(1994) 08 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 383 of 1993

Shree Radha Krishnajee and Another — APPELLANT

Vs

Ratandhari Singh, The Commissioner, Darbhaga Division, The Treasury Officer and The Accountant-General — RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:
- Bihar Land Reforms Act, 1950 — Section 21, 21(2), 21(3), 23, 24
- Bihar Land Reforms Rules, 1951 — Rule 43, 43(1), 43(3)
- Bihar Practice and Procedure Manual, 1958 — Section 68

Citation : (1994) 08 PAT CK 0003

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : A.K. Mouar and S.B. Pathak, for the Appellant; None, Rameshwar Prasad and O.P. Agrawal for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—The present writ application is directed against the order, Dated 31.12.82 as contained in Annexure-1 passed by the Respondent No. 2, the Commissioner, Darbhanga Division, in Misc. Case No. 97/1982-83, by reason of which he has set aside the order, dated 4.8.82, as contained in Annexure-2, passed by the Collector of Madhubani in Misc. Case No. 36/82.

2. For appreciating the points urged on behalf of the parties, some relevant facts are required to be kept in mind, which are as follows.

Mother of one Chandradhari Singh created a Trust known as Shree Radh Krishnajee Trust. The first trustee was the mother who nominated her son, Chandradhari Singh as her successor-in-office on her death. By the deed of Trust, Chandradhari Singh was empowered to nominate his successor'' from among the group from his choice. The said Trust was held to be a genuine Trust for charitable and religious purposes by the Government and, as such, a final order was passed u/s 21(2) of the Bihar Land Reforms Act, 1950 (hereinafter referred to as ''the Act'' for brevity). Compensation assessment roll was prepared in accordance with the provisions of Sub-section (3) of Section 21 of the Act. Although Chandradhari Singh nominated Petitioner No. 2, namely, Shashidhari Singh, as the next Shabait, after the death of Chandradhari Singh, Respondent No. 1, namely, Ratandhari Singh, Anr. son of late Chandradhari Singh raised objection regarding the said nomination. The father of Petitioner No. 2, Chandradhari Singh, being a peace loving person, executed a compromise petition in respect of future line of succession of Shebaitship after his death. The compromise petition stipulated that both Petitioner No. 2 and Respondent No. 1 shall manage the affairs of Petitioner No. 1. The Collector recorded the said compromise, but ordered that the name of Chandradhari Singh be substituted in place of Tantrawati Bahuasin, the creator of the Trust for further action in respect of the payment of the annuity. It appears that the Collector of Madhubani, after hearing both the brothers, directed that the new annuity demand should be issued in the name of Petitioner No. 2, Shashidhari Singh. It is said that the Petitioner No. 2 received payment of annuity for the year 1981 on the death of the said Chandradhari Singh. Respondent No. 1, however, being aggrieved by the order of Collector, filed Misc. Case No. 97/82-83 before Respondent No. 2. By the impugned order. Annexure-1, Respondent No. 2 set aside the order of the Collector, Madhubani, and hence, this writ application.

3. From the record, it appears that Respondent No. 1 has appeared by filing Vakalatnama as well as the counter-affidavit. At the time of hearing, however, nobody appeared on behalf of Respondent No. 1. Mr Agrawal, learned Counsel, appearing on behalf of Respondent No. 2, has assisted the Court very fairly.

4. Mr. Mouar, learned Counsel appearing on behalf of the Petitioners has firstly submitted that Respondent No. 2, the Commissioner, had no jurisdiction to sit over the order passed by the Collector under Rule 43(3) of the Bihar Land Reforms Rules, 1951, (hereinafter referred to as ''the Rules'' for brevity). Elaborating his argument, he submits that Section 68 of the Bihar Practice and Procedure Manual, 1958 (hereinafter referred to as ''the Manual'' for brevity) does not empower the Commissioner to revise the order passed by an authority under the provisions of the Act and the Rules. Secondly, he has submitted that from the impugned order itself, it is apparent that Respondent No. 2, instead of exercising his purported power u/s 68 of the Manual, transferred the matter to his office for enquiry and giving report to him. It is stated that even the lawyers of the parties were heard by the Secretary to the Commissioner and records were also looked into by him. This procedure, according to Mr. Mouar is unheard of, muchless illegal. Lastly, Mr. Mouar submits that the Collector passed the order under Sub-rule (3) of Rule 43 of the Rules, which is a routine order to be passed by the Collector as soon as an information is received by him of any change in the office of the trustee etc.

5. Mr. Agrawal, learned Counsel, on the Other hand, has submitted that it cannot be disputed that the Collector is an officer subordinate to the Commissioner,

Respondent No. 2, and as such, any order passed under any Act or Rules by the officers subordinate to him can be revised by the Commissioner, by exercising his power u/s 68 of the Manual except, of course, if no other forum is prescribed under the Act or the Rules. It is submitted that Respondent No. 2 has exercised his power under his supervising and revisional capacity, and, as such, even if the Act and the Rules do not vest such power to the Commissioner, the Commissioner is well within his jurisdiction to revise the order of the Collector.

6. In order to appreciate the contention put forward by the learned Counsel, it is useful to look at the different provisions made in the Act and the Rules. Section 21 of the Act lays down determination as to whether a Trust is for a charitable or religious ''purpose or not. Sub-clause (2) of Section 21 provides for a thorough enquiry by the Collector after giving a reasponable notice to the parties. After such an enquiry being held, the State Government is to pass the final order thereon, on the basis of the enquiries made by the Collector. Section 24(3) reads as follows-

24. Rates of compensation. - After the net income has been computed u/s 23. the Compensation Officer shall for the purpose of preparing the Compensation Assessment-roll, proceed to determine the amount of compensation to be payable in respect of I the transference to the State of the interests of each intermediary as follows-

(1) XXX XXX XXX

(2) XXX XXX XXX

(3) in case where according to the order of the State Government under Sub-section (2) of Section 21, the trust is genuine and has been acted upon and the net income or any portion of the net income in respect of any estate or tenure held under the trust has been dedicated exclusively to charitable or religious purposes without any reservation of pecuniary benefit to any individual, the compensation payable in respect of such income or such portion thereof shall, instead of being assessed under Clause (1), be assessed as perpetual annuity equal to such net income or such portion thereof as the case may be.

Explanation.-The salary, remuneration or any allowance payable to a mutawalli in the case of a waqf or to a trustee in any other case including a Shebait of a Hindu Religious trust not exceeding fifteen per centum of the net income dedicated, exclusively to charitabte or religious purposes shall not be deemed to be a reservation of pecuniary benefit within the meaning of this clause:

(4) to (6) XX XX XX XX

The last proviso to Section 24 contemplates that an appeal against such order of the Compensation Officer shall lie to the authority and be disposed of in the manner provided in Section 27 of the Act.

7. At this stage, it is necessary to refer to Rule 43(1) of the Rules, which is as

follows-

43. Manner of payment of perpetual annuity assessed u/s 24(3). -(1) After the Compensation Officer has assessed the annuity he will send the record of the case to the Collector for approval of the amount payable. The Collector will then prepare an annuity payment order (in triplicate) which will be on similar lines to a Pension Payment Order and numbered consecutively. One copy will be sent to Treasury Officer, one to the Accountant-General and the third copy will be made over to the Trus-tee/Mutawalli/Shebait after obtaining a receipt from him.

The Collector will enter particulars of the Annuity Order in Register in Form V. The Treasury Officer will enter particulars of the Annuity Order in Form V(1).

Similarly, Sub-rule (3) of Rule 43 of the Rules contemplates that as soon as an information is received by the Collector of any change in the office of the Trus-teeJ Mutawalli/Shebait, which may be occasioned by the death of Mutawalli/ Sebait/trustee or otherwise, he will immediately communicate to the Treasury Officer the particulars of such Annuity Order and instruct him to stop further payment of annuity on such Annuity Order. This sub-rule directs the Collector to follow some procedure thereof.

8. Annexure-2 is dated 4.8.1982, passed in Misc. Case No. 38 of 1982-83 by the Collector, Madhubani. From a perusal of the order, it appears that there arose some dispute regarding joint trusteeship between the parties. Respondent No. 1 did not claim before the Collector to be the Managing Trustee of the said Trust; whereas Petitioner No. 2; was the Managing Trustee, as he was managing the affairs of the deities under the said Trust. The Collector took into consideration the compromise petitions filed by the respective parties and relied upon the statement made by the Petitioner No. 2 in his petition that he undertook to pay the amount of annuity to Respondent No. 1, if he was declared to be a co-trustee in future. On the basis of this undertaking, the Collector passed the order under Rule 43 as aforesaid. No provision could be brought to my notice by either side as to whether this order passed by the Collector under Rule 43 is appealable or not. In paragraph 9 of his counter-affidavit, the Commissioner has admitted that there is no specific provision of appeal in this matter, but the Commissioner has asserted that he is vested with the general power of superintendence and supervision u/s 68 of the manual.

9. In my opinion, this assertion of Respondent No. 2 is completely misconceived. It is uncontroverted that the rules which form part in the Manual have been formed by the Legal Rememberance of the State of Bihar. These rules are meant for the executive officers for exercising their executive powers from time to time. The provisions as contained in Rule 43 have been enacted by the State Government by virtue of the power laid down in Section 43 of the Act. In these circumstances, it Is an absurd proposition that the Commissioner will exercise his power u/s 68 of the Manual, which reads as follows-

68. The fact that a superior authority is vested by any Act of the legislature with

general powers of supervision and control over the proceedings and orders of subordinate officers does not of itself confer upon a party to a case or proceeding any right of appeal to such superior authority; but Government have held that those powers do confer on such authority, when satisfied that injustice has been done, a right to revise orders passed by subordinate officers. Powers of control and supervision are discretionary, and superior authorities exercising such powers are not ordinarily disposed to interfere execpt in the following classes of cases:

(1) where a subordinate officer has improperly refused to exercise a jurisdiction vested in him;

(2) where such officer has acted without jurisdiction;

(3) where such officer in the exercise of the jurisdiction has signally failed in his duty; or

(4) generally where it is necessary for the purpose-of preventing gross abuse or gross injustice.

From a perusal of the aforesaid provision, it appears that the superior authority has been authorised to revise some orders, which are not passed under any statute, it is suffice to say that the Rules framed by the Legal Rememberance cannot override the provisions made by the legislate.

10. Taking into consideration all those aspects of the matter, I hold that the order passed by the Commissioner, Respondent No. 2 as contained in Annexure-1 is completely without jurisdiction and, as such, vitiated in law.

11. Coming to the second contention of Mr. Mouar, learned Counsel for the Petitioners, I may refer to the statement made by Respondent No. 2 in the counter-affidavit itself. He has admitted that the Secretary to the Commissioner examined all matters proposed in the notes and put up before the Commissioner and also otherwise consists him except in judicial order or Court''s work. From the other statements made in the counter-affidavit, it appears that instead of the Commissioner himself, the Secretary to the Commissioner examined the matter, but also heard the lawyers of the parties. From a persual of the impugned order, it appears that during the course of hearing, the Respondent No. 2 felt it necessary to send the matter to the office for enquiry on the gound that the said enquiry can be made in a better way by the office itself. The word ''hastantarit'' in the impugned order suggests that the matter was endorsed to the office where both parties were noticed by the Secretary to the Commissioner and Secretary to the Commissioner heard the lawyers of the parties appearing in the case on their behalf. Though it is not very explicit from the order, but it is apparent that the Commissioner only put his signature on the conclusion arrived at by his Secretary after hearing of the arguments of the parties. This procedure adopted by the Commissioner cannot be accepted as valid and legal. Even assuming that he had power to decide the matter u/s 68 of the Manual, but the procedure ;

adopted by him is completely illegal and I cannot be appreciated by a Court of law. In this connection, I may refer to the Wherton''s Law Lexicon, Eleventh Edition, in which the expression ''Coram non justice'' (in presence of a person not a Judge), has been defined as "when a suit is brought and determined in a Court which has no jurisdiction in the matter, then it is said to be coram non justice, and the judgment is void.

12. Whether the claim of the Respondent No. 1 is correct or not is to be decided by an appropriate forum. This Court cannot go into evidence for deciding such issues. However, from the above discussion, it is clear that Respondent No. 2 has. acted with material irregularity, muehless illegality in not only exercising his power u/s 68 of the Manual, as also by adopting a procedure, which is foreign to the prescribed procedure established by law.

13. In the result, this writ application is allowed and the impugned order, dated 31.12.92, as contained in Annexure-1, is hereby set aside. As nobody appeared on behalf of the private Respondent, namely, Respondent No. 1, Ratandhari Singh, there shall be no order as to costs.