

(1985) 11 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 5215 of 1985

M/s. Deo Lal Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27A, 9(5)

Citation : (1988) PLJR 468

Hon'ble Judges : S.K. Jha, J;B.P. Griyaghey, J

Bench : Division Bench

Advocate : G.C. Bharuka, Navniti Pd. Singh and Ramesh Kr. Agrawal, for the Appellant;

Judgement

1. Having heard learned counsel for the parties and perused the petition, we are convinced, specially at the instance and as requested by learned counsel for the Market Committee and its so called authorities (respondents 2 to 4) who alone are the contesting respondents, that this application be disposed of at this stage itself. It will be an exercise in futility to keep it pending for years together to dispose of the matter on a pure question of law which is well settled by law as accepted by respondents 2 to 4.

2. The petition is directed against the assessment orders dated 16.7.83 passed by the Special Officer (Administrator) of the Agricultural Produce Market Committee, Gulab Bagh, Purnea along with the Member Secretary. Both of them have participated in the assessment proceeding and have signed the assessment order. A copy of the impugned order has been marked annexure 4 to the writ application. Admittedly the Market Committee in question has, by efflux of time, been replaced by an Executive Officer/Administrator as enjoined by sub-section (5) of section 9 of the Bihar Agricultural Produce Markets Committee Act, 1960 (Amended up-to-date). It is obvious, therefore, that all the powers, functions and obligation of the Market Committee in question has been duly vested in the Administrator/Special Officer as appointed by the State Government under the

provisions of sub-section (5) of section 9 of the Act read in its entirety. It has been settled by this Court as a pure principle of law in a series of cases, the latest of which is the case of Ramautar Choudhary Vs. The Managing Director, Bihar State Agricultural Marketing Board, Patna and Others, which has clearly laid down that while the powers of the Market Committee remain vested in the Administrator and an assessment is made by the Administrator along with the Secretary of the Market Committee such an assessment is invalid. In the circumstances it is manifest that the impugned order as contained in annexure 4 is void ab initio. When we confronted learned counsel for the petitioner as to why this Court has been moved so late when the impugned order as incorporated in annexure 4 was passed as far back as on 16th July, 1983, he invited our attention to the fact that against that order a revision application was filed by the petitioner before the Managing Director of the Bihar State Agricultural marketing Board, Patna which was registered as Revision No. 2/83. The final order was passed by the Managing Director as late as on 5.9.85. That merely says that it is found that similar revision petition had been filed in a number of cases on the plea that the provision of appeal as provided in the Bihar Agricultural Produce Markets Act was too onerous. The Act has since been amended and the provision of appeal has been made considerably liberal now. In view of this, this petition is dismissed with the observation that the petitioner may file an appeal under the relevant provision of the Act before the prescribed appellate authority within 30 days from today with a condonation petition and the appellate authority will favourably consider in condoning the delay in filing the appeal". It is well settled principle of law that if the original order is void ab initio any order of remand passed in revision dismissing the revision application on the ground that an appellate forum was prescribed is equally without jurisdiction. The other impugned order in this writ application is the aforementioned revision application passed by the Managing Director of the Marketing Board in the aforementioned case. If the original order as indicated in annexure 4 is void ab initio, it follows as a necessary corollary that the revision order as contained in annexure 6 must also be struck down.

3. We accordingly allow this application at this stage itself and quash the impugned orders as contained in annexures 4 and 6 to the writ application. It goes without saying that if the Market Committee has already been re-constituted under the provision of the Act the Assessment Sub Committee appointed by the Market Committee under the provisions of section 27A of the Act shall deal with the matter afresh in accordance with law and if then the petitioner still feels aggrieved by any infringement of any statutory provision he shall equally be at liberty to move this Court again.