

(2003) 03 PAT CK 0105
In the Patna High Court
Case No : C.W.J.C. No. 13025 of 2001

Kapildeo Singh and Others		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Bihar Tenants Holdings (Maintenance of Records) Act, 1973 — Section 14, 15, 16, 2

Citation : (2003) 2 PLJR 431

Hon'ble Judges : Rajendra Prasad, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Mithilesh Kumar and Lallan Kumar Verma, for the Appellant; Binod Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. The Petitioners have challenged the order dated 5.12.1994 passed by the Additional Collector, East Champaran, Motihari in Mutation Revision Case No. 18 of 1994-95, by which he has allowed the revision application filed by Respondent No. 6 challenging the order dated 19.7.1994 passed by the Deputy Collector Land Reforms. Sikarahana in Appeal No. 6 of 1993-94, whereby the Deputy Collector Land Reforms allowed the appeal filed by the Petitioner and set aside the order of mutation dated 15.12.1993 passed in favour of Respondent No. 6 by the Anchal Adhikari, Dhaka in Mutation Case No. 1148 of 1992-93.
3. The dispute between the parties is with regard to 1 bigha 6 katha of land of khata No. 83 Khesra No. 741 in village Barharwa Lakhansen. Respondent No. 6 filed mutation case under the provisions of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973, hereinafter referred to as the "Act" for mutation of his name against the Petitioners. The Anchal Adhikari allowed the mutation case, as stated above, u/s 14 of the Act against the Petitioners. The Petitioners filed an appeal before the Deputy Collector Land Reforms u/s 15 of

the Act, which was allowed.

4. Respondent No. 6 having lost before the appellate authority, instead of filing revision application before the Collector of the district filed revision application before the Additional Collector, Motihari, who allowed the revision application. It appears that before the disposal of the revision application, the Petitioner filed an application before the Collector of the district for transfer of the case which was dismissed by the Collector by order dated 3.10.2000 on the ground that the order has already been passed by the Additional Collector and as such there is no question of transferring the case or to rehear the matter on merit.

5. The Petitioners Challenged the aforesaid order by filing writ application and before the learned single Judge submitted that u/s 16 of the Act the Collector of the District is vested with revisional power and the Additional Collector has no power of revision under said section of the Act and as such the order passed by the Additional Collector, as contained in Annexure-2, is without jurisdiction. In support of his submission, he relied upon two decisions of this Court in the case of Shankar Shukla Vs. State and Others, and Mst. Binda Kunwar Vs. State of Bihar, . In the aforesaid two cases it has been held by this Court that u/s 16 of the Act the revisional power vests in the Collector of the district only.

6. Learned single Judge disagreed with the law laid down in the aforesaid two cases, as according to him, the Collector of the District also includes Additional Collector specially in view of the definition of the Collector as mentioned in Section 2(c) of the Act and referred the matter to the Chief Justice to place the matter for consideration and authoritative pronouncement by a Division Bench on the said point. That is how the matter has been placed before us for decision.

7. The aforesaid Act has been enacted for the maintenance of upto date records of holdings of raiyats in the State of Bihar and the matters connected therewith. Under the definition clause Collector has been defined u/s 2(c) of the Act which runs 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. According, to the said definition, the Collector includes Additional Collector, Additional Deputy Commissioner and any other officer not below the rank of Deputy Collector specially empowered by the State Government to discharge all or any of the functions of the Collector under the Act. So, unless there is notification by the State Government specially empowering the Additional Collector or any other authority mentioned in the definition clause to discharge the function of the Collector, they cannot be treated as Collector in terms of the aforesaid provision.

9. Mutation proceedings are filed u/s 14 of the Act before the Anchal Adhikari.

The provision of appeal is provided u/s 15 of the Act before the Deputy Collector Land Reforms and the said order is final subject to revision u/s 16 of the Act which runs as follows:

16. Revision.- The Collector of the district may, on an application made to him in his 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 there under 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:

Provided that the Collector shall not entertain any application from any person, aggrieved by any order, unless it is made within thirty days from the date of the order:

Provided further that no order modifying, altering, or setting aside, any order made by such authority or officer shall be passed by the Collector unless the parties concerned have been given a reasonable opportunity of being heard.

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 provisions of the Act specially authorising 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.

13. In the result, this writ application is allowed and the order dated 5.12.1994 passed by the Additional Collector, East Champaran, Motihari in Revision Case No. 18 of 1994-95, as contained in Annexure-2, is set aside. So far order of the Collector dated 3.10.2000, as contained in Annexure-3 is concerned, he has not disposed of the matter on merit and has refused to interfere with the matter on the ground that the revision has already been disposed of by the Additional Collector. As we have held that the Additional Collector has no jurisdiction to decide the revision, now the Collector, East Champaran, Motihari will decide the matter as directed above.