

(1957) 03 PAT CK 0018

In the Patna High Court

Case No : Misc. Judl. Case No's. 226 to 234 of 1956

Ramdayal Missir and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-03-1957

Acts Referred:

Bihar Tenancy Act, 1885 — Section 103A, 106, 108, 108A, 189
Bihar Tenancy Rules, 1886 — Rule 40
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226

Citation : AIR 1958 Patna 4 : (1957) 5 BLJR 292

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : P.R. Das, Kailash Rai and Sheo Kumar Singh, for the Appellant; The Govt. Advocate and Ugrah Singh, for the Respondent

Final Decision : Allowed

Judgement

1. In these applications which have been heard together there is a common question of law arising for determination, namely, whether the Settlement Officer has authority to review an order of the Assistant Settlement Officer made u/s 103-A of the Bihar Tenancy Act.

2. It appears that by an order of the Government of Bihar, revisional survey operation was under taken in the district of Purnea and record-of-rights -was under preparation. In the course of these proceedings the petitioners claimed that they had taken settlement of the disputed properties from the previous proprietors, namely, Dhir Narayan Chand and Bir Narayan Chand. It further appears that on 28th September, 1954, the estate of the proprietors vested in the State of Bihar by a notification published u/s 3 of the Bihar Land Reforms Act.

Thereafter the State of Bihar filed objections before the Assistant Settlement Officer, who held an elaborate enquiry and came to the conclusion that there was settlement made with the petitioners and the objections made by the State of

Bihar should be disallowed. This order was passed on 10th of August, 1955, and is Annexure A to the application made by the petitioners. Against this order of the Assistant Settlement Officer the Government of Bihar applied in revision to the Settlement Officer.

On 29th of February, 1956, the Settlement Officer held that he had no power of revision but it was open to him to review the order of the Assistant Settlement Officer and that the revision petition should be treated as review petitions and should be transferred to a senior revenue officer for being dealt with. The order of the Settlement Officer is Annexure C to the application. The last paragraph of this order is important and it is necessary to quote it in full:

"The next question which arises is, if any wrong has been committed, whether this can be righted before the final publication of the records. Order 47, Rule 1 of the CPC no doubt prescribes that a petition for review can only be presented to the Judge who passed the decree or made the order. The Assistant Settlement Officer in this case however is not a *functus officio*, as he has been transferred from this Department and District.

The duties which he could have performed have now therefore to be performed either by me or by an officer designated by me for this purpose, vide Statutory Rule 40 under the Bihar Tenancy Act. It does not stand to reason that a right which the aggrieved party could have exercised if the Assistant Settlement Officer were present, is abrogated on account of any official change. Again it has been held in *Raj Mohan Guha Vs. Alam Gazi Patwari*, , quoted in Dr. S.C. Sen's Bengal Tenancy Act, 6th edition, page 550, that the Settlement Officer has inherent jurisdiction to correct any obvious error in the record.

This must of course be done in a regular procedure after hearing the parties. This view is also supported in *Lakhi Nath Bera and Others Vs. Nabadwip Chandra Nandi and Others*, . I therefore order that these petitions for review should be admitted. It is true that these were originally filed as petitions for revision but that does not debar me from treating these as petitions for review. In view of the importance of the matter I consider that the review petitions should be heard by a senior revenue officer and I accordingly transfer these to the file of Shree Rameshwar Prasad Gupta, Assistant Settlement Officer in charge for disposal. The hearing must be expedited.

Sd/- K. K. Mitra Settlement Officer, Purnea. 29-2-56."

3. The petitioners have obtained this rule from the High Court, calling upon the State of Bihar and the other opposite parties to show cause why a writ in the nature of certiorari should not be issued to quash the order of the Settlement Officer dated 29th of February, 1956. Cause has been shown by the learned Government Advocate on behalf of the opposite parties to whom notice of the rule had been ordered to be given.

4. The sole question which has to be determined is whether the Settlement

Officer has authority to entertain an application for review of an order of the Assistant Settlement Officer made u/s 103-A of the Bihar Tenancy Act. It was conceded by the learned Government Advocate that there is no express provision in the Bihar Tenancy Act conferring a power of review either upon the Assistant Settlement Officer or upon the Settlement Officer. Section 103-A of the Bihar Tenancy Act is in the following terms :

"103-A. 1. When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

2. When such objections have been considered and disposed of according to such rules as the Provincial Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record u/s 104-F, Sub-section (3), the Revenue Officer shall finally frame the record and shall cause it to be finally published in the prescribed manner; and the publication shall be con" elusive evidence that the record has been duly made under this Chapter,

3. Separate draft or final records may be published under Sub-section (1) or Sub-section (2) for different local areas, estates, tenures or parts thereof."

5. Section 108 of the Bihar Tenancy Act deals with the power of revision of the revenue officers and states as follows :

"108. Arty Revenue Officer especially empowered by the Provincial Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision u/s 105, Section 105-A, Section 106 or Section 107, revise the same, whether it was made by himself or by any other Revenue Officer, but not so as to affect any order passed or decree made u/s 109-A:

Provided that no such order or decision shall be so revised if an appeal from it is pending u/s 109-A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter."

6. Section 108-A provides for correction by Revenue Officers of mistakes in the record-of-rights. Section 108-A is in the following terms :

"108-A. Any Revenue Officer especially empowered by the Provincial Government in this behalf, may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under Sub-section (2) of Section 103-A, correct any entry in such record-of-rights which he is satisfied has been made owing to a bona fide mistake :

Provided that no such correction shall be made if an appeal affecting such entry is pending u/s 109-A, of until reasonable notice has been given to the parties concerned to appear and be heard in the matter."

7. Section 106 is also important. It provides for institution of suits before a Revenue Officer for the decision of any dispute regarding any entry in the record-of-rights after its final publication. The section reads as follows:

"106. In proceedings under this Part, a suit may be instituted before a Revenue Officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under Sub-section (2) of Section 103-A of this Act, by presenting a plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue Officer has made in, or any omission which the said Officer has made from, the record,

Whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter; and the Revenue Officer shall hear and decide the dispute."

8. On an examination of the language of these provisions it is manifest that the Settlement Officer has not been expressly granted the power of review of an order passed by the Assistant Settlement Officer u/s 103-A of the Bihar Tenancy Act. It is true that Section 108-A provides for correction by the Revenue Officers of mistakes in the record-of-rights, but the section applies only to a case where an application is made after the final publication of the record-of-rights. It is also obvious that the section provides for the correction of the record-of-rights only when there is a bona fide mistake.

Indeed, it was conceded by the learned Government Advocate that there is no express provision in the statute granting power of review to the Settlement Officer, but it was argued on behalf of the opposite parties that Rule 40 of the rules framed by the Government u/s 189 of the Bihar Tenancy Act grants the power of review to the Settlement Officers and Assistant Settlement Officers. We do not think that this contention is correct. Rule 40 (a) is in the following terms :

"40. (a) Every Revenue Officer appointed by the Local Government under the designation of "Settlement Officer" or "Assistant Settlement Officer" for the purpose of making surveys, record-of-rights, settlement of rents, determination of proprietor's private lands and such like proceedings, or any one or more of them, under the Bihar Tenancy Act, 1885, and every officer specially appointed to receive applications u/s 40 of the Act, is hereby vested with

(i) all the powers exercisable by a Civil Court in the trial of suits;

(ii) powers to enter upon any land and to survey, demarcate and make a map of the same;

(iii) all the powers of an Assistant Superintendent of survey and a Deputy Collector under the Bengal Survey Act, 1875;

(iv) power to cut and thresh the crops on any land and weigh the produce with a

view to estimating the capabilities of the soil; and

(v) power to take down evidence with his own hand in the English language, in proceedings held under Chapter X of the Bihar Tenancy Act, 1885 in which an appeal is allowed, in accordance with the procedure laid down in the Code of Civil Procedure; 1908, for the trial of suits."

The argument of the learned Government Advocate is based upon the language of Rule 40 (a). It was contended by the learned Government Advocate that under Rule 40 (a) the Settlement Officer and the Assistant Settlement Officer have been granted the power of review u/s 114 of the Code of Civil Procedure. We do not accept this argument as correct. Under Chapter X of the Bihar Tenancy Act the Settlement Officer and Assistant Settlement Officer have been expressly granted certain powers with regard to the right of appeal and the right of review and revision.

It is, therefore, not possible to hold that additional power of review has impliedly been granted by the State Government under Rule 40 (a) made in exercise of the rule making authority. Even assuming in favour of the opposite parties that Rule 40 (a) grants the power of review to the Settlement Officer or the Assistant Settlement Officer, nevertheless we are of opinion that the order of the Settlement Officer made in this case on 29th of February, 1956, is an order made without jurisdiction.

The reason is that u/s 114 of the CPC the power of review is granted only to the Court which passed the decree or made the order. The position is made clearer if reference is made to Order 47, Rule 1 and Rule 2. Order 47, Rule 1, states that an application for review of a judgment may be made to the Court which passed the decree or made the order in a case where the review is sought because of the discovery of new and important matter or because there is some mistake or error apparent on the face of the record or for any other cognate reason.

Order 47, Rule 2, states that in other cases the application for review of a decree or order of a Court should be made only to the Judge who passed the decree or made the order sought to be reviewed. In the present case it is manifest that the application for review has been made to the Settlement Officer who did not make the order which was sought to be reviewed- It follows, therefore, that the Settlement Officer in this case had no jurisdiction to entertain the application for review or transfer it for disposal to "a senior revenue officer, namely, Shri Rameshwar Prasad Gupta. For these Reasons we hold that the order of the Settlement Officer, Mr. K.K. Mitra, dated the 29th of February, 1956, is illegal and ultra vires and must be quashed by a writ in the nature of certiorari.

9. It was also argued on behalf of the opposite parties that the Settlement Officer was not a tribunal of a judicial or quasi-judicial character and a writ in the nature of certiorari or in the nature of prohibition should not be issued for quashing his orders. We do not think there is any substance in this argument.

An examination of the statutory provisions under Chapter X of the Bihar Tenancy Act would clearly indicate that the Settlement Officer and the Assistant Settlement Officer have been vested with powers and duties of a judicial, or at any rate of a quasi-judicial, character, and therefore both the Settlement Officer and the Assistant Settlement Officer are tribunals whose orders are amenable to be challenged and quashed by a writ in the nature of certiorari or a writ in the nature of prohibition. We, therefore, reject this argument of the learned Government Advocate.

10. For these reasons we allow these applications and order that a writ in the nature of certiorari be issued to quash the order of the Settlement Officer dated the 29th February, 1956. The applications are accordingly allowed with costs. There will be consolidated hearing fee of Rs. 180/-which will be distributed between the nine sets of petitioners.