
(2012) 08 JH CK 0168
In the Jharkhand High Court
Case No : LPA No. 316 of 2011

Mahabir Mahto and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

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

Citation : (2013) 2 AJR 324 : (2012) 4 JLJR 210

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Kalyan Ray, for the Appellant; V.K. Prasad for the State, M/s V. Shivnath, Niraj Kishore for the Respondent Nos. 7 to 12, for the Respondent

Judgement

1. Heard learned counsel for the parties. The appellant is aggrieved against the judgment dated 29.6.2011 passed in W.P.(C) No. 1565 of 2008 whereby the learned Single Judge set aside the order dated 19.2.2008 passed by the Commissioner, Hazaribagh in Miscellaneous Revision No. 158 of 2005.

2. It will be appropriate to place on record facts in brief:--

The appellants" claimed that, by virtue of a settlement of land in favour of the appellants, their names were required to be entered in the revenue record/in record of rights to be maintained under the Bihar Tenants Holdings (Maintenance of Records) Act, 1973. However, for the said claim of settlement of 8th September, 1925, the appellants" submitted an application No. 37/1961-62 on 27.1.1961 upon which the appellants" names were entered into the revenue records. The appellants continued to pay the rent till the year 1967-68. After 1968, the revenue authorities refused to accept the rent from the appellants. The appellants, in the year 1998, came to know that in the Jamabandi, the name of the respondents have been wrongly entered and because of that reason the revenue authorities are not accepting the rent from the appellants. Finding this wrong entry in Jamabandi, the appellants submitted an application before the Circle Officer in the year 1998 and that application was in fact, for deletion of the

wrong entry of the names of the respondents but was considered as application for mutation u/s 14 of the Act of 1973. Said application was dismissed by the Circle Officer on 8.11.1998. According to learned counsel for the appellants, against this rejection order, no appeal was preferred by the appellants but according to learned counsel for the private respondents in fact appeal was preferred by the appellants against the order dated 8.11.1998 before the Deputy Collector Land Reforms who rejected the appeal also. Be that as it may be, in either case the order of rejection of the appellants' application for deletion of names of respondents dated 8.11.1998 attained finality. The appellants then submitted an application before the Additional Collector for the same reliefs and the Additional Collector by order dated 22.12.2004 set aside the order of the Circle Officer dated 8.11.1998 and directed that appellants' names may be entered in the revenue record and the Circle Officer was directed to accept the rent from the appellants. According to appellants, aggrieved against the order dated 22.12.2004, a review application was filed by the respondents before the same authority, the Additional Collector. The successor Additional Collector allowed the said review application and set aside the order dated 22.12.2004 by order dated 27.10.2005. Aggrieved against the order dated 27.10.2005, a revision petition was submitted before the Commissioner by the present appellants. Learned Commissioner allowed the revision petition vide order dated 19.2.2008 and held that the Additional Collector had no jurisdiction to review the order dated 22.12.2004 and, therefore, set aside the review order dated 27.10.2005 restoring the order dated 22.12.2004 by which the names of the respondents stand deleted from the revenue record.

Against the order passed in revision by the Commissioner dated 19.2.2008, the respondents preferred present writ petition being W.P.(C) No. 1565 of 2008 which has been allowed by the learned Single Judge and the orders dated 19.2.2008 and order dated 22.12.2004 both were set aside. According to learned Single Judge the Additional Collector could not have entertained revisions u/s 16 of the Act of 1973 which lies before Collector of the District u/s 16. The Additional Collector also could not have heard the application as appeal because appeal against the said order could have been before Land Reform Deputy Collector (L.R.D.C.). Therefore, the order dated 22.12.2004 of the Additional Collector was wholly without jurisdiction. Learned Single Judge also held that the order dated 22.12.2004 was passed ex-parte and without affording an opportunity of hearing to the respondents and when correct law was brought to knowledge of the learned Additional Collector, the Additional Collector passed the order dated 27.10.2005 and rectified the order dated 22.12.2004. Learned Single Judge, therefore, held that, in this legal position the Commissioner should not have entertained the revision petition and set aside the order dated 19th February, 2008 passed by the Commissioner, Hazaribagh in Miscellaneous Revision No. 158 of 2005.

3. Learned counsel for the appellants submitted that till 1967-68, appellants' names were in the revenue record obviously, in Jamabandi and, therefore, this

entry in Jamabandi could have been altered only by the order of a competent authority but the respondents' names were entered absolutely illegally and, therefore, the respondents' names should have been deleted and that was rightly deleted by order dated 22.12.2004 and appellants' names were rightly ordered to be entered in the Jamabandi. It is submitted that even if, the view of the learned Single Judge is correct that Additional Collector had no jurisdiction to entertain the application filed by the appellants, then the Additional Collector had also no jurisdiction to entertain the application filed by the respondents/writ petitioners upon which the order dated 22.12.2004 was passed. In that situation, the Court should have remanded the matter to the competent authority who should have decided the application of the parties in accordance with law relating to mutation proceedings. Learned counsel for the appellants submitted that learned Single Judge himself has considered the Division Bench judgment of this Court delivered in the case of Kapildeo Singh and Others Vs. The State of Bihar and Others, wherein the Division Bench of this Court finding the similar situation, when the application was submitted before a wrong authority, directed to remand the matter to the competent authority for consideration in accordance with law. In that situation also, the learned Single Judge was bound by the decision of the Division Bench of this Court rendered in Kapildeo Singh's case.

4. Learned counsel for the respondents/writ petitioners vehemently submitted that in fact the proceeding initiated by the appellants were not a mutation proceeding as the mutation proceeding could have been initiated only on the basis of accrual of right in agricultural land by devolution of interest which may be by way of sale, gift or by virtue of succession claiming the same right, title and interest which was possessed by the recorded tenant of the land as recorded in the revenue record. A rival party to the recorded person cannot avail the mutation proceeding for deletion of name of any person from the revenue record and for entry of his name in revenue record because of plain and simple reason that in mutation proceeding, no right, title and interest can be decided by any authority. Therefore, a person who is having hostile title against the recorded person in Jamabandi, he has only option to file a civil suit for declaration and correction in revenue record. A mutation proceeding cannot be converted into a title suit for deciding the right, title and interest of any party in the property.

5. Learned counsel for the respondents/writ petitioners further vehemently submitted that for initiation of any proceeding there must be some material on record in support of the claim of any party and according to learned counsel for the respondents/writ petitioners, the appellants failed to produce any lawful document on the basis of which they could have claimed their right to have their names entered in the revenue records. Learned counsel for the appellants and respondents drew out attention to the relevant provisions of law for the agriculturists having the right under the various land revenue laws and particularly, under the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 prescribing the procedure for mutation.

6. We considered the submissions of the learned counsel for the parties and perused the facts of the case.

7. It is not in dispute that this proceeding arises out of a fiscal proceeding of mutation whereunder no right, title or interest of the parties can be declared as can be done in a regularly instituted suit in competent court of jurisdiction. The definition of mutation given in the Act of 1973 in Clause (1) of Section 2 is as under:--

2(1) "Mutation" means any alteration in the entries in the Continuous Khatian and the Tenants" Ledger Register maintained under this Act.

On the basis of the mutation, the person whose name has been mutated may get the right to enter his name in the revenue record and record of rights.

8. Subject of mutation is given in the Act of 1973, under Sections 3 to 14. As per Section 3 of the Act of 1973, the Circle Officer is required to maintain Continuous Khatian, Tenants" Ledger Register and Village Maps.

9. Section 4 of the Act of 1973 is also relevant which is as under:--

4. Registering Authority to give notice of transfer and registration to Anchal Adhikari.--When the registration of any instrument of transfer by way of sale, exchange, mortgage, lease, partition or gift or by any other mode of transfer of a holding or part thereof is complete, the registering authority shall give notice of such registration in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

It is clear from Section 4 that in case of transfer of property by way of sale, exchange, mortgage, lease, partition or gift or by any other mode of transfer of a holding or part thereof, then the registering authority shall give notice of such registration of the document effecting the transfer to the Circle Officer in the prescribed form.

10. Section 5 of the Act of 1973 deals with the effect of the decree passed by the competent civil courts. Section 5 reads as under:--

5. Civil Courts to give notice of delivery of possession to the decree-holder or auction purchaser or of decree for partition or for foreclosure to the Anchal Adhikari.--When under the Code of Civil Procedure, 1908 (Act 5 of 1908) possession of a holding or part thereof and possession has been delivered in execution of decree to the decree holder or to a purchaser at Court auction sale or when a final decree for partition or for foreclosure of a mortgage has been passed the Court executing the decree or the Court passing the final decree for partition or foreclosure, as the case may be, shall give notice of facts in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

11. Section 6 of the Act of 1973 provides:--

6. Certificate Officer to give notice to the Anchal Adhikari of delivery of possession to the auction purchaser.--When under the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), possession of a holding or part thereof has been delivered to a purchaser at auction sale held in execution of a certificate, the Certificate Officer shall give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

12. Section 7 of the Act of 1973 is as under:--

7. Collector to give notice of acquisition under the Land Acquisition Act, 1894 to the Anchal Adhikari.--Where holding or part thereof has been acquired under the Land Acquisition Act, 1894 (Act 1 of 1894), the Collector or the Court, as the case may be, making the award under that Act, shall give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

13. Section 9 provides provision for giving notice by the civil courts of acquisition of land u/s 84 of Bihar Act VIII of 1885.

14. As per Section 10 of the Act of 1973, when any land is granted by the Bhoodan Yagna Committee to any landless person under the Bihar Bhoodan Yagna Act, 1954, the said Committee shall give notice of the fact in the prescribed form to the Anchal Adhikari of the area.

15. Section 11 provides that under-raiyat claiming to have acquired the status of occupancy raiyat under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, he is required to file an application before the Anchal Adhikari, obviously for the purpose of getting his name entered.

16. Section 12 is very important and relevant for the purpose of deciding this Letters Patent Appeal which is as under:--

12. Persons claiming interest by partition effected either privately or through Court or intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift, or by any other means to give notice to the Anchal Adhikari.--After the commencement of this Act in any area every person having interest in a holding or part thereof in that area by partition effected either privately or through Court of intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means, shall within six month of accrual of such interest, give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated, and may apply for mutation of his name in respect of that holding or part thereof in the Continuous Khatian and the Tenants' Ledger Register on receipt of such information of application the Anchal Adhikari shall grant a receipt to such person.

As per Section 12 of the Act of 1973 in certain circumstances mentioned in Section 12 itself, like if any person is claiming interest in a holding or part thereof

by way of partition, privately or through court or in a intestate land or by virtue of testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means, then he is required to give information to the Anchal Adhikari within the stipulated time.

17. In addition to above, Section 13 cast duty upon Mukhia, Circle Inspector and Karamchari who are required to obtain information of partition, intestate, deliberation of interest, testamentary succession or acquisition of interest or any other means in holding or part thereof then he is to visit the village and the area obviously, the land itself and is required to furnish the information to the Anchal Adhikari in prescribed format.

18. Therefore, it is clear from the Act of 1973 that all contingencies as far as possible have been taken care of with respect to the maintenance of the revenue record by revenue officers under the Act of 1973 so that all informations with respect to the devolution of interest by transfer, land acquisition by Government for itself or for others, acquisition of title by virtue of decree of the civil court and obtaining possession, or by will or under personal law of succession etc. are required to be furnished to the Anchal Adhikari. Upon receipt of such information, the Chapter-III comes into operation.

19. Section 14 of the Act of 1973 gives the jurisdiction to Anchal Adhikari to pass appropriate order in above contingencies. Section 14 is as under:--

14. Requisition and disposal of mutation case.--(1) On receipt of notice under Sections 4, 5, 6, 7, 8, 9 and 10 or an application under Sections 11 and 12 or a report u/s 13, the Anchal Adhikari shall start a mutation proceeding and, after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such enquiry to be made as may be deemed necessary.

(2) The Anchal Adhikari shall issue a general notice and also give notice to the parties concerned to file objection, if any, within 15 days of the issue of the notice. On receipt of objection, if any, the Anchal Adhikari shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and dispose of the objection and pass such orders as may be deemed necessary.

(3) In cases in which no objections are received the Anchal Adhikari shall dispose them of within one month of the date of expiry of filing objection and in cases in which objections are received, the Anchal Adhikari shall dispose them of in not more than three months from the date of expiry of the period of filing objections.

20. So complete scheme of the Act of 1973 which has been discussed above in detail clearly indicates that mutation proceeding is confined to matters cognizance of which can be taken by the Anchal Adhikari regarding possession in consequence of devolution of interest and transfers upon receipt of such information, as provided under Sections 3 to 13. The purpose of mutation is only,

as we have noticed from the definition of mutation given in Clause (I) of Section 2 is for "alteration in the entries in the Continuous Khatian and the Tenants" Ledger Register maintained under this Act" obviously, under the Act of 1973 under happening of events mentioned in Sections 4 to 13 and not for deciding the dispute of rival claims, like adverse claim to the recorded person.

21. The entry of the names of right persons in the revenue record is required so that the Government, who is the owner of the land, may collect the revenue from the persons whose names are entered in the revenue records and so in larger interest of the public also that whenever a land acquisition proceeding is started, the Government may give appropriate notice to such persons and further in public interest that in case of any lapse on the part of the person holding any right, title or interest in the agricultural holding if alleged to have committed some wrong so as to vesting any agricultural land in the State Government, he may be served appropriate notice by the revenue authorities before re-vesting of the agricultural land in the State Government. By maintaining these land records up to date, every dispute can be shorten.

22. From the nature of the proceeding which is only for the purpose of making alteration in the entries in the Continuous Khatian and Tenants" Ledger Register, a lower revenue officer has been given jurisdiction to decide these disputes by taking evidence but for the limited purpose and such revenue authority cannot decide complicated legal dispute as well as adverse claims.

23. At this juncture, it will be appropriate to mention here that the mutation proceeding may be uncontested in case of no dispute and it can be contested as is clear from sub-section (2) of Section 14 of the Act of 1973. Therefore, a right of appeal has been given to the aggrieved party u/s 15 of the Act of 1973 and appeal against the order of the Anchal Adhikari lies before the Land Reforms Deputy Collector and revisional power vests in the Collector of the District who has been given power to examine the legality and propriety of any order made under the Act of 1973 or Rules made thereunder by any authority. However, nature of the order which may attain finality by order passed in the appeal u/s 15 or in revision u/s 16 will remain the same of fiscal nature having limited effect. After attaining finality of the order which were referred above, the Anchal Adhikari is required to give effect to the order u/s 18 by making correction in Continuous Khatian and Tenants" Ledger Register and is required to forward the copies of the corrected entries thereof to the Sub-Divisional Officer and the Collector.

24. The value of the entry made in the revenue record has presumptive value and Section 19 deals with this provisions. Section 19 of the Act of 1973 is as under:--

19. Presumption of correctness of entries in Continuous Khatian and Tenants" Ledger Register.--Every entry in the Continuous Khatian and Tenants" Ledger Register finally published under clause (iii) of sub-section (4) of Section 3--

- (i) shall be an evidence of the matter referred to in such entry, and
- (ii) shall be presumed to be corrected until it is proved by evidence to be incorrect in the following proceedings--
 - (a) in a proceeding in a Civil Court of competent jurisdiction, or
 - (b) in a proceeding under Chapter-X of the Bihar Tenancy Act, 1885 (Act VIII of 1885), or Chapter-XII, of the Chhotanagpur Tenancy Act, 1908 (Act VI of 1908) or under the Santhal Paragana Settlement Regulations, 1872 (Regulation 3 of 1872) or the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of the 1956) in any area where the State Government has made an order directing that a survey be made and a record of rights be prepared in respect of the lands in that area, and in pursuance of such an order survey and settlement operation is already in progress. Section 19 says that every entry in the Continuous Khatian and Tenants' Ledger Register finally published under clause (iii) of sub-section (4) of Section 3 shall be an evidence of the matter referred to in such entry, and as per sub-clause (ii), shall be presumed to be corrected until it is proved by evidence to be incorrect in the proceedings referred in clauses (a) and (b) of this Section which includes, proceeding in a Civil Court of competent jurisdiction as well as in other proceedings under various provisions of Bihar Tenancy Act, 1885, Chhotanagpur Tenancy Act, 1908, Santhal Paragana Settlement Regulations, 1872 and the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

25. In sum and substance, the mutation proceedings have limited scope so far as its effect is concerned and the purpose of mutation proceeding is very clear from the Act of 1973 itself which substantially suggests that these are proceedings to safeguard the interest of the State and the revenue authorities primarily so that the State may know the persons' right over the agricultural land and once the names are entered in the revenue record they can be altered only because of the reasons mentioned in Sections 3 to 13 of the Act of 1973. The provisions referred above are not meant for getting a declaration in serious dispute cases with respect to the entitlement and, therefore, it has been specifically provided by Section 5 of the Act of 1973 that when under the Code of Civil Procedure, possession of a holding or part thereof has been delivered in execution of a decree to the decree holder or to a purchase at Court auction sale or when a final decree for partition or for foreclosure of a mortgage has been passed the Court executing the decree or the Court passing the final decree for partition or foreclosure, as the case may be, shall also give notice of the fact in the prescribed form to the Anchal Adhikari of the area. The Anchal Adhikari has no jurisdiction to alter or modify or disobey the court's decree and consequential effect of the possession under the Act of 1973 or otherwise. Looking to the nature of the proceeding and limited jurisdiction of the Anchal Adhikari of making correction in the revenue record, the Anchal Adhikari has no power and jurisdiction to pass a decree or order of declaration of a right, title or interest in the property or has right to declare about legality and validity of an instrument of

transfer or a settlement or decide the issue of contentious succession cases which power vest under the provisions of the Indian Succession Act, in Civil Courts.

26. The question arises is that in a case where one party claims right adverse to the person whose name is recorded in the Continuous Khatian or Record of Rights whether he can move application for mutation.

27. The scheme of the Act of 1973, as we have noticed from Sections 3 to 13, nowhere provides for it. Meaning thereby, any information under Sections 4 to 10 and on application under Sections 11 and 12 or upon report u/s 13, only the Anchal Adhikari can proceed to decide the application u/s 14. In Sections 3 to 13 and in Section 14, it is nowhere provided that any person who has any grievance against wrong entry in the Continuous Khatian and Record of Rights can submit an application for getting determination of his right, title and interest in the land vis-a-vis a recorded entry. We may recapitulate here that as per the duty cast upon the Anchal Adhikari, he is required to prepare and maintain Continuous Khatian and Tenants' Ledger Register by following the procedure as provided in sub-clause (1) of Section 3 itself and in other cases the Anchal Adhikari can get the information as provided under Sections 4 to 13 only.

28. From the scheme of the above provisions it is clear that the application for mutation, obviously for alteration of the entries in the Continuous Khatian and Tenants' Ledger Register cannot be claimed by a person having totally adverse interest to the person whose name is entered in the revenue record and, therefore, the application filed for the entry of the names of the appellants with a claim that their source of right is independent and is adverse to the respondents/writ petitioners itself, was not maintainable. It appears that by passage of time, the mutation proceedings which has limited scope and which gives limited jurisdiction to the Anchal Adhikari under the Act of 1973 expanded to beyond its scope and in practice may have become an adversary litigation in a proceeding for entering the names of the person who is claiming right through the person whose name is recorded in the revenue record and, claiming the right by virtue of either death of original recorded person and being successor of the recorded persons or by virtue of transfer, exchange, agreement, settlement, lease, mortgage, gift, or by any other means or by virtue of the court's decree or by virtue of grant of land by the Bhoodan Yagna Committee or by virtue of consequence of the acquisition of the land under the Land Acquisition Act or other statutes, but legally, Anchal Adhikari has no jurisdiction to decide adverse claims, other than provided under Sections 3 to 13 of the Act.

29. Learned counsel for both the parties could not dispute this fact that in mutation proceeding no declaration can be made with respect to the right, title and interest of any party nor any decree/order of possession can be passed so as to give possession to one party by evicting the other party, may be he has a valid and legal document of transfer of land. Learned counsel rightly admitted so because of the reason that in mutation proceeding primarily the question of

transfer and succession referred above are relevant and the possession is more relevant as is apparent from Section 5 of the Act of 1973 which says that mutation can be effected not merely by passing of the decree but consequential delivery of possession is also required.

30. In this situation, the parties litigated since 1998 for getting their names entered in the revenue record without any consequential reliefs like declaration of their right, title and interest in the property and without there being any consequential relief of delivery of possession from one party to another party. Such reliefs have not been claimed because of plain and simple reason that such reliefs cannot be granted by Anchal Adhikari or by appellate authority or by revisional authority under the Act of 1973. Therefore, if the parties are permitted to litigate mere for entries of their names in the revenue record without actual relief of declaration and possession and injunction by filing appeal and revision and, thereafter by challenging the orders in writ petition and Letters Patent Appeal and thereafter before the Hon"ble Supreme Court in Special Leave to Appeal, then after getting a decision from even the Apex Court, the parties will get only their names entered in the revenue record which only has presumptive value u/s 19 of the Act of 1973 and this evidence since is rebuttable in civil court proceeding where the suit will be filed after litigating up to the Hon"ble Supreme Court and where the other party can show that there is no value of such evidence of entry in the revenue record and civil court can certainly reach to the conclusion that presumption has been rebutted sufficiently by the contesting party then such circuitous route can be avoided if, the finality is attached to the order of the Anchal Adhikari and by making provisions that the Anchal Adhikari can decide the uncontested cases of the nature mentioned under Sections 3 to 13 leaving the parties to obtain actual relief in suit from the competent court of law.

31. This is one of the case where the facts are not in dispute that in the year 1998, when the application was submitted before the Circle Officer, the names of the respondents/writ petitioners were there in the revenue record since long and the appellants were not claiming title through the respondent and, therefore, had a rival claim and adverse to the writ petitioners/respondents. Since 1998, parties approached total seven forums for obtaining order in fiscal proceeding matter wherein no actual relief can be granted to the parties. If the parties would have filed the suit of appropriate nature in competent court of jurisdiction in the year 1998, they may have paid the court fees according to the market value of the property as it was in the year 1998. After fighting the litigation for about 14 years, the parties can get the entries of their names in the revenue record without there being declaration of right, title or interest in the property. After this delay of 14 years, if the parties will file a suit, they will have to pay the court fees as per the value of the property in the year 2012 provided this order attains finality and the parties chose to file the suit for actual relief. At the cost of repetition, we may observe that the appellants neither can get declaration nor can get possession nor can evict any party in these proceedings yet they are

compelled to litigate because of the reason of availability of law as it is or more important reason may be that they may not have been advised to file a civil suit forthwith when they found that there is wrong entry in the revenue record. All these rounds of litigation could have been avoided by advising them to file the suit for appropriate reliefs.

32. We are of the considered opinion that in a mutation proceeding also if there is serious dispute with respect to the claims and rival claims even amongst the successors of the recorded person then they may be directed to file the appropriate suit. We may taken help of earlier decision of the Patna High Court delivered in the case of Sundari Devi Vs. The State of Bihar and Others, wherein it has been held by the Hon''ble Mr. Justice S.B. Sinha, as he was then, that even if, procedure required to be followed for mutation has not been strictly complied with by the revenue authorities, the High Court should not exercise its extraordinary jurisdiction under Article 227 and remedy lies in filing a civil suit for obtaining appropriate relief before a competent Civil Court.

33. This type of litigation can be avoided by making appropriate amendment in Section 15 and Section 16 of the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 as well as appropriate amendment in Section 14 so as to give the finality of the order of the Anchal Adhikari and by inserting appropriate Section or provision requiring that after the order of the Anchal Adhikari u/s 14 the aggrieved party may file civil suit in a court of competent jurisdiction so that the parties aggrieved against the order passed u/s 14, merely because of the availability of the right to appeal u/s 15 and right to challenge the order in revision u/s 16, may not be misguided for taking this route resulting into the same effect i.e., thereafter, requiring parties to seek declaration from the court and also pray for the relief of possession etc. where they can also get the interim relief of protection of their possession or even appointment of receiver for the property, which reliefs are not available in these proceedings where the litigants may fight for decades for no actual relief to them.

34. Therefore, we are of the considered opinion that there is no reason to interfere in the order passed by the learned Single Judge which has been passed for different reasons but since we are of the view that the original application filed by the appellants was not maintainable, therefore, this Letters Patent Appeal is dismissed. A copy of this judgment be sent to State Law Commission and the State Government through Law Secretary so that they may examine the issue raised in this order as well as the State Government may also consider whether in a suit for declaration with relief of possession or without possession and for any ancillary relief for agricultural land, whether advalorem according to market value of the property is justified or it should be a nominal fixed court fees as may be leviable in other States looking to the important fact that the agriculturists may have a big chunk of land but they may not have means to pay the court fees according to market value of their land and we can take judicial notice of this fact that in other States there may not be such type of burden of

court fees upon the person claiming any right over agricultural land. At this stage, learned counsel for the respondents pointed out that under CPC there is a provision for filing suit without paying the court fees. However, we are of the considered opinion that the litigant of the agricultural land need not to be asked to obtain a declaration that they are indigent persons and, therefore, we are of the considered opinion that the State Government should consider appropriate law for dispensing with the court fees for the agriculturists in suits for right, title, possession and interest over the agricultural land only.

L.P.A. is dismissed for the reasons mentioned above. No order as to cost.