
(2003) 09 JH CK 0053
In the Jharkhand High Court
Case No : C.W.J.C. No. 4237 of 1996 (R)

Smt. Rajpati Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 18, 21, 212

Citation : (2004) 1 JCR 117

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : B.P. Jaiswal, for the Appellant; Rajiv Ranjan Mishra, GP-II, Sumir Prasad and Baleshwar Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In this writ application the petitioner has prayed for quashing of the order dated 12.12.1994/ 19.12.1994 passed by the Deputy Commissioner, Palamau as contained in Annexure 3 where by he has cancelled the Basgit Parcha issued in favour of the petitioner by the order of Circle Officer, Bishrampur vide his order dated 5.2.1991 with regard to the land measuring an area 0.15 decimals of Khata No. 10, Plot No. 132 of village, Jhar-hakala.

2. According to the petitioner, on application made by the petitioner the Circle Officer, Bishrampur vide order dated 5.2,1991 passed an order for issuance of Basgit Parcha in favour of the petitioner with regard to the land measuring an area 0.15 decimals of Khata No. 10, Plot No. 132 of village Jharhakala vide Annexure 1 to the writ application. The learned Deputy Commissioner by his impugned order dated 19.12.1994 (Annexure 3) cancelled the issuance of Basgit Parcha in favour of the petitioner on the ground that Circle Officer has passed the order of extraneous consideration and without taken into consideration the report of the Karamchari, Circle Inspector.

3. Mr. B.P. Jaiswal, learned counsel for the petitioner has submitted that the

Circle Officer has passed the order as contained in Annexure 1 in exercising of power envisages u/s 18 of Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred as the Act for the sake of convenience) which is not appealable and no appeal lies against the order of the Collector in exercising of power u/s 18 of the Act and any order passed u/s 18 of the Act is final and therefore the order as contained in Annexure 3 passed by the Deputy Commissioner, Palamau is without jurisdiction and as such the same is liable to be quashed. In support of his contention he has relied on. the decision in the case of Ganga Ram Bhagat v. Deputy Commissioner, Dumka and Anr. and analogous cases reported in 1977 BBCJ 562.

4. On the other hand Mr. Rajiv Ran-jan Mishra, learned GP-II has submitted that the submission made on behalf of the petitioner is wholly erroneous and is not tenable in view of the fact that Section 18 of the Act has been amended by Amendment Act 11 of 1989 and the language of Section 18 of the Act has been changed and now after amendment the order passed u/s 18 of the Act is subject to the provisions of Section 21 of the Act. For ready reference Section 18 of the Act is quoted herein below :

"18. Order under this Act to be final--The orders passed under this Act shall be final. Subject to the provisions of Section 21, all orders passed by the Collector in any proceeding under this Act shall be final, and no suit shall lie in any Civil Court to vary or set aside any such order except on the ground of fraud or want of Jurisdiction."

5. Section 21 has been inserted by Amendment Act of 11 of 1989, which reads as under :

"21. Power of the Collector of the District to call for and examine records.--Notwithstanding anything to the contrary contained In any judgment, decree or order of any Court or Authority; the Collector of the district may, on his own motion or on the application of any party, or on reference being made by any subordinate authority, call for and examine record of any case decided or proceeding taken by the Collector under the Act for satisfying himself as to the regularity of the proceeding or to the correctness, legality or propriety of an order passed by the Collector under the Act in the case or proceeding, and may after, allowing the parties concerned opportunity of being heard, direct that the case or the proceeding be re-opened and disposed of afresh in accordance with the provisions of this Act."

6. From bare perusal of the Section 21 of the Act quoted herein above, it appears that it gives power to the Collector of the District to call for and examine record of any case decided under the Act either on his own motion or on the application of any party, or on reference made by subordinate authority for satisfying himself as to the regularity of any proceeding or correctness, legality or prosperity of the said order.

7. The decision cited by the learned counsel for the petitioner is not applicable as

the same was decided under the old Act i.e. unamended Act- but. now after the amendment of 1989 the position has totally changed. Therefore, it cannot be said that the order as contained in Annexure 3 passed by the Deputy Commissioner is without jurisdiction.

8. The learned Deputy Commissioner was fully justified in passing the order by exercising the power u/s 21 of the Act.

9. No order point has been urged on behalf of the petitioner.

10. In the result this application has got no merit. It is accordingly dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.