
(2014) 11 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2135 of 2005

Ram Briksh Mahto

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2014) 4 PLJR 686

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Uday Shankar Sharan Singh, Ajay and Alok Bhushan, Advocate for the Appellant; Jitendra Prasad Singh, Baidya Nath Thakur and Shankar Kumar Thakur, Advocate for the Respondent

Judgement

Hemant Kumar Srivastava, J.—Petitioners have prayed for quashing the order dated 15-10-2004 passed in Miscellaneous Case No. 44 of 2003 by the Superintendent of Survey, Gaya by which, he recalled/cancelled the orders dated 13-05-1994 passed in Appeal No. 34 of 1991 and other appeals as well as the order passed in Case No. 103 of 1989 and others.

2. The brief fact which lies to file this writ petition is that in Survey Operation of Sherghati Municipality, the names of petitioners were entered in the records in respect of plots contained at Annexure-1 to this writ petition but in the year, 1988-89, the original respondents No. 4 to 28 filed objection against the above-said entries under Section- 9 of the Bihar & Orissa Municipal Survey Act, 1920 (hereinafter referred to as the "Act"). Notices were issued to petitioners, who filed their objections. The concerned authority vide order dated 23-03-1991 directed to record the names of respondents No. 4 to 28 and others in possession column of the records. The above-said order dated 23-03-1991 passed by the Assistant Survey Superintendent was challenged by petitioners as well as concerned respondents before the Superintendent of Survey, Gaya and altogether 70 appeals were filed. The Superintendent of Survey, Gaya passed common order on 13-05-1994 in Appeal No. 34 of 1991 and by the aforesaid

order, all the above-said appeals were disposed off. The Superintendent of Survey, Gaya set aside the order dated 23-03-1991 passed in Miscellaneous Case No. 125 of 2009 and others and directed to enter the name of petitioners in concerned records in respect of plots in question but after lapse of about 10 years, respondent No. 4 Smt. Deoki Devi and some others filed a petition before the Superintendent of Survey, Gaya, challenging the order dated 13-05-1994 passed in Appeal No. 34 of 1991 and other appeals. The Superintendent of Survey, Gaya registered the aforesaid petitions as Misc. Case No. 44 of 2003 and issued notices to petitioners, who appeared and filed their objection, raising the plea that only appeal shall lie against the order dated 13-05-1994 passed in Appeal No. 34 of 1991 & other appeals but the Superintendent of Survey, Gaya vide order dated 15-10-2004, reviewed his earlier order dated 13-05-1994 passed in Appeal No. 34 of 1991 & other appeals.

3. Counter affidavit has been filed on behalf of respondents No. 4 to 28 and a specific plea has been taken in the counter affidavit that the Superintendent of Survey, Gaya did not review his order dated 13-05-1994 passing impugned order dated 15-10-2004 in Misc. Case No. 44 of 2003 and as a matter of fact, the case of respondents No. 4 to 28 was never considered by the Superintendent of Survey, Gaya nor any opportunity of hearing was given to them while disposing off all the 70 appeals passing order dated 13-05-1994 in Appeal Case No. 34 of 1991. It has also been stated in the counter affidavit that since there was procedural ultra vires, the Superintendent of Survey, Gaya corrected his previous order, passing the impugned order.

4. Learned counsel, appearing for the petitioners challenged the impugned order on the ground that there is no provision of review in the Act and therefore, the Superintendent of Survey, Gaya had no jurisdiction to review his own order. Learned counsel for petitioners referred the case of Smt. Nageshwari Devi Vs Superintendent of Survey & Ors reported in 1986 BBCJ 475 in which, it has been held by a coordinate bench of this court that the appellate authority has got no power to review its own order under Municipal Survey Act. Learned counsel for the petitioners also relied upon the judgment of Sujash Chandra Tarafdar Vs. The State of Bihar and Others, wherein this court held that the authority under Bihar & Orissa Municipal Survey Act, 1920 cannot review his order unless the law provides for review.

5. Learned counsel for petitioners further submitted that admittedly, Appeal No. 34 of 1991 & others were heard together and common judgment was passed. He further submitted that the photocopy of order dated 13-05-1994 passed in Appeal No. 34 of 1991 and other appeals, has been annexed as Annexure-2 to this writ petition and from perusal of the aforesaid Annexure-2, it would appear that parties to the aforesaid appeals were heard. He further submitted that even if, it assumed that some of the appellants could not place their cases before the appellate authority before passing the order dated 13-05-1994, the same cannot be a ground of review because the said appellants failed to avail the opportunity

of hearing, which had already been provided by the appellate authority. In support of his above-said contention, learned counsel for the petitioners relied upon a decision of Parshottam Jadavji Jeni Vs. The State of Gujarat and Others, wherein it has been held by Apex Court of this country that if, an opportunity of being heard is given and the person concerned, fails to avail the aforesaid opportunity, the said person cannot raise his grievance at later stage of the proceeding, including the appellate stage.

6. On the other hand, learned counsel, appearing for respondents No. 4 to 28 refuted the above-said submissions, arguing that the impugned order has been annexed as Annexure-3 to this writ petition and from perusal of the certified copy of order dated 15-10-2004 passed in Misc. Case No. 44 of 2003, it would appear that the respondents were not heard by the then Superintendent of Survey, Gaya while passing the order dated 13-05-1994 in appeal No. 34 of 1991 and other appeals and since there was a procedural defect, the Superintendent of Survey, Gaya passed fresh order on 15-10-2004 after giving opportunity of hearing to all the parties and, therefore, the order dated 15-10-2004 passed in Misc. Case No. 44 of 2003 does not come under the ambit of review rather the Superintendent of Survey, Gaya rectified the defect, which had occurred while passing the order dated 13-05-1994 in Appeal No. 34 of 1991 and other appeals. Learned counsel for respondents further submitted that admittedly, Title Suit between the parties is pending before the competent court and, therefore, this writ petition is not maintainable.

7. Having heard the above-said contentions of both the parties, I have gone through the record.

8. The question arises for determination is as to whether the Superintendent of Survey, Gaya under the Act has power to review his own order and as to whether the impugned order dated 15-10-2004 passed in Misc. Case No. 44 of 2003 comes under the ambit of review or not?

9. It is not in dispute that the Act does not contain any provision for review of its own order by the appellate authority. It is an admitted position that Appeal No. 34 of 1991 and other appeals were disposed off by the Superintendent of Survey, Gaya on 13-05-1994 and after lapse of more than 10 years, a petition was filed which was registered as Case No. 44 of 2003 in which, impugned order dated 15-10-2004 has been passed. Admittedly, the impugned order passed in Misc. Case No. 44 of 2003 recalled earlier order dated 13-05-1994 passed in Appeal No. 34 of 1991 and other appeals. The aforesaid fact apparently goes to show that the Superintendent of Survey, Gaya proceeded with the matter after institution of Misc. Case No. 44 of 2003 on the basis of petition, filed by the concerned respondents and while disposing off the aforesaid Misc. Case No. 44 of 2003, he recalled/cancelled the order dated 13-05-1994 passed in Appeal No. 34 of 1991 & other appeals and, therefore, it cannot be said that the order dated 15-10-2004 passed in Misc. Case No. 44 of 2003 does not come under the definition of review.

10. It is well-known fact that power of review is a creature of statute and it is not an inherent power. The power of review can only be exercised when there is apparent error on the record, subject to condition that the aforesaid power should be conferred by the statute itself. In the present case, admittedly, no provision of review has been made in Bihar & Orissa Municipal Act, 1920 and, furthermore, there was no error apparent on the face of the record but in spite of that, the Superintendent of Survey, Gaya not only entertained review petition after lapse of more than 10 years of passing the order dated 13-05-1994 but also cancelled/reviewed his own order. So far as pendency of title suit is concerned; the same is irrelevant for disposal of this writ petition because the title suit is pending for decision of right and title of the parties but the impugned order relates to entry of names in the records and it is well settled principle of law that mere entry in revenue record does not decide right and title of the parties. Moreover, this court has come to the conclusion that the impugned order has been passed by the Superintendent of Survey, Gaya without having power to review his own order and the order impugned is not in accordance with law.

11. In view of the aforesaid discussions, in my view, the Superintendent of Survey, Gaya has committed a gross error in passing the impugned order dated 15-10-2004 in Misc. Case No. 44 of 2002-03 and the same cannot sustain in the eye of law.

12. Accordingly, this writ petition is allowed and the impugned order dated 15-10-2004 passed in Misc. Case No. 44 of 2002-03 is set aside.