
(2007) 10 PAT CK 0078
In the Patna High Court
Case No : CWJC No. 2198 of 2003

Shiv Nandan Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Bihar Tenants Holdings (Maintenance of Records) Act, 1973 — Section 14, 15, 16

Citation : (2008) 1 PLJR 772

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Pramod Mishra, for the Appellant; Ajay Kr. Singh for Respondent No. 7 and Mr. Binod Kumar, for the Respondent

Judgement

J.N. Singh, J.—Heard learned counsel for the parties. Petitioner has filed this writ application for quashing of order dated 10.7.2002 (Annexure-3) passed by the Divisional Commissioner in Revenue Revision Case No. 29/2001.

2. Learned counsel for the petitioner contends that as per Section 16 of the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 (hereinafter referred to as "the Act" for the sake of brevity) the revisional power has to be exercised by the Collector of the district himself and no other authority has power to entertain the revision under the Act. In support of his contention learned counsel for the petitioner places reliance on a judgment of this Court in the case of Arun Kumar Sinha and Another Vs. Suresh Prasad and Others, .

3. From a bare reading of Section 16 of the Act it appears that the revisional power vests only in the Collector of the district but the impugned order has been passed by the Divisional Commissioner.

4. Learned counsel for the respondent No. 7 as well as learned counsel for the State does not dispute this proposition of law in view of the clear wordings of Section 16 of the Act and the aforesaid judgment of this Court as relied upon by the learned counsel for the petitioner.

5. However, learned counsel for the respondents submit that in this case the order of the original authority as contained in Annexure-1 and the order of the appellate authority as contained in Annexure-2 also suffer from error of jurisdiction as the petitioner had filed a petition for mutation before the Deputy Collector Land Reforms (in short "the DCLR"), who rejected the same by Annexure-1 finding that the petitioner had chosen a wrong forum, but also dealt with the matter on merit and opined that the petitioner should move the competent civil court for determination of his claim. Against this order of the DCLR petitioner had preferred an appeal before the Additional Collector, which was allowed. From the provisions of the Act under Sections 14, 15 and 16, it is apparent that an application for mutation has to be filed before the Anchal Adhikari, who shall start the mutation proceeding and shall dispose of the matter at his own level. From Section 15 of the Act it appears that against the said order of the Anchal Adhikari an appeal lies before the Deputy Collector Land Reforms and against an order passed by the Deputy Collector Land Reforms revisions lies before the Collector of the district as per provision of Section 16 of the Act.

6. Petitioner had chosen a wrong forum by filing an application before the DCLR, who had rightly rejected the application by Annexure-1 observing that the petitioner ought to have filed an application before the Anchal Adhikari as per the Act. Petitioner instead of filing a fresh application before the Anchal Adhikari in terms of Section 14 of the Act preferred an appeal before the Additional Collector, who allowed his appeal, against which the respondent filed revision before the Divisional Commissioner. Thus it is apparent that the Divisional Commissioner and the Additional Collector both have committed error of jurisdiction by entertaining them.

7. Therefore, learned counsel for the respondents submit that while setting aside the order of the Divisional Commissioner as contained in Annexure-3, the order of the Additional Collector as contained in Annexure-2 may also be set aside.

8. Learned counsel for the petitioner does not dispute this legal position.

9. In that view of the matter, the order of the Additional Collector as contained in Annexure-2 and the order of the Divisional Commissioner as contained in Annexure-3 are set aside. Petitioner will be at liberty to file a fresh application for mutation before the Anchal Adhikari in terms of Section 14 of the Act. If such application is filed, the same shall be considered and disposed of in accordance with law. Since the DCLR had rejected application of the petitioner, the same need not be quashed. But it is made clear that any observation/finding by the DCLR with regard to merits of the claim of the petitioner shall not be taken into account by the Anchal Adhikari in any proceeding which may be initiated on the application of the petitioner. With the above observations/directions this writ application is disposed of.