

(1946) 11 PAT CK 0001
In the Patna High Court

Medne Prasad Singh and Others

APPELLANT

Vs

Mt. Dulhin Shamsunder Kuer and Another

RESPONDENT

Date of Decision : 08-11-1946

Acts Referred:

Bihar Tenancy Act, 1885 — Section 112A, 112B

Citation : AIR 1947 Patna 401

Hon'ble Judges : Manohar Lall, J;Bennett, J

Bench : Full Bench

Judgement

Manohar Lall, J.—The only point argued in this appeal on behalf of the appellant is that the order of the Board of Revenue, Ex. C, by which the Rent Reduction Officer was directed to reconsider the case was ultra vires.

2. It appears that the tenants filed an application for reduction of rent u/s 112A, Bihar Tenancy Act. The Rent Reduction Officer reduced, the rent under Clause (d) holding that the rent first became payable in 1915. Against this order there was an appeal to the Collector which was dismissed for default on 5th December 1939. The landlord then moved the Commissioner without success and ultimately he went up to the Board of Revenue who in the exercise of their revisional jurisdiction remanded the case for a fresh decision after taking into consideration the jamabandi papers produced by the landlord. The case was then heard by another Rent Reduction Officer who rejected the application for reduction of rent. The tenants' argument before the Court below was that the second order of the Rent Reduction Officer rejecting their application for reduction of rent must be treated as being ultra vires on the ground, as I have already stated, that the Board of Revenue had no right to revise the order of the Collector. Attention is drawn to the provisions of Section 112B, Bihar Tenancy Act, and to the decision of this Court in Sri Thakur Radha Krishnaji Vs. Ramkhelawan Singh and Others, . In our opinion, the learned Subordinate Judge has correctly distinguished that decision of this Court by pointing out that in the present case there was no order of the Collector by which he decided the case on the merits. The order of the

Collector merely showed that he was dismissing the appeal for default as nobody appeared before him. In these circumstances it cannot be said that the Collector passed any order by which he devoted his attention to consider whether the decision of the Rent Reduction Officer was right or wrong. This contention must be overruled in the peculiar circumstances.

3. It was then argued that by Ex. c the case of these very tenants was not remanded by the Board of Revenue. It is impossible for us to come to a decision on this question, because in the first instance, this question was not raised before the learned Subordinate Judge in this form, and, secondly, because on the materials on the record it is impossible for us to decide this point satisfactorily. Moreover, the Court below has pointed out that the order of Mr. Ozair by which he held that this particular case was remanded to the Rent Reduction Officer was an order correct on the facts. This point must, therefore, be also overruled. The result is that the appeal fails and is dismissed with costs.

Bennett, J.

4. I agree.