
(2017) 07 JH CK 0074

In the Jharkhand High Court

Case No : Writ Petition (c) No. 4765 of 2004

Meghan Mahto

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-07-2017

Acts Referred:

Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 — Section 2(t), 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14(2), 15, 16

Citation : (2017) 07 JH CK 0074

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Bhaiya Vishwajeet Kumar, Laljee Sahay, Ashish Kumar Thakur

Final Decision : Allowed

Judgement

1. Heard learned counsels for the parties.
2. The present writ petition has been filed for quashing the entire proceeding including the final order dated 03.08.2004 passed by the respondent No. 2 in Misc. Appeal No. 15/2003 whereby, the mutation appeal was allowed by cancelling the long running Zamabandi in the name of Kail Mahto (uncle of the petitioner).
3. The factual matrix of the case is that one Mahendra Kumar Dangi and others had filed an application before the respondent No. 4 for cancellation of long running Zamabandi in the name of Kail Mahto with respect to the land of Village-Danguri, Thana Chouparan No. 11, Khata No. 3, admeasuring total area of 1.96 acres, which was rejected vide order dated 19.10.2001 (Annexure-1 to the writ petition). Thereafter, the respondent No. 6 again preferred an application being Misc. Case No. 78/2002 before the respondent No. 3 for cancellation of Zamabandi relating to the said land

in which the petitioner appeared and filed his objection and after hearing the parties, the said application was also rejected vide order dated 08.07.2003

(Annexure-2 to the writ petition) holding, inter alia, that since there has been long running Zamabandi in the name of Kail Mahto, the matter does not

appear to be of cancellation of Zamabandi, rather it is an issue relating to title of the parties in which the revenue authorities have no jurisdiction. It

was also observed therein that the parties may take recourse before the appropriate Civil Court. Subsequently, the respondent No. 6 filed Misc.

Appeal No. 15/2003-04 before the respondent No. 2 against the order dated 08.07.2003 passed by the respondent No. 3 in Misc. Case No. 78/2002.

The said appeal was allowed by the respondent No. 2 vide order dated 03.08.2004 holding, inter alia, that since the petitioner was in possession of the

land in question by virtue of a plain agreement, the Zamabandi running in the name of Kail Mahto cannot be allowed to continue and, thus, the

Zamabandi relating to the land in question was cancelled. Aggrieved by the order dated 03.08.2004 passed in Misc. Appeal No. 15/2003-04 by the

respondent No. 2, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner submits that the mutation proceeding is regulated by the provisions of the Bihar Tenant's Holdings (Maintenance

of Records) Act, 1973 [hereinafter to be referred to as 'the said Act']. The Sub-divisional Officer has no authority under the said Act to deal

with any dispute arising out of mutation/changes in the Tenants' Ledger Register. It is well settled that Zamabandi running in the name of a particular

person for several years cannot be cancelled at the instance of the claimant in summary proceeding. The proper course for the claimant is to move to

Civil Court of competent jurisdiction for proper relief and therefore the impugned order dated 03.08.2004 passed by the respondent No. 2 being

completely without jurisdiction and nonest in the eye of law and therefore the same may be set aside.

5. The respondent No. 6 has not filed counter affidavit. However, learned counsel appearing on behalf of the respondent No. 6 submits that the order

dated 03.08.2004 passed by the respondent No. 2 in Misc. Appeal No. 15/2003-04 is completely in accordance with law and the same needs no

interference by this Court.

6. Learned counsel appearing on behalf of the State while referring to the

counter affidavit filed on behalf of the respondent Nos. 1 to 5, submits that an agreement of sale with respect of the land in question was executed in ?? Samwat 2004 Saal?? (1948, by English calendar) in favour of Kail Mahto by Narayan Mahto and Chowa Mahto, but the sale deed was never executed and on the basis of a Sada agreement, the Zamabandi was opened which continued till 2001-02. Learned counsel for the State further submits that the respondent No. 6 had not filed any application for cancellation of Zamabandi, rather it was a miscellaneous appeal against the order passed by the respondent No. 3 on which an order for cancellation of Zamabandi was passed by the respondent No. 2.

7. Having heard learned counsels for the parties and going through the relevant documents placed on record, it appears that the jurisdiction of the authorities relating to mutation/changes in the Tenants' Ledger Register has been prescribed in the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973. The relevant provisions of the said Act are quoted hereunder:

??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 under Section 13, the Anchal Adkhikari 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. ??!?!..??

??15. Appeals.- (1) An appeal shall lie to the Land Reforms Deputy Collector against the order of the Anchal Adhikari passed under sub-section (2) of Section 14, if preferred within thirty days of the date of the order appealed against. ??!?!..??

??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: ??!?!?!??

8. On perusal of Sections 14, 15 and 16 of the said Act, it would be evident that the original authority for receiving the requisition and disposing of the mutation case is Anchal Adhikari (Circle Officer). As per Section 15 of the said Act, the Land Reforms Deputy Collector is the appellate authority

and in view of Section 16 of the said Act, the Collector is the revisional authority.

9. The Sub-divisional Officer has been defined under Section 2(t) of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973, which reads as

under:

â??(t) â??sub-divisional Officerâ?? means the officer-in-charge of the civil administration of the sub-division of a district;â??

10. In view of the said definition, the Sub-divisional Officer is the officer-in-charge of the civil administration of the sub-division of the district for the

purpose of the said Act. However, the Sub-divisional officer is not an authority under the provisions of Sections 14, 15 & 16 of the said Act.

11. It is well settled that the power/jurisdiction of an authority is conferred by the statute. No authority can exercise jurisdiction in absence of any such

power conferred by the statute.

12. In the case of Bhavnagar University v. Palitana Sugar Mill (P) Ltd., reported in (2003) 2 SCC 111, the Hon'ble Supreme has held as under:

â??40. ---- It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or

not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.â??

13. In the case of Kurmanchal Institute of Degree & Diploma v. Chancellor, M.J.P. Rohilkhand University, reported in (2007) 6 SCC 3,5 the Hon'ble

Supreme Court has held as under:

â??20. ----- The subordinate legislation will be ultra vires if it contravenes the provisions of the principal Act. (See Vasu Dev Singh v. Union of India

[(2006) 12 SCC 753 : (2006) 11 Scale 108].) A statutory authority, it is well known, must act within the four corners of the statute. A fortiori it has to

operate within the boundaries of the territories within which it is to operate under the statute. Such territorial jurisdiction of the university must be

maintained as otherwise chaos would be created. If distance education of such a nature is to be encouraged, the only course would be to suitably

amend the provisions of the Act.â??

14. In the case of Indian Charge Chrome Ltd. v. Union of India, reported in (2003) 2 SCC 533, the Hon'ble Supreme Court has held as under:

â??27. The Central Government and the State Government are statutory authorities. They must, thus, act within the four corners of the statute. When

an order is meant to be passed by the State Government or the Central Government the same must be passed by an authority competent therefor. An order which has been passed by an officer without an authority would be non est. The Central Government, therefore, could not have acted thereupon particularly when the State itself took such a stand. It failed to take into consideration that the recommendation dated 30-6-2001 being withdrawn, was no longer operative.â??

15. In the present case, it is an admitted fact that in Misc. Case No. 04/2001-02, the Circle Officer while dismissed the application of one Mahendra

Kumar Dangi for cancellation of Zamabandi running in the name of Kail Mahto, clearly held that since the Zamabandi is running in favour of Kail

Mahto for more than 50 years, the revenue authorities should be careful in making recommendation for cancellation of Zamabandi in such cases.

Thereafter, the respondent No. 6 filed Misc. Case No. 78/2002 before the respondent No. 3 for cancellation of Zamabandi for the same land and the

respondent No. 3 passed an order dated 08.07.2003 holding, inter alia, that in the facts of the case, it does not appear to be a case of cancellation of

Zamabandi, rather it is a matter of title dispute between the parties. Aggrieved by the said order, the respondent No. 6 filed an appeal before the

respondent No. 2 and on hearing the parties, the impugned order dated 03.08.2004 was passed cancelling the Zamabandi running in the name of Kail

Mahto.

16. In the facts and circumstances of the case, in my opinion, neither Misc. Case No. 78/2002 before the respondent No. 3 nor Misc. Appeal No.

15/2003-04 before the respondent No. 2 were filed in accordance with the provisions of the said Act. The respondent No. 3 is the appellate authority

under Section 15 of the said Act. However, he entertained the original application filed by the respondent No. 6 in Misc. Case No. 78/2002. Moreover,

the respondent No. 2 entertained Misc. Appeal No. 15/2003-04 filed by the respondent No. 6 as an appellate authority, which was completely without

jurisdiction, as the Sub-divisional Officer has no power under the said Act either as an appellate authority or the revisional authority. The respondent

Nos. 2 & 3 committed serious error of jurisdiction in entertaining the application/appeal filed by the respective parties before them. Accordingly, the

impugned order dated 03.08.2004 passed by the respondent No. 2 in Misc.

Appeal No. 15/2003-04, being without jurisdiction, cannot be said to be legally sustainable and the same is, hereby, quashed and set aside. Though the order dated 08.07.2003 passed by the respondent No. 3 in Misc. Case No. 78/2002 is not under challenge in the present writ petition, yet taking judicial notice of the fact that the same is also without jurisdiction, it is also set aside. The only order on record which can be said to be legal in terms with the provisions of the said Act is the order dated 19.10.2001 passed by the respondent No. 4 in Misc. Case no. 04/2001-02 in which it was observed that since the Zamabandi in the name of Kail Mahto has been continuing for more than 50 years, it is not appropriate for the revenue authorities to entertain the application for cancellation of long running Zamabandi, rather the appropriate remedy for the parties is to take recourse before appropriate Civil Court.

17. The Division Bench of this court in Mahabir Mahto v. State of Jharkhand reported in 2013 (1) JCR 571, while dealing with the extent of power of the revenue authorities under the Bihar Tenant's Holding (Maintenance of Records) Act, held as under:

â??29. 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.â??

18. In view of the aforesaid discussions and judicial pronouncement, the writ petition is, accordingly, allowed and disposed of.