
(2019) 12 PAT CK 0208

In the Patna High Court

Case No : Letters Patent Appeal No. 979 Of 2011 In Civil Writ Jurisdiction Case
No. 9869 Of 2010

Kusum Devi

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Bihar Tenants Holding (Maintenance Of Records) Act, 1973 — Section 2(c), 16

Citation : (2019) 12 PAT CK 0208

Hon'ble Judges : Ashwani Kumar Singh, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Subodh Prasad, Anjani Kumar, Sanjay Prasad, Abhay Bhushan Sinha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant and learned counsel appearing for private respondents.
2. The instant appeal under Clause X of the Letters Patent is directed against the order dated 03.11.2010 passed by the learned Single Judge in CWJC No. 9869 of 2010 whereby she has quashed the order dated 04.04.2008 passed by the DCLR, Danapur in Revision Application No.6 of 2000-01 on the ground that the Additional Collector, Patna had no jurisdiction to pass the order dated 25.03.2010 in the revision application.
3. The only point of law to be considered in the present appeal is whether the Additional Collector, Patna had jurisdiction to pass the order dated 25.03.2010 in Mutation Revision No. 10 of 2008-09 or not.
4. The brief facts necessary for adjudication of the case are that the dispute between the parties started when the appellant filed Mutation Case No.1355/96-97 before the Circle Officer, Danapur for mutating 70.5 decimals of land pertaining to Mauza Saguna, Tauzi No.5234, Thana No.23, Khata Nos. 8 and 8/11, Khasra Nos. 441, 440 and 449. Said mutation case filed by the appellant

was decided in her favour against which the original respondent (Bijendra Prasad) filed Mutation Appeal No. 3 of 2001 which was decided in his favour vide order dated 22.08.2000 by the DCLR, Danapur.

5. Being aggrieved by the appellate order, the appellant of the present case filed Mutation Revision No.6/2000-01 before the Collector, Patna. After hearing the parties, the Collector, Patna vide order dated 02.03.2009 remanded the matter back before the DCLR, Danapur for fresh hearing.

6. Upon remand, the DCLR, Danapur decided the appeal vide order dated 04.04.2008 in favour of respondents.

7. Being aggrieved by the order passed in appeal, the appellant of the present case preferred revision application before the Collector, Patna vide Mutation Revision No.10/2008-09 on 30.04.2008. The said revision application was admitted vide order dated 05.06.2009 passed by the Collector.

8. Thereafter, the record of the case was transferred to the Additional Collector, who heard the parties and decided the revision application vide order dated 25.03.2010.

9. Being aggrieved by the aforesaid revisional order, the respondent filed a writ petition before this Court vide CWJC No.9869 of 2010.

10. The said writ petition was decided by the learned Single Judge on 03.11.2010 whereby the matter was remanded back to the Collector to hear the revision application afresh and for passing an appropriate order after hearing the parties.

11. The learned Single Judge, while passing the order dated 03.11.2010 took into consideration Section 16 of the Bihar Tenants Holding (Maintenance of Records) Act, 1973 (for short 'the Act') and came to the conclusion that it was only the Collector, who could have passed order in revision. She took the view that since the order dated 25.03.2010 in revision was passed by the Additional Collector, the same was bad in law.

12. Being aggrieved by the order passed by the learned Single Judge, the appellant has preferred the instant letters patent appeal.

13. The contention of the appellant is that the learned Single Judge erred in law while passing the order in the writ petition whereby she has held that the power of revision under Section 16 of the Act had been conferred on the Collector alone. Learned counsel for the appellant submitted that the issue as to whether the Collector alone is empowered under Section 16 of the Act to maintain a revision application is no more res integra as a Full Bench of this Court had occasion to consider the issue in the instant case itself and, vide order dated 14.02.2019, the Full Bench has held that after Gazette Notification dated 28th May, 2008, the Additional Collector is empowered to exercise the power of the Collector. He contended that the Full Bench has upheld order passed by the Division Bench of this Court in Amarendra Kumar Singh vs. the State of Bihar &

Ors. [2011 (3) PLJR 422] wherein the Division Bench has held that the power of the Collector under Section 2(c) of the Act can be conferred upon the Additional Collector in exercise of power under Section 2(c) of the Act and that the Notification dated 28th May, 2008 does confer such power upon the Additional Collector.

14. Per contra, learned counsel appearing for private respondents submitted that there is no dispute with the proposition of law laid down by the Full Bench vide order dated 14.02.2019. However, the Full Bench has said in its order that all matters which arose prior to Notification dated 28th May, 2008 were to be governed by the existing law and only the matters which arose after Notification dated 28th May, 2008 would be governed by the amendment made vide Gazette Notification dated 28th May, 2008. He contended that as in the instant case, the matter had arisen much prior to 28th May, 2008, therefore, the amendment brought by Gazette Notification whereby the Additional Collector has been empowered to entertain the revision application would not be applicable and in that view of the matter, no fault can be found with the order passed by the learned Single Judge whereby she remanded the matter back to the Collector for hearing and for passing appropriate orders in accordance with law.

15. Having heard the parties and carefully perused the material on record, we do not find any substance in the submission made on behalf of private respondents.

16. In *Kapildeo Singh & Ors. vs. State of Bihar & Ors.* [2003 (2) PLJR 431], a Division Bench of this Court has held that Section 16 of the Act empowers the Collector of a district to hear the revision application and not the Collector under Section 2(c) of the Act. The revisional power conferred upon the Collector of a district, therefore, cannot be delegated in exercise of power conferred by Section 2(c) of the Act whereas another Division Bench of this Court in the matter of *Amarendra Kumar Singh vs. the State of Bihar & Ors.* (supra) after considering the judgment in *Kapildeo Singh* (supra) has held that the power of the Collector under Section 2(c) of the Act can be conferred upon the Additional Collector in exercise of power under Section 2(c) of the Act, and that the Notification dated 28th May, 2008 gives such power upon the Additional Collector under Section 16 of the Act.

17. When the present appeal was taken up by the Division Bench on 06.12.2012, noticing the aforesaid two conflicting views of the collateral Bench of this Court, the matter was referred to the Full Bench.

18. The Full Bench after hearing the parties and considering the provision of the Act as also the Gazette Notification dated 28th May, 2008 vide order dated 14.02.2019 concluded that there is no conflict with the later judgment in the case of *Amarendra Kumar Singh* (supra). The Full Bench was of the view that after Notification dated 28th May, 2008, the position stood altered whereby the Additional Collector has been empowered to exercise the power of the Collector as held in *Amarendra Kumar Singh* (supra). The Full Bench held that prior to

Gazette Notification dated 28th May, 2008, it was only the Collector, who was empowered to hear the revision application, but after the Gazette Notification, the Additional Collector has also been empowered to exercise the powers of the Collector.

19. The interpretation being given by the respondents that Gazette Notification dated 28th May, 2008 has not been given a retrospective effect and, thus, any matter which has arisen prior to 28th May, 2008 would be governed by the law laid down in Kapildeo Singh (supra) is patently erroneous. The revisional power has been conferred to the Additional Collector by the Gazette Notification on and from 28th May, 2008. Since then the Additional Collector is fully empowered to entertain any revision application and decide the same. Any matter which may have arisen prior to 28th May, 2008 and on that day if the revision was pending, the Additional Collector would have jurisdiction to entertain the same and determine the dispute.

20. The facts in the case of Amarendra Kumar Singh (supra), in brief, were that one Upendra Kumar Singh and Kaushalendra Kumar Singh, the two brothers had filed Mutation Case No.42 of 2001 before the Circle Officer, Bihata for issuing rent receipts by opening zamabandi in their favour. The Circle Officer rejected the application vide order dated 12.02.2001. They filed an appeal before the Deputy Collector, Land Reforms, Danapur being Appeal No.1 of 2001-02, which was allowed on 18.07.2001. Thereafter, the respondents of that case filed revision application before the Collector, Patna being Mutation Revision Case No. 15 of 2001-02 under Section 16 of the Act. The revision application was admitted on 18.01.2006 and allowed by the Additional Collector vide order dated 24.02.2010. A writ petition was filed before this Court vide CWJC No. 10324 of 2010 challenging the order of the Additional Collector dated 24.02.2010 passed in Mutation Revision Case No.15 of 2001-02. The learned Single Judge vide order dated 07.07.2010 observed that in view of statutory provisions of the Act as well as the judgment of the Division Bench of this Court in Kapildeo Singh (supra), an Additional Collector would not have jurisdiction to decide revision application under Section 16 of the Act for which only the Collector of the district was authorised. The learned Single Judge had remanded the matter to the Collector of the district for fresh adjudication.

21. Being aggrieved by the order passed by the learned Single Judge in the writ petition, the appellant of that case challenged the order of the learned Single Judge by preferring appeal vide LPA No.1269 of 2019.

22. As seen above, in the instant case itself, the Full Bench has upheld the order passed by the Division Bench in Amarendra Kumar Singh (supra) vide order dated 14.02.2019.

23. It is in this background of the fact, the Division Bench allowed the appeal vide order dated 07.04.2011 in Amarendra Kumar Singh (supra) observing that it is unfortunate that the Notification dated 28th May, 2008 conferring the

revisional power under Section 16 of the Act to the Additional Collector was not produced before the learned Single Judge. The Division Bench further observed that had the aforesaid notification been produced before the learned Single Judge, she may possibly have taken the same view as we in the present appeal.

24. The facts noted above in Amarendra Kumar Singh (supra) makes it abundantly clear that in that case also like the present case, revision was filed much prior to the Gazette Notification which was decided after the Gazette Notification and when the learned Single Judge had set aside the revisional order and remanded the matter back to the Collector to hear the matter afresh and decide the revision application, the Division Bench set aside the order of the learned Single Judge and held that after the Gazette Notification dated 28th May, 2008, the Additional Collector was competent to entertain the revision application and determine the same. The said judgment passed by the Division Bench has been upheld by the Full Bench in the present case itself.

25. In view of the discussions made above, we are of the opinion that objection raised on behalf of private respondents does not hold weight and is meritless.

26. Resultantly, the appeal is allowed. The impugned order dated 03.11.2010 passed by the learned Single Judge in CWJC No. 9869 of 2010 is set aside. The matter is remanded back to the learned Single Judge for adjudication on merit in accordance with law.