
(2019) 12 JH CK 0006
In the Jharkhand High Court
Case No : Writ Petition (c) No. 2619 Of 2014

Harivansh Choudhary

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Bihar Tenant's Holdings (Maintenance Of Records) Act, 1973 — Section 15

Citation : (2019) 12 JH CK 0006

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rajesh Kumar, Subhash Chandra Prakash, Rishikesh Giri

Final Decision : Allowed

Judgement

1. Heard Mr. Rajesh Kumar, learned counsel appearing for the petitioner and Mr. Subhash Chandra Prakash, learned A.C. to S.C. (L&C) appearing for the State.

The petitioner has preferred this writ petition for quashing the order dated 12.03.2014/15.03.2014 passed in Miscellaneous Case No. 11 of 2013-14 by the Additional Collector, Lohardaga.

Respondent no.5 filed a Miscellaneous Case No. 8 of 2013-14 before the court of the Circle Officer, Lohardaga for cancellation of Zamabandi in the name of petitioner with regard to land appertaining to Plot No. 544, corresponding to M.S. Plot No. 777, Khata No. 28, Thana No. 194, Mouza Lohardaga measuring an area of 240 Kadi and respondent no.5 contended before the Circle Officer that the plot has been registered vide sale deed bearing No. 6630 dated 17.11.1959 executed by Ganga Prasad Budhia in his favour and Chaparbandi receipts and Municipality holding receipts were also issued in his favour right from the year 1962-63. After receiving notice, the petitioner appeared and filed his written statement stating therein that the said plot of land was transferred in the name of Kashi Choudhary by Purusottam Sahu and after the death of Kashi Choudhary, his legal heirs filed a mutation case being Mutation Case No. 462 of 2012-13 and thereafter the said

plot was entered in the name of the present petitioner. The ancestor of the petitioner had not sold the said plot of land to anybody. The said plot of land was barren land and respondent no.5 herein had fraudulently got the Chaparbandi receipt issued in his favour and holding receipt had been created in his name in the Municipality. The said Miscellaneous Case No. 8 of 2013-14 was dismissed by the Circle Officer, Lohardaga on 24.12.2013/11.01.2014 on the ground that he did not have jurisdiction to hear the said case as the higher authorities have jurisdiction to take a decision relating to cancellation of Zamabandi. Thereafter the petitioner had filed Miscellaneous Case No. 16 of 2013-14 before the Circle Officer, Lohardaga for measurement of Plot No. 544, corresponding to M.S. Plot No. 777, Khata No. 28, Thana No. 194, Mouza Lohardaga measuring an area of 240 Kadi. The said application was also dismissed vide order dated 20.12.2013/11.01.2014 on the ground that both the parties claiming right, title and interest on the same plot of land and it would not be proper to allow measurement of land till the issue was settled by a competent jurisdiction and since Miscellaneous Case No. 8 of 2013-14 was held to be not maintainable before the Circle Officer, Lohardaga, respondent no.5 filed Miscellaneous Case No. 11 of 2013-14, which was allowed by the Additional Collector, Lohardaga vide order dated 12.03.2014/15.03.2014 and the order passed by the Circle Officer, Lohardaga in Miscellaneous Case No. 8 of 2013-14 was set aside and Zamabandi of the aforesaid plot standing in the name of the petitioner has been cancelled. Against this order, the petitioner has filed this writ petition.

Learned counsel appearing for the petitioner submits that the impugned order has been passed by the Additional Collector, Lohardaga, who has got no authority to exercise the appellate power under the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973. He further submits that under Section 15 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973, the appellate power is vested with Land Reforms Deputy Collector against the order of the Circle Officer, whereas, in this case the Additional Collector, Lohardaga has passed the impugned order, who has no jurisdiction to pass such order. He further submits that Zamabandi standing in the name of the petitioner has been cancelled by an authority, which is not having power to exercise appellate power. To substantiate his argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Hasham Abbas Sayyad v. Usman Abbas Sayyad and Others, reported in (2007) 2 SCC 355.

Paragraph 22 of the said judgment is quoted herein below:

"22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice, being a nullity the same ordinarily should not be given effect to."

Learned counsel for the petitioner has further relied upon the judgment passed by this Court in the case of Meghan Mahto v. State of Jharkhand & Ors., reported in 2017 (4) JBCJ 57 (HC) and submits that the case of the petitioner is fully covered by the aforesaid two judgments. He further submits that it is well settled that the power/jurisdiction of an authority is conferred by the statute and no authority can exercise jurisdiction in absence of any such power conferred by the statute.

Learned counsel appearing for the respondent-State has not been able to point out as to why the impugned order has been passed by the Additional Collector, Lohardaga.

In view of the above facts and submission of the parties and also looking to the provision made in Section 15 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 and also looking to the aforesaid two judgments relied by the petitioner, the impugned order cannot survive as it is without restriction. Accordingly, the order dated 12.03.2014/15.03.2014 passed in Miscellaneous Case No. 11 of 2013-14 by the Additional Collector, Lohardaga is set aside.

Accordingly, the writ petition stands allowed and disposed of.