

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4352 of 2006

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1. Subhash Chandra Jha ,
 2. Bibhash Chandra Jha,
 3. Prabhash Chandra Jha,

All are sons of late Sita Rama Jha, resident of village Lagma, P.S. Sonbarsa,
District Saharsa,

.... Petitioners

Versus

1. The State of Bihar,
2. The Divisional Commissioner, Koshi Division, Saharsa,
3. The District Magistrate-cum-Collector, Saharsa,
4. The Additional Collector, Saharsa,
5. The Deputy Collector, Land Reforms, Saharsa,
6. The Circle Officer, Sonbarsa, District Saharsa,
7. Tara Devi wife of late Sharda Kant Jha, resident of village Lagma, P.S.
Sonbarsa, District Saharsa,

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate
For the State : Dr. Anil Kumar Upadhyay, SC 20
Mr. Yashraj Vardhan, AC to SC 20
For Respondent No. 7: Mr. Arun Kumar Jha, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 19-01-2015

I have heard learned counsel for the petitioners, the State
and the respondent no. 7.

Petitioners are aggrieved by the order passed by the
Divisional Commissioner in Mutation Case No. 6/2004 on the
ground that the same has been passed by a forum *non juris* as a
revision was already entertained by the Additional Collector and as
such, the Commissioner of the Division did not have any power to
entertain a second revision.

Learned counsel for the petitioners places reliance upon a

decision of a Division Bench of this Court in **Arun Kumar Sinha and anr. V. Suresh Prasad and others (1997(2) PLJR 996)** in this regard. The relevant passage from the aforesaid decision is reproduced for better appreciation:-

“7. Section 17 is an enabling provision vesting in the Commissioner authority to correct orders passed by the named authorities in that section on the grounds specified therein. It does not vest any right in any person to file a revision before him. Once that power is taken away from the Commissioner by a legislative enactment, no party could complain that his right to move the Commissioner had been taken away. The amendment brought about does not divest any person of any right, but is in the nature of divesting the authority vested in the Commissioner under Section 17 of the Act. If the Commissioner does not have the power to pass such orders no party can complain that he has been deprived of his right to move the Commissioner.”

However, it has been brought to the notice of the Court that the Additional Collector also did not have any power to entertain a revision under section 16 of the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 (hereinafter to be referred to as “the Act”) which indicates in clear terms that such revision would lie before the Collector of the district.

Learned counsel for the State has placed reliance upon decisions of Division Benches of this Court in **Mst. Babuni Devi v. State of Bihar (1997(2) PLJR, 404)** and **Mst. Binda Kunwar v.**

State of Bihar (2001(3) PLJR 54).

Per contra, learned counsel for the petitioners places reliance upon another decision of a Division Bench of this Court in **Kapildeo Singh and others v. State of Bihar and others (2003(2) PLJR 431)** and submits that the term Collector would include Additional Collector etc. provided there is notification under the provisions of the Act specially authorising Additional Collector to discharge all or any of the functions of the Collector of the district.

However, in the present case, neither such notification is on record nor is it a case of any of the parties that the Additional Collector concerned has been authorised to discharge all the functions of the Collector of the district rather in paragraph 8 of the writ petition the petitioners themselves have stated that they have preferred a revision against the order dated 15.04.1996 before the Collector, Saharsa who had transferred the same to the Additional Collector for hearing and disposal.

The Collector of the district being creature of the Act has to act under the mandate of the legislation and, thus, he could not have transferred the matter to the Additional Collector as I have earlier observed that there is no material on record to show that the Additional Collector concerned was authorised by the State of Bihar to discharge the function of the Collector of the district.

In the aforementioned facts and circumstances of the case, in my considered opinion, the revisional order passed by the Additional Collector cannot be sustained.

Accordingly, both the orders contained in Annexures 3 and 4 are quashed and set aside and the matter is being remitted back to the Collector of the district to consider the case afresh and after hearing all the concerned including the respondent no. 7 pass a fresh order on its own merit and in accordance with law within a period of two months from the date of receipt/production of a copy of this order.

It is made clear that this Court has not formed any opinion with respect to the merit of the cases of the respective parties.

With the aforesaid observation and direction, this writ application stands disposed of.

(Dr. Ravi Ranjan, J)

SC/-

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