, on 3-7-1969, the Charge Officer was within his rights in directing the Assistant Settlement Officer to re-open the case and dispose of the same after hearing all the parties concerned. In my opinion, this contention has to be accepted. The Additional Member, Board of Revenue has relied on a decision of this Court in Ramdayal Missir and Others Vs. The State of Bihar and Others, for the proposition that a Settlement Officer has no power of review. It is well settled that power of review is creature of a Statute. Unless such power is vested by specific provision, a Judicial Authority cannot exercise any such power for correcting a wrong. The view expressed in the aforesaid Bench decision of this Court was affirmed by the Supreme Court also in the case of State of Bihar v. Ram Dayal Missir 1962 BLJR 385 where it was observed that the law, as it stood on that day, the Revenue Officers, while exercising judicial powers, or quasi-judicial powers, have no power of review. But, the Additional Member, Board of Revenue overlooked the fact that by the amendment by Act I of 1963, the Revenue Officer, who was specially empowered by the State Government, was vested with the power of revision and review. Under Sub-section (3) of Section 103-A, he can review his own order as well as revise any other order passed by any other Revenue Officer. Of course, under the terms of that very Sub-section (3), he has to pass any such order only after'' giving a reasonable notice to the parties concerned to appear and to be heard in, the matter. Learned counsel appearing for respondent No. 6 pointed out that the Charge Officer, while passing the order dated 3-7-1969, did not give him an opportunity of being heard, and as such, the order dated 3-7-1969 was vitiated on that ground alone. It cannot be disputed that while passing the order dated 3-7-1969, the Charge Officer did not conform to the procedure prescribed by Sub-section (3) of Section 103-A. But, respondent No. 6, except filing an application to recall the said order, did not take'' any further steps in tine matter, rather he appeared before the Assistant Settlement Officer where the whole matter was heard in presence of both the parties and before the application of respondent No. 6 could be disposed of, the Assistant Settlement Officer passed the order on 25-7-1969. Respondent No. 6, thereafter, pursued different forums by way of revision and ''appeal only against the order dated 25-7-1969. He filed a revision before the Charge Officer; thereafter, an appeal before the Commissioner and then the revision before: the Board of Revenue. Apart from that, on 3-7-1969, the Charge Officer did not pass any final order affecting any right of! respondent No. 6. He simply directed the Assistant Settlement Officer to rehear both the parties and then to pass an order on the objection of respondent No. 6. In that view of the matter, I am of the view that order dated 3-7-1969 had been passed by the Charge Officer in exercise of the power under Sub-section (3) of Section 103-A and the Additional Member, Board of Revenue took an erroneous view of law when he held that it amounted to an order of review which was not sanctioned by the provisions of the Act.

5. Learned counsel appearing for respondent No. 6 has submitted that his application before the Board had been allowed only on the ground that the Charge Officer could not have passed an order directing the Assistant Settlement Officer to reopen the matter which had attained finality. According to learned counsel, even if that decision of the Board is held to be bad, respondent No. 6 was entitled to urge either before the Commissioner or before the Board that the order dated 25-7-1969 passed by the Assistant Settlement Officer and the order dated 1-2-1971'' passed by the Charge Officer were bad on merits, and neither the Commissioner nor the Additional Member of the Board of Revenue has examined the legality of those orders on the basis of the materials produced on

behalf of the parties. In that connection, learned counsel for respondent No. 6 has also pointed out that his appeal before the Commissioner was a proper remedy provided for him under the Act "and the rules framed thereunder and the Commissioner was not correct when he dismissed the same in limine saying that respondent No. 6 had other alternative remedies. I have already pointed out that by Act I of 1963 a new Sub-section (4) had'' been introduced into Section 103-A which has been reproduced earlier. Under that Sub-section (4) an appeal had been provided in the prescribed manner to the prescribed officer from any order passed under Sub-section (3). Under this Sub-section (4) an appeal against order dated 1-2-971 passed by the Charge Officer was clearly maintainable, but this Sub-section (4), as I have already pointed out above, was deleted by Act VII of 1969. We have looked into Act VII of 1969. From the Statement of Objects and Reasons of that Act it appears that Sub-section (4) was deleted because a right of appeal was available under Sub-section (1) of Section 104-G even against an order passed under Sub-section (3) of Section 103-A. From Sub-section (1) of Section 104-G it appears that an appeal can be presented within two months from every order passed by a Revenue Officer prior to the final publication of the record-of-rights. This will include even an order under Sub-section (3) of Section 103-A. From Clause (c) of Rule 63-A it appears that an appeal will lie to the Commissioner of the Division from an order passed under Sub-section (3) of Section 103-A if the same has been passed by the Charge Officer. On a plain reading of Rule 63-A it appears that this was introduced along with the aforesaid Sub-section (4) of Section 103-A which had provided an appeal u/s 103-A itself. But, as this Rule 63-A does not appear to have been deleted when Sub-section (4) of Section 103-A was deleted, it has to be held that on proper reading of Rule 63-A along with Rule 76, Commissioner of the Division will be deemed to be superior Revenue Authority before whom an appeal shall lie. There is some conflict in the period of limitation prescribed under Rule 63-A and under Sub-section (1) of Section 104-G for filing such appeals. It is obvious that the period of two months prescribed u/s 104-G will prevail.

6. In view of the aforesaid interpretation it has to be held that the appeals filed by respondent No. 6 before the Commissioner of the Division concerned were maintainable and the said appeals ought to have been heard on merit. Accordingly, I hold that the Additional Member, Board of Revenue was in error when he held that there was no power of revision vested in the Charge Officer when he passed the order dated 3-7-1969, and I also hold that the Commissioner was not justified in dismissing the appeals of respondent No. 6 in limine saying that other remedies were open to him.

7. Now the question is to what relief the parties are entitled under aforesaid circumstances. If only the resolution dated 21-9-1972 of the Additional Member, Board of Revenue is quashed, then the effect of this order will be that an illegal order dated 30-11-1971 passed by the Commissioner will be revived. It is well settled that the writ jurisdiction! of this Court should not be exercised for the purpose of quashing an illegal order the effect whereof will be to revive another

illegal order. Reference in this connection can be made to the decision in Abdul Majid and Others Vs. The State Transport Appellate Authority and Others, . Accordingly, I quash the resolution dated 21-9-1972 of the Additional Member, Board of Revenue as well as the order dated 30-11-1971 passed by the Commissioner, Bhagalpur Division, and I direct that the appeals filed on behalf of respondent No. 6 should now be heard, on merit by the Commissioner, Kosi Division, because we are informed that now he has the jurisdiction to hear the said appeals. It is, however, made clear that the appeals will be heard and disposed of on the grounds other than the ground that the Charge Officer had no jurisdiction to pass order dated 3-7-1969 because I have already decided the said point in favour of the petitioner. It is said that respondent No. 6 bad filed three appeals and thereafter he had filed three revisions, before the Board of Revenue and they had been heard and disposed of together by the Commissioner as well as the Additional Member, Board of Revenue. If three appeals had been filed on behalf of respondent No. 6, then the Commissioner will dispose of all the three appeals after hearing the parties. In the circumstances of the case, there will be no order as to costs.

B.S. Sinha, J.

8. I agree.

