

(2000) 12 JH CK 0023

In the Jharkhand High Court

Case No : Civil WJC No"s. 8942 and 8972 of 1999

Ramotar Yadav and Others and Ajaz Haider

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

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

Citation : (2000) 12 JH CK 0023

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : S.C. Verma, Rekha Mukund and Farooque Moazzam Sunil Kr. Tiwary and R.P. Singh, G.P.V, for the Appellant; P. Mishra and V. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—As in both these writ petitions, the question involved is common, they have been heard and are being finally disposed of together after due service of notice to the respondents.

2. In short, the relevant facts are that in both the writ petitions, petitioners are aggrieved by the order passed by the Deputy Director, Consolidation, Purnea and Deputy Director, Consolidation (Headquarters), Bihar, Patna in Revision Case No. 31/98 and 332/96 prospectively in purported exercise of the power u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act")- In both the writ petitions-respective revisions were filed against the order of the Deputy Director, Consolidation, Saharsa and Vaishali passed in the respective appeals. First one preferred by the concerned respondents and the second one preferred by the petitioner, which were finally heard and disposed of by the Deputy Director, Consolidation as already mentioned above.

3. Learned counsel for the petitioners, inter alia, contended that the order

impugned in the respective petitions passed by the Deputy Director are wholly without jurisdiction and bad in law and are fit to be quashed on this ground alone. According to the learned counsel for the petitioners, power of revision u/s 35 of the Act is vested in the Director, Consolidation, who may of his own motion or on the application of any party or on reference made by any subordinate authority, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceeding; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings, and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit. It has been submitted that the Deputy Director, Consolidation in exercise of power u/s 35 of the Act cannot hear the revision and decide.

4. Counter-affidavits on behalf of respondents have been filed in the first case including on behalf of Deputy Director, Consolidation, Purnea (respondent No. 2), which on being authorised has been sworn by the Incharge Officer (Legal Section), Consolidation Directorate, Patna, on the specific point as to whether the Deputy Director, Consolidation is empowered to act u/s 35 of the Act. In paragraph 4 of the said counter-affidavit, it is stated that the Deputy Director of Consolidation has been duly delegated with the powers and functions u/s 35 of the Act with the sanction of the State Government vide Notification No. 858, dated 4.9.1997. A photostat copy of the said notification has been annexed as Annexure-A. According to the stand taken in the said affidavit, Director of Consolidation may with the sanction of the State Government delegate any of its power and functions under the Act to any of the Officer not below the rank of Deputy Collector as provided u/s 34 of the Act.

5. Learned counsel for the respondents has contended that in view of the afore mentioned notification contained in Annexure A, it cannot be said that the respective Deputy Director had no power to hear and decide revision in exercise of the power u/s 35 of the Act. It is submitted that Section 34 deals with delegation of powers and under Sub-section (2) of Section 34, the Director of Consolidation has been vested with the power to delegate any of his powers and function under the Act to any Officer not below the rank of Deputy Collector with the sanction of the State Government. It is submitted that the Director of Consolidation accordingly vide notification contained in Annexure A vested his power u/s 35 of the Act in the respective Deputy Directors, Consolidation, who were not below the rank of Deputy Collector. As such, according to the learned counsel for the respondents, there is no infirmity in the impugned orders on this count.

6. This Court is unable to accept the said submissions of the learned counsel for the respondents. Annexure-A only vests power in two Presiding Officers, namely, Sri Rajendra Prasad Singh, Deputy Director, Consolidation (Headquarters), Patna and Sri Laloo Chaudhary, Deputy Director, Katihar, for disposal of the revision

applications u/s 35 of the Act. The jurisdiction of Sri Singh is in respect of Buxar district and those cases transferred by the Director and the jurisdiction of Sri Chaudhary is in regard to the matter relating to Saharsa Division and those cases which are transferred by the Director. In the first case which relates to Saharsa district, the order has been passed by Sri Jagannath Sharma, Deputy Director, Consolidation, Purnea and the second case which relates to Vaishali district, the order has been passed by Sri Rajendra Prasad Singh, Deputy Director, Consolidation (Headquarters), Bihar, Patna

7. In the counter-affidavit filed on behalf of respondent No. 2 a bald statement has been made that the Deputy Director of Consolidation has been duly delegated with the powers and functions u/s 35 of the Act with the sanction of the State Government, vide Notification No. 858, dated 4.9.1997. Thus, it is evident that the first case is not at all even covered by the notification contained in Annexure-A as the order has been passed by Sri Jagannath Sharma, Deputy Director, Consolidation, Purnea whereas the said notification vests power in Sri Laloo Chaudhary. It is also not the case of the respondents that the Director, Consolidation transferred the revision case by separate order to Sri Jagannath Sharma, Deputy Director, Consolidation, Purnea. In regard to second case also, this Court finds it difficult to accept that it is covered by the notification contained in Annexure-A as neither it relates to Buxar district nor it has been averred in the counter-affidavit that the Director, Consolidation by separate order ever transferred it to the file of Sri Rajendra Prasad Singh, Deputy Director, Consolidation (Headquarters), Patna. Moreover, this Court is unable to accept the contention advanced on behalf of the respondents that the power of revision and reference u/s 35 of the Act can be delegated in the Deputy Director u/s 34(2) of the Act.

8. This Court finds it difficult to hold that the Director in exercise of the power u/s 34(2) of the Act can delegate his power of revision u/s 35 of the Act. The object of this Section is to empower the Director of Consolidation to see that the subordinate Courts are not acting arbitrarily and illegally in exercise of their jurisdiction. (Reference can be made to the decision of the apex Court in "the case of Sher Singh v. Joint Director of Consolidation and Ors. "). In the case of Jagannath Thakur and Anr. v. The State of Bihar and others 1984 PLR 310, Division Bench of this Court held that the power u/s 35 of the Act has to be exercised under the conditions mentioned therein by the Director of Consolidation and the Court did not approve the order impugned therein passed by the Deputy Director of Consolidation. In my opinion, the power under this Section is very wide and such power cannot be exercised by any authority subordinate to the Director of Consolidation as defined under Sub-section (4) of Section 2 of the Act.

9. According to the definition under Sub-section (4) of Section 2 "Director of Consolidation" means an Officer appointed as such by the State Government to exercise the power and perform the duty of Director of Consolidation under the

Act or the Rules made thereunder and shall also include Additional Director of Consolidation and Joint Director of Consolidation and that not the said power can be further delegated to any Officer. In exercise of the said power, the Governor of Bihar, vide Notification No. A/T-1051/57-7445 R dated 13/19th September, 1957 was pleased to appoint the Director of Land Records and Surveys, Bihar to be the Director of Consolidation, Bihar, to discharge all or any of the functions of the Director, Consolidation under the said Act.

10. From the plain reading of the provisions contained in Section 35 read with definition of "Director of Consolidation" under Sub-section (4) of Section 2, it is evident that the power of revision at best can be said to be exercisable by Additional Director, Consolidation or Joint Director of Consolidation but in no case, such a power can be delegated in the Deputy Director of Consolidation. This is also evident from the power of delegation provided in Sub-section (2) of Section 34 under which the Director of Consolidation has not been vested with the power to delegated any of his powers and functions under the Act to any Officer under the Act. The delegation can be made only to any Officer not below the rank of Deputy Collector with the sanction of the State Government- The Legislature have obviously not vested the power under the said provision in the Director to delegate his power to any Officer under the Consolidation Act as, in my opinion, would lead to absurdity. For example, if it is held that the Director can delegate the power of revision u/s 35 of the Act in the Deputy Director also then the Deputy Director under delegated power while exercising the power of revision can hear revision against the order of the Director passed under various provisions like Sections 4 and 33 and also against the orders of Additional Director and Joint Director passed under various other provisions of the Act. The Deputy Director, who is subordinate to Director, Additional Director and Joint Director while exercising the delegated power of revision cannot sit in appeal or revision against the orders of his superior Officers. This cannot be the intention of the Legislature while incorporating the provisions contained in Sub-section (2) of Section 34. Even in the case of Deputy Director hearing revision against the order of the Deputy Director, this "Court finds it to be absurd proposition as Deputy Director though much junior, if delegated with the power of revision under Sub-section (2) of Section 34 to exercise the power of revision u/s 35 may hear revision or reference under the said provision against the order passed by his senior, though in the same rank which, in my opinion, cannot be the intention of the Legislature. Even Sub-section (3) of Section 34 makes it clear that where the powers are to be exercised or duties are to be performed by any authority under this Act or Rules made there under, such powers or duties may also be exercised or performed by the authority superior to him.

11. The apex- Court in the case of Tirath Singh Vs. Bachittar Singh and Others, held that where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which

modifies the meaning of the words, and even the structure of the sentence.

12. I find it difficult to reconcile Sub-section (2) and sub-section (3) of Section 34 itself. Under Sub-section (2), Director of Consolidation has been empowered to delegate his power in any Officer not below the rank of Deputy Director, who is inferior to him, whereas Sub-section (3) provides that where powers are to be exercised or duties are to be performed by any authority under the Act or the Rules made thereunder, such powers or duties may also be exercised or performed by an authority superior to him. Further, I find it difficult to reconcile Sub-section (4) and Sub-section (4a) of Section 2 which defines "Director of Consolidation" and "Deputy Director of Consolidation". According to the definition of Director of Consolidation, it shall include Additional Director of Consolidation and Joint Director of Consolidation, whereas according to Sub-section (4a) even Deputy Director of Consolidation appointed by the State Government can exercise such powers and perform such duties of Director of Consolidation as may be delegated to him and is also to include Assistant Director of Consolidation which would obviously mean that even Assistant Director of Consolidation can be appointed and delegated with the exercise of such powers or duties of Director of Consolidation. Sub-section (4a) of Section 2 defines Deputy Director of Consolidation which means an Officer not below the rank of Additional District Collector appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government, whereas under Sub-section (2) of Section 34, the Director with the sanction of the State Government has been vested with the power to delegate his powers or function under the Act to any Officer not below the rank of Deputy Collector. Thus, I find that the power of delegation u/s 34(2) is different from the power of delegation under Sub-section (4a) of Section 2 which defines Deputy Director of Consolidation.

13. In my view on reading of various provisions referred to above, it is difficult to reconcile the powers of delegation and power of revision u/s 35. Any other interpretation would lead to absurdity, as noticed above, and the said provisions will be contradictory to each other. Thus, on reading of the afore-mentioned provisions, I only come to the conclusion that the power of revision and reference vested in the Director of Consolidation u/s 35 of the Act can at best be exercised only by any of such authority as defined under Sub-section (4) of Section 2 which does not include the Deputy Director of Consolidation.

14. There is another reason to come to the said conclusion as the Joint Director, Consolidation in some matters is the appellate authority under the Act and authority superior to the Deputy Director of Consolidation, and if it is held that the power of revision can be delegated in the Deputy Director, Consolidation, then he will get jurisdiction to hear revision against the order passed by his senior/superior.

15. This Court, thus, holds that the impugned orders passed by the Deputy

Director in purported exercise of the power of revision u/s 35 are bad in law and cannot be sustained.

16. In the result, both the writ petitions are allowed and the impugned orders contained in Annexures 1 and 4 respectively are quashed and the matter is remitted back to the Director, Consolidation for fresh consideration" in accordance with Jaw. In the facts and circumstances, there shall be no order as to costs.

17. Petitions allowed.