
(2019) 07 JH CK 0024

In the Jharkhand High Court

Case No : Writ petition (c) No. 995 Of 2018

Shiv Shankar Singh Munda

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Bihar Tenants Holding (Maintenance Of Records) Act, 1973 — Section 14, 14(2), 15, 16
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0024

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : A.K. Sahani, Atanu Banerjee, Ashwini Bhushan

Final Decision : Disposed Off

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the Sub Divisional Officer, Khunti vide order dated

23.09.2017, by assuming the jurisdiction of the revenue authority has exercised the power of the revenue authority by quashing the order passed by the

competent authority of creation of jamabandi i.e., of an order passed by the Circle Officer in a proceeding initiated in Misc. Case No.01 of 2014-15.

2. Mr. A.K. Sahani, learned counsel for the petitioner has submitted that the order of creation of mutation has been passed by the Circle Officer as

per the provision made under Section 14 of Bihar Tenants Holding (Maintenance of Records) Act, 1973 wherein the order has been passed in favour

of the petitioner but the respondents have questioned the aforesaid order by filing an appeal before the Deputy Collector Land Reforms, Khunti who

has forwarded the matter before the Sub-Divisional Officer, Khunti and passed an order in Misc. Case No.M-03/2016-17 by quashing the order

passed by the Circle Officer in Misc. Case No.01/2014-15.

3. According to Mr. Sahani, learned counsel for the petitioner under the Act, 1973, the Sub-Divisional Officer has not been vested with the power to exercise the power of the revenue authority and therefore, the Deputy Collector Land Reforms, Khunti ought to have adjudicated the dispute instead of forwarding the records before the Sub-Divisional Officer, Khunti who has assumed the power of the appellate authority which cannot be said to be in consonance with the provision of Act, 1973 and hence, the same is not sustainable.

4. This Court after hearing the learned counsel for the parties and looking to the party position of the respondent has found that one Nagendra Singh Munda has been impleaded as respondent No.6 who is the adversary of the petitioner and therefore, the question has come that as to whether in absence of the respondent No.6 any order passed would be said to be proper.

This Court is of the view that in absence, no order be passed by court of Law for the reason that no prejudice be caused to such party and therefore, the question of prejudice is the paramount consideration in absence of an order against such respondent.

5. Mr. Sahani, in course of argument has not questioned the order passed by the Sub-Divisional Officer on its merit save and except, the jurisdiction by making reference of the provision of the Act, 1973, therefore, this Court since is not entering into the merit rather it is to be assessed by the appellate authority, therefore, if the matter would be remitted before the Deputy Collector Land Reforms, at the stage from where the record has been forwarded to the Court of the Sub-Divisional Officer, Khunti, then no prejudice would be caused to such party.

6. This Court after considering the aforesaid aspect of the matter has examined the provision of Bihar Tenants Holding (Maintenance of Records) Act, 1973 wherefrom it is evident that the statute has been enacted to provide for maintenance up to date records by holding of raiyats in the State.

7. The Chapter III of the said Act contains the provisions for dealing with case of mutation wherein under Section 14 requisition and disposal of mutation case has been referred whereby and whereunder under the provision of Section 14 thereof, the Anchal Adhikari (Circle Officer) has been conferred with the power to start a mutation proceeding and to take final

decision within a period of three months.

Section 15 under Chapter IV to the Act, 1973 provides power of appeal to be exercised by the Deputy Collector Land Reforms against the order of

the Anchal Adhikari passed under sub-section (2) of Section 14, if preferred within 30 days of the date of the order appealed against.

Section 16 confers power upon the Collector to exercise the power as a revisional authority.

8. It is not in dispute that the quasi judicial power is only to be exercised if conferred under the statute and if any authority is acting without any

authority, it will be said to be without jurisdiction.

9. It is evident from the fact in hand that a proceeding has been initiated before the Circle Officer for creation of jamabandi of mutation upon which an

order has been passed by the Circle Officer in exercise of power conferred under Section 14 of the Act, 1973.

10. The aggrieved, respondent No.6, has preferred an appeal before the Land Reforms Deputy Collector as per the provision provided under Section

15 of the Act, 1973 as would appear from the order impugned that the Deputy Collector Land Reforms has forwarded the record before the Sub-

Divisional Officer, Khunti, who has assumed the power of the appellate authority and has adjudicated the issue by quashing the order passed by the

mutating authority.

11. The fact suggests that the Deputy Collector Land Reforms has sub-delegated the power of the Sub-Divisional Officer.

The question here would be that in hierarchy the Sub-Divisional Officer is higher to that of Deputy Collector Land Reforms and therefore, even if

accepting that Deputy Collector Land Reforms has exercised the power by sub-delegating to the Sub-Divisional Officer, although the same cannot be

exercised by him since not provided under the statute, but the same has been made to the higher authority which he even cannot do.

12. The Deputy Collector Land Reforms since has been provided under the statute to act as an appellate authority it was incumbent upon him to

adjudicate upon the same instead of referring the matter before the sub-Divisional Officer and therefore, Deputy Collector Land Reforms, Khunti has

exceeded his jurisdiction by not discharging the statutory duty conferred upon him by statute as under the provision of the Act, 1973.

Likewise, the Sub-Divisional Officer, Khunti has also exceeded his jurisdiction by assuming the power of the appellate authority who cannot exercise

the same in absence of any provision to that effect provided under the statute.

Therefore, this Court is of the view that the stand either of the Deputy Collector Land Reforms, Khunti or the Sub-Divisional Officer, Khunti is not to

be appreciated rather this Court is constraint to hold that both the authorities have failed in discharging their statutory duty, therefore, the order passed

by the Sub-Divisional Officer, Khunti in Case No.M-03/2016-17 is held to be without jurisdiction, accordingly, not sustainable, in the result, the same is

quashed.

13. This Court is of the further view that since the respondent no.6 has preferred an appeal before the Deputy Collector Land Reforms invoking the

jurisdiction as conferred under Section 15 of the Act, 1973, therefore, it would be just and proper to direct the Deputy Collector Land Reforms to

initiate a proceeding from that stage and adjudicate upon the dispute in accordance with law.

Accordingly, the Sub-Divisional Officer, Khunti is directed to remit the records before the Deputy Collector Land Reforms, Khunti forthwith.

The Deputy Collector Land Reforms, Khunti is directed to complete the process in accordance with law by passing an appropriate order within a

period of eight weeks from the date of receipt of copy of the order.

14. Needless to say that, The Deputy Collector Land Reforms before passing an order will provide an opportunity of hearing to the petitioner and the

respondent No.6 and any other affected party, if any.

15. In view thereof, the writ petition is disposed of.