

(1991) 01 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7232 of 1988

Ramji Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27A, 37, 9(5)

Citation : AIR 1992 Patna 59 : (1991) 39 BLJR 827 : (1991) 1 PLJR 446

Hon'ble Judges : S. Ali Ahmad, J;R.N. Prasad, J

Bench : Division Bench

Advocate : Ramesh Kumar Agrawal, for the Appellant; Seema Ali Khan, SC and Binod Kumar Ambastha, J.C. to S.C. and Nilima Thakur, for the Respondent

Final Decision : Allowed

Judgement

1. Prayer in this application is to quash the assessment orders passed on 17-5-1988 vide Annexures 3, 3/A and 3/B for the years 1982-83, 1983-84 and 1984-85 respectively. The assessment orders were passed by Mr. R. K. Srivastava, I.A.S., Special Officer of respondent-Market Committee. They have been challenged inter alia on the ground that Sri Srivastava, who was the special officer of the respondent-Market Committee was not empowered under S. 9(5) of the Bihar Agricultural Produce Markets Act, 1960 to make any order of assessment. It is said that Market Committee was constituted by Annexure 5 dated 12-3-1983 and on account of lapse of time it ceased to exist on 12-9-1986. Thereafter one Sudhir Kumar Rakesh, Sub-Divisional Officer, Bettiah was appointed as special officer of the Committee for the period beginning from 6-10-1986 to 11-3-1987 vide Annexure 5A. There was another notification issued appointing the same officer for the period beginning from 12-3-1987 to 11-9-1987 vide Annexure 5B. The third notification issued u/s 9(5) of the Bihar Agriculture Produce Market Act (hereinafter to be referred to as th Act appointing Mr. Ravindra Kumar, Sub-Divisional Officer, Bettiah as special officer for the period beginning from 22-9-1987 to 21-3-1988 vide Annexure 5/C. It is said that

thereafter there was no notification u/s 9(5) of the Act to enable any person to make order of assessment u/s 27A of the Act. On these facts prayer is to quash Annexures 3, 3A and 3B. No counter-affidavit has been filed either on behalf of Market Committee or on behalf of State. A report, however, was called for from Mr. Srivastava regarding his competency to make orders of assessment. In his report it is said that a notification was issued u/s 37 of the Act conferring powers of the Chairman on Mr. Sudhir Kumar Rakesh, S.D.O., Bettiah for the period beginning from 12-9-1987 to 15-11-1988 and on Mr. Purn Chand Rai, S.D.O., Bettiah for the period beginning from 16-11-1988 to 11-3-1989. He has also annexed a photo copy of corrigendum stating that name of Mr. R. K. Srivastava should be read in the aforesaid notification in place of Mr. Sudhir Kumar Rakesh. On that basis it has been urged on behalf of respondents that Mr. R. K. Srivastava was competent to make orders of assessment. It is not possible to accept this contention. Section 37 of the Act gives power to the Board to make arrangements for the performance of the duties and functions of the Market Committee and the Chairman in certain cases, but Section 37 of the Act comes into play where Market Committee is in existence and is unable or not competent due to any order or decision of a Court or any other reasons to perform his duties. This section does not contemplate the situation where the Market Committee is not in existence at all. Here admittedly the Market Committee was not in existence. Therefore, there was no question of Committee being unable or being not competent to perform its duties. Further by this notification only powers of Chairman of the Board was conferred on Mr. Srivastava and not of the Committee. Admittedly the Chairman is not competent to make any order of assessment. Since no powers of the Committee was given to Mr. Srivastava, therefore, under this notification Mr. Srivastava was not competent to make any order of assessment. We may also add that in a situation where Committee is not in existence then the only persons who can exercise powers u/s 27A of the Act is a person, who is notified for the purpose u/s 9(5) of the Act. In that view of the matter we allow this application and quash Annexures 3, 3/A and 3/B. Admittedly the Committee is now in existence. It will now proceed to assess the petitioner for the years in question in accordance with law. It will not be necessary for the Committee to issue notice to the petitioner. He will appear before the Committee on 20th of March, 1991 with such documents on which he relies. On that date the committee may either make the assessment after hearing him or may adjourn to some future date.