

(2001) 09 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 11530 of 2001

Rajdeo Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 2(4), 34(2), 35

Citation : (2002) 3 PLJR 633

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Mahendra Thakur, for the Appellant; S.J. Rahman, for the Respondent

Judgement

S.K. Katriar, J.—Heard learned Counsel for the Petitioners and learned GP VII.

2. In view of the error apparent on the face of the impugned order which goes to the root of the matter and renders the same a nullity, I have chosen to finally dispose of this writ petition without issuing notices to Respondent Nos. 5 to 16, who are private parties. This writ petition is directed against the order dated 10.8.2000 (Annexure 1), passed by the Deputy Director of Consolidation (H.Q.), Bihar, Patna, in Revision Case No. 26 of 1995 Ramji Rai and Ors. v. Rajdeo Rai and Ors. in purported exercise of powers u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the Act").

3. In view of the nature of the order going to be passed in this case, there is no need to recapitulate the facts in detail. The appellate order dt. 16.4.1992 (Annexure 2) was passed by the Deputy Director of Consolidation, Vaishali, in Misc. Case No. 116 of 1991 Rajdeo Rai v. State of Bihar and Ors. The aggrieved party had thereafter filed a review application before the same authority which was disposed of by order 19.11.94 (Annexure 5). The aggrieved party filed Revision Application No. 26 of 1995 (Ramji Rai v. Rajdeo Rai u/s 35 of the Act which has been disposed of by the Deputy Director of Consolidation (H.Q.), Bihar,

Patna in Revision Case No. 26 of 1995 Ramji Rai v. Rajdeo Rai and Ors., by the impugned order. Hence the present writ petition.

4. It is manifest on the face of it that the order on appeal as well as review petition were passed by the Deputy Director, Vaishali, and revisional order has also been passed by an officer of the rank of Deputy Director. Law is well settled that this is wholly impermissible in law. It has been held by various decisions of this Court that the combined effect of the relevant provisions of the Act, particularly Section 2(4), Section 34(2) and Section 35 of the Act, that the powers of revision cannot be delegated to an officer below the rank of Joint Director of Consolidation. The judgment reported in Ramotar Yadav and Others and Ajaz Haider Vs. The State of Bihar and Others, is to the same effect. I have myself held to the same effect in my judgment dated 22.8.2001, passed in CWJC No. 11774 of 1999 Dhruw Dayal Mahto v. State of Bihar and Ors. I have, inter alia, held as follows in paragraph 5 of the judgment which is set out hereinbelow for the facility of quick reference:

There is one more aspect of the matter. Law is well settled that appeal or revision lies before a higher authority, and review lies before the same authority whose judgment is sought to be reviewed. This is advisedly so for the reason that power of review is very narrow and, therefore, lies before the same authority. The appeal and revision are wider in scope and, therefore, lie before a superior authority.

5. A large number of cases are coming up before this Court where such a mistake has been uniformly committed by the authorities under the Act. Let the Director of Consolidation and other concerned authorities be reminded that the power of revision u/s 35 read with Section 2(4) of the Act is primarily that of the Director of Consolidation. This power can be delegated to a person not below the rank of Joint Director, and should not be below the rank of Deputy Collector, and that too with the prior sanction of the State Government in terms of Section 34(2) of the Act. It goes without saying that I have indicated in my aforesaid judgment, paragraph 5 of which is set out hereinabove, that under any circumstance the appellate authority and the revisional authority have to be at two distinct levels of administrative hierarchy.

6. In the result, this writ petition is allowed, the impugned order dated 10.8.2000 (Annexure 1), passed in Revision Case No. 26 of 1995 Ramji Rai and Ors. v. Rajdeo Rai and Ors., is hereby set aside and the matter is remitted back to the Director of Consolidation to ensure that the same is placed before a person duly authorised under the Act to sit in revision. This being an old matter, let the same be disposed of expeditiously.

7. In view of the position that cases involving such grave error of law rendering the revisional order a nullity is repeatedly coming up before this Court, the Director of Consolidation is directed to ensure implementation of the provisions of the Act in the right letter and spirit of the Act. Let a copy of this order be

handed over to Mr. S.J. Rahman, learned GP VII, for the needful.