
(1975) 05 PAT CK 0005
In the Patna High Court

Nitya Nand Singh

APPELLANT

Vs

Shri Sitaram Prasad and Another

RESPONDENT

Date of Decision : 13-05-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 5
Penal Code, 1860 (IPC) — Section 175, 178, 179, 180, 228

Citation : (1976) CriLJ 427 : (1976) 9 PLJR 149

Hon'ble Judges : S. Sarwar Ali, J;Nagendra Prasad Singh, J

Bench : Division Bench

Judgement

S. Sarwar Ali, J.—The petitioner has filed the writ application praying for quashing of the order contained in An-nexure "2" to the writ application, whereby the Assistant Settlement Officer. KI-shanpur Camp, in the district of Dar-bhanga (respondent No. 1), has held the petitioner liable to be dealt with u/s 480 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "Code") and has sentenced him to pay a fine of rupees fifteen or, in default, to undergo simple imprisonment for seven days, u/s 228 of the Indian Penal Code. The petitioner has also filed an application in revision directed against an order of the Sessions Judge, Dar-bhanga passed in Criminal Revision No. 166 of 1971. As the questions involved in the two cases are, more or less, connected, they have been heard together with the consent of the parties and are being disposed of by this common judgment.

2. The facts giving rise to the writ application may be briefly stated thus: At the relevant time revisional survey operations were going on in village Balahi,, P.S. Warianagar. in the District of Dar-bhanga. The wife of the petitioner owns some land in that village. The respondent Assistant Settlement Officer, being a Revenue Officer appointed under the Bihar Tenancy Act, was holding camp at Kishanpur, where he was hearing tanasaa filed in respect of survey operations that had taken place. One of the disputes raised before the Assistant Settlement Officer related to lands which the wife of the petitioner claimed to be her raiyati land. The 29th of May. 1970, was a date fixed for disposal of the objections

raised by some persons in relation to the survey operations. The Assistant Settlement Officer was. therefore, it is accepted, acting u/s 103-A of the Bihar Tenancy Act

3. On the 29th May. 1970. it is alleged that the petitioner acted in such a manner as to attract the provisions of Section 228 of the Indian Penal Code. The Assistant Settlement Officer, being of the view that he had power u/s 480 of the Code to proceed in the matter and to deal with the petitioner, who had committed contempt in the view or presence of a "Revenue Court", proceeded to draw up a proceeding against the petitioner. After examination; of the petitioner, the respondent Assistant Settlement Officer passed the impugned order holding that the petitioner was guilty of an offence punishable u/s 228 of the Indian Penal Code.

4. learned Counsel for the petitioner raised various contentions; but it would be necessary to deal with only one of the contentions as, in my view, the writ application can be disposed of on consideration and decision of that question, learned Counsel contended that the power u/s 480 of the Code to deal with contempt can only be available to an Assistant Settlement Officer provided he was a "Revenue Court" within the meaning of Section 480 of the Code. In his contention, since the respondent Assistant Settlement Officer was not a "Revenue Court", no action could be taken u/s 480 of the Code.

5. It would be necessary to quote Section 480 of the Code as also Section 481, They are as follows:?

480. When any such offence as is described in Section 175 Section 178. Section 179 Section 180. or Section 228 of the Indian Penal Code be committed In the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody; and at any time before the rising of the Court on the same day may. If it thinks fit. take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and. In default of payment. to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

481 (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is u/s 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the court interrupted or Insulted was sitting and the nature of the interruption or insult.

Since it was alleged that the petitioner was guilty u/s 228 of the Indian Penal Code, that too may be quoted:

228. Whoever intentionally offers any insult, or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may

extend to six months, or with fine which may extend to one thousand rupees, or with both.

A perusal of Section 480 of the Code makes it quite clear that a Revenue Court (we are not concerned with other Courts) may have power to take cognizance of one of the offences mentioned in that section and to sentence to fine, as mentioned in the section, provided one of the offences mentioned therein has been committed.

6. It is, therefore, necessary to examine whether the Assistant Settlement Officer, while discharging his duties u/s 103-A of the Bihar Tenancy Act, can be said to be a "Revenue Court". "Revenue Court" has not been defined in the Code. The only statute which was brought to our notice in which "Revenue Court" has been defined is Section 5(2) of the Code of Civil Procedure, which reads as follows:?

(2) "Revenue Court" in Sub-section (1) means a court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

Although the definition is in relation to Section 5(1) of the Code of Civil Procedure, I am of the view that some light can be thrown by this definition,

7. In order to understand the meaning of the expression "Court", we have the well known enunciation of law in *Cooper v. Wilson* (1937) 2 KB 309 which may be quoted:?

A true judicial decision presupposes an existing dispute between two or more Parties, and then involves four requisites: (1) the presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

Approving the enunciation of law as quoted above, the Supreme Court in *Brajnandan Sinha Vs. Jyoti Narain*, observed as follows:?

(18) It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement." The same approach has also been adopted in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank*

Ltd. and Another, .

8. Examining the provisions of Section 103-A of the Bihar Tenancy Act, it appears that the decision arrived at by the Revenue Officer under this section does not finally determine the rights of the parties. Even after the final publication of the record-of-rights, which follows the aforesaid enquiry and decision by the Revenue Officer, there is a provision u/s 106 for a suit for the decision of any dispute regarding any entry which the Revenue Officer has made in, or any omission which the officer has omitted from, the records. The view which I have taken is fully supported by the observation of the Supreme Court in *State of Bihar v. Ram Dayal Missir* 1962 BLJR 385 to the following effect:

In this connection, it is pertinent to observe that the proceedings under the provisions of the Bihar Tenancy Act are meant to have an up-to-date record prepared by Revenue Officers with a view to determining principally the question of possession of particular pieces of land by tenants in a particular estate. The officers engaged in these proceedings have not the right finally to determine the question of title as between conflicting claims laid before them. Their function, primarily, is to determine the question of present possession. After the proceedings have been concluded, there is a statutory prima facie presumption of correctness attaching to the Record of Rights u/s 103-B of the Bihar Tenancy Act. But that is all. The determination by the Revenue Officers engaged in the preparation of the Record of Rights is, by no means, conclusive of the rights of the parties recorded therein. The Record of Rights prepared under the provisions of the Act neither creates nor extinguishes such rights as there may be in the lands forming the subject-matter of the enquiry. There are provisions in the Act itself for challenging the correctness of the, entries made in the Record of Rights, e.g.. Section 106.

It is thus clear that the tests which have been laid down by the Supreme Court in order to constitute a Court are not fulfilled in the instant case.

9. Reference in this connection may also be made to three cases, although several other decisions were also cited at the Bar. In *Kurban Ali v. Jafar Ali* ILR (1901) Cal. 471 it was held that when a Revenue Officer disposes of a petition summarily u/s 105 (103-A of the Amended Act) of the Bengal Tenancy Act. without adopting the procedure laid down in the CPC for the trial of suits, his order would not be open to appeal or second appeal nor will it have effect by res judicata. It was observed in that case that Revenue Officer's order is not a "decision" within the meaning of Section 108 (2) of the Act. In the case of *Nasarulla Mia v. Amiruddi*. (1906) 3 CLJ 133 it was held that an order striking off a petition of objection u/s 103-A of the Bengal Tenancy Act is not a judicial order, nor does it operate as res judicata in a subsequent suit for rent brought by the objector against the recorded tenant. In *Muhammad Subhan-Ullah v. The Secretary of State for India in Council* ILR (1904) AH 382 in relation to settlement proceedings, it was observed as follows:?

The Settlement Officer in the matter of preparing a record of rights is not a judicial officer and is not a Court. He is simply an Executive Officer, who, under the instructions of Government and the provisions of Section 62 and subsequent sections of Act XIX of 1873, is employed in revising the settlement. Among other duties he has to prepare what is called a "record of rights" which is a paper in which, inter alia, the names of all co-sharers and tenants are entered. As to co-sharers, the Settlement Officer is directed to make entries in it, as we have already mentioned, on "the basis of actual possession". This is not a judicial act. It is a purely executive function discharged by an Executive Officer.

All these cases support the view that I have taken and two of the Calcutta cases are cases under the Bengal Tenancy Act, which is almost identical (in relation to Section 103-A) with the Bihar Tenancy Act.

10. All these considerations lead to the conclusion that the respondent Assistant Settlement Officer was not acting as a "Revenue Court" when he passed the impugned order, dated the 29th May, 1970. The order of the respondent Assistant Settlement Officer finding the petitioner guilty u/s 228 of the Indian Penal Code was, therefore, without jurisdiction and is hereby quashed. The writ application is, accordingly, allowed.

11. In the view that I have taken in the writ application, learned Counsel for the petitioner does not press the criminal revision application, which is, accordingly, dismissed.

Nagendra Prasad Singh, J.

12. I agree.