(1999) 07 PAT CK 0042

In the Patna High Court

Case No : C.W.J.C. No. 7711 of 1988

Sujash Chandra Tarafdar APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-07-1999

Acts Referred:

Citation : (1999) 3 PLJR 366

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Ravi Shanker Prasad and Sujeet Kumar Sinha, for the Appellant; J.P. Shukla, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The writ petition has been filed for quashing the order dated 23.8.1988, annexure-1, passed by Superintendent of Survey, Respondent No. 2, whereby he reviewed his earlier order dated 25.7.1987, annexure-3.

2. The relevant facts of the case are that father and uncle of the Petitioner purchased seven Bighas three Kathas of land on 10.4.1922 by a registered sale deed. There was a partition between them. The half of the aforesaid purchased land was allotted to the Petitioners. The municipal survey was started in the early eightees and in the draft publication municipal survey plot Nos. 416, 417, 418 and 419 were recorded in the name of the Petitioners. The State of Bihar, Respondent No. 1 filed objection before the Assistant Superintendent of Survey stating therein that jamabandi stands in the name of the Petitioners in respect of three Bighas, sixteen Kathas and ten dhurs but the land actually in their possession is four Bighas ten Kathas and six Dhurs and as such separate jamabandi for the surplus land be created in the name of State of Bihar. The Assistant Superintendent of Survey, Respondent No. 3 after hearing the parties rejected the claim of Respondent No. 1 vide order dated 29.4.1986, annexure 2. The Respondent No. 1 preferred an appeal before the Superintendent of Survey, Respondent No. 2. The said appeal was dismissed on 25.7.1987, annexure-3.

The Respondent No. 1 filed a petition for review after one year before the Superintendent of Survey reiterating its claim which was allowed vide order dated 23.8.1988, annexure-1.

3. A counter affidavit has been filed on behalf of Respondent No. 1 wherein stand has been taken that in fact the order, annexure-1 is not a review rather it is rectification of error committed by Respondent No. 2

4. Learned Counsel for the parties reiterated the stand which they have taken in their pleadings.

5. It is evident from the materials on record that Respondent No. 2, the appellate authority had dismissed the appeal rejecting the claim of Respondent No. 1. Subsequently, Respondent No. 1 filed a review petition on which miscellaneous case No. 7 of 1988 was order, annexure-1, was passed reviewing the appellate order, annexure-3, which has been impugned in this writ application. It is well known that revenue authority has no power of review of his own order. Moreover, under the Municipal Act or Municipal Survey Rules there is no provision of review. The authority under the Act cannot review his order unless the law provides for review. In the instant case, learned Counsel for the Petitioner contended that since there is no provision of review, the Respondent No. 2 has committed error in reviewing the order. On the other hand learned Counsel for the Respondents could not be able to show any provision that there is a provision under the Municipal Act or Municipal Survey Rules that the authority has been vested with the power of review. Moreover, learned Counsel for the Respondents could not be able to show as to what was the apparent error which required to be rectified.

6. Thus, on consideration as discussed above, I find merit in this application. Accordingly, this application is allowed. The order, Annexure-1, is hereby quashed but without cost.