
(2009) 06 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 3927 of 2002

Indradeo Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Bihar Tenants Holdings (Maintenance of Records) Act, 1973 — Section 16, 2(c)

Citation : (2009) 3 PLJR 974

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Ashok Kumar Dubey, for the Appellant; Bindhyachal Singh, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioner, State and respondent No. 5. None appears on behalf of respondent No. 6. However, a counter affidavit filed on behalf of respondent No. 6 is on record. Shorn of unnecessary details, the brief fact of the case of the petitioner is as follows:--

The petitioner purchased 31/4 decimals of land appertaining to khata No. 157 plot No. 453 of Village-Charkawan Mahmad Rafiganj through a registered sale deed dated 8.5.1995 from Marchhu Mistri, respondent No. 6 and filed a case for mutation of his name in place of his vendor and, thus, for raising the demand in his favour by the State, before the Anchaladhikari, Rafiganj.

2. The aforesaid prayer of the petitioner was rejected by the Anchaladhikari vide Annexure-2. The petitioner thereafter filed appeal before the Deputy Collector, Land Reforms, Aurangabad, which was registered as Mutation Case No. 11 of 2000-2001. The appeal was allowed in favour of the petitioner. Being aggrieved thereby respondent No. 5 preferred revision before the Additional Collector, Aurangabad, which was registered as Revision No. 82 of 2000-2001. After hearing the parties, the revision was allowed and the appellate order was set aside by the revisional authority.

3. Learned counsel for the petitioner, however, raised only one question at the time of argument in this case. He submits that the impugned order, as contained in Annexure-4, is totally without jurisdiction, as the Additional Collector is not empowered to hear or entertain a revision filed against the appellate order passed by the appellate authority. Learned counsel drew attention of the Court to Section 16 of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (hereinafter to be referred to as "Act"), wherein the Collector of the District has been empowered to entertain and decide the revision preferred against the appellate order. Since learned counsel for the petitioner has confined himself to the aforesaid short question only, thus, other points raised in the writ application are not being discussed and considered. In support of his submission, the petitioner has placed reliance upon a decision of this Court rendered in *Dulari Devi Vs. State of Bihar and Others*, wherein it has been held that Section 16 of the Act confers revisional jurisdiction only upon the Collector of the District and not to the Additional Collector or any other authority.

4. Mr. Bindhyachal Singh, learned counsel appearing for opposite party No. 5, contends that the term "Collector" has been defined u/s 2(c) of the Act, which also includes Additional Collector. Therefore, according to him, no illegality has been committed by the Additional Collector in passing the order under challenge.

5. I do not find force in the aforesaid submission of the learned counsel for the opposite party.

6. The relevant provision of Section 16 of the Act is as follows:--

"16. Revision.--The Collector of the district may, on an application made to him in this behalf or for the purpose of satisfying himself as to the legality or propriety of any order made under this Act or the rules made thereunder by any authority or officer call for and examine the record of any case pending before or disposed of by such authority or officer and pass such order as he thinks fit."

7. The aforesaid Act has been enacted for the maintenance of up-to-date records of holdings of raiyats and matters connected therewith. u/s 2(c) of the Act "Collector" has been defined as follows:--

"2(c) "Collector" includes an Additional Collector, an Additional Deputy Commissioner and any other officer not below the rank of a Deputy Collector specially empowered by the State Government to discharge all or any of the functions of a Collector under this Act."

8. The aforesaid definition of "Collector" also includes other officers, however, not below the rank of Deputy Collector, who have been empowered by the State of Bihar to discharge all or any of the functions of the Collector.

9. The provision of appeal is provided u/s 15 of the Act, which lies before the Deputy Collector, Land Reforms, concerned and that order is final subject to revision u/s 16 of the Act, the relevant provision of which has been quoted above

10. However, it is clear from the above that under the statutory provision, the revisional power has only been conferred upon the Collector of the District and not upon any other officer. This matter was examined by a Division Bench of this Court in Kapildeo Singh and Others Vs. The State of Bihar and Others, , which in paragraph Nos. 10, 11 and 12, has held as follows:--

"10. Before proceeding to consider the question which has been referred to the Division Bench, it is to be stated that the powers of appeal and revision are statutory in nature and unless they are conferred by the statute, no authority has inherent power of revision or appeal. Under the statutory provision, if power is vested with a particular authority, then that power has to be exercised by that authority and not by any other authority unless by a statutory provision power has been conferred on the other authority by including that authority in the definition clause. A bare reading of the provision of Section 16 of the Act shows that the word used in Section 16 is not the Collector as defined in Section 2(c) of the Act but it provides that the revision will lie before the Collector of the district. The legislature with the clear intention has provided this power to be exercised by the Collector of the district itself and by no other authority. Thus, the view taken in the aforesaid two cases as well as in the case of Most. Babuni Devi Vs. State of Bihar and Others, taking the same view, lays down the correct law.

11. Even according to Section 2(c) of the Act the Collector includes Additional Collector etc. as provided therein provided there is notification under the provision of the Act specially authorizing them to discharge all or any of the functions of the Collector of the district. In absence of empowerment by notification they cannot discharge the functions of the Collector of the district with regard to any matter. Nothing has been brought on record to show that any notification has been issued specially empowering the Additional Collector to exercise all or any of the functions of the Collector under the Act.

12. Thus, in our view the revision will lie only before the Collector of the district and as the revision application was filed by the respondent No. 6 before the Additional Collector who has no" power to decide the matter, the order passed by him, as contained in Annexure-2, is without jurisdiction and the same is quashed. Taking into consideration the facts of this case, instead of directing respondent No. 6 to file fresh revision before the Collector, we direct that the revision application filed by the respondent No. 6 before the Additional Collector, East Champaran, Motihari should be transferred to the Court of Collector, East Champaran, Motihari, who will dispose of the same u/s 16 of the Act."

11. Similar view has been taken by another Bench of this Court in Dulari Devi (supra).

12. In view of the above, I also hold that the Additional Collector acted beyond his jurisdiction in deciding the revision.

13. In the result, this writ application is allowed and the order dated 4.2.2002 passed by the Additional Collector, Aurangabad, contained in Annexure-4, is set

aside.

14. However, taking into consideration the facts of the case and following the aforesaid decision of the Division Bench of this Court in Kapildeo Singh and Others (supra) instead of directing the respondents to file a fresh revision application, I direct that the revision filed by respondent No. 5 before the Additional Collector, Aurangabad, should be transferred to the Collector, Aurangabad, who will dispose of the same in accordance with law exercising the revisional power. It is made clear that this Court has not formed any opinion with regard to merit of the respective cases of the parties.