

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7643 of 1998

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Yasodabati Kumari, wife of Kunj Bihari Singh of village-Kishanpur Bargaon, P.S.-
Kusheshwar Sthan, District-Darbhangha

.... Petitioner/s

Versus

1. The State of Bihar
2. Anchal Adhikari (A-A) of Anchal Kusheshwarsthan, P.S. Kusheshwarsthan,
District Darbhanga
3. Parma Nand Singh, son of Vidya Singh of village Kishanpur Bargaon, P.S.
Kusheshwarasthan, District Darbhanga
4. The Additional Collector, Darbhanga (P.O.) P.O.Lahariasarai, District
Darbhanga
5. The Commissioner Darbhanga Division Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Shashi Nath Thakur, Adv. Mr. Ajit Kumar, Adv.
For the Respondent/s :	Mr. Rajeev Kumar Singh, G.P.2
For the respondent No.3:	Mr. Bhupendra Nr Sinha'Suman', Adv. Mr. Sanjay Kumar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-04-2015

None appears on behalf of the petitioner or the private respondents.

Mr. Rajeev Kumar Singh, G.P.2 appears for the State and submits that an application for mutation was filed by the private respondent before the Circle Officer giving rise to Mutation Case No. 16 of 1989-90 and vide order passed on 28.5.1990 placed at Annexure-1, his application was allowed and orders were issued for opening of his account. He submits that being aggrieved the writ petitioner moved in appeal before the Deputy Collector Land



Reforms, Benipur in Appeal No. 2 of 1990-91 who allowed the appeal and set aside the order passed by the Circle Officer vide order dated 4.1.1991 placed at Annexure-2. It is submitted that respondent No.3 being aggrieved by the appellate order now moved a second appeal before the Additional Collector, Darbhanga registered as Mutation Appeal No. 5 of 1991 and the Additional Collector by order dated 19.7.1995 allowed the appeal placed at Annexure-3. It is stated that the writ petitioner thereafter filed a revision application before the Commissioner, Darbhanga Division in Revision Case No. 24 of 1995-96 which was dismissed for default on 25.3.1998 and even the restoration application was dismissed on 29.4.1998 placed at Annexure-4 series. The writ petitioner being aggrieved is before this Court.

Mr. Singh, learned counsel for the State submits that under the provisions of the Bihar Tenancy Holding (Maintenance of Records) Act, 1973 (hereinafter referred to as 'the Act') in force at the relevant time, an appeal lay before the Land Reforms Deputy Collector under Section 15 of 'the Act' against an order of the Circle Officer and which order of the appellate authority subject to the provisions of Section 16, was statutorily made final. Section 16 of 'the Act' vests revisional powers in the Collector of the District to consider any matter and examine the records of any proceedings on an application



made to him in this regard, for satisfying himself as to the legality and propriety of any order passed under the Act and pass appropriate orders. He thus submits that the scheme of 'the Act' firstly did not conceive of a second appeal against an appellate order and thus the power exercised by the Additional Collector in the appeal preferred by the private respondent against an appellate order bearing Appeal No. 5 of 1990-91 was an exercise without jurisdiction, for 'the Act' does not conceive of a second appeal. He submits that even if the said appeal is stretched to mean a revisional application, even then the exercise by the Additional Collector, would suffer from the vice of 'coram non judice' in as much as such jurisdictional power exclusively vested in the Collector of the District at the relevant time and none other. He thus submits that the exercise of power by the Additional Collector while entertaining Mutation Appeal No. 5 of 1990-91 and even the power exercised by the Divisional Commissioner under Section 17 of 'the Act' were without jurisdiction since Section 7 stood deleted from the Act vide Bihar Act, 28 of 1975.

Although there is no representation on behalf of the parties but since the issue raised is straight way an issue of law, this Court has proceeded to adjudicate the matter in the backdrop of the statutory provisions and with the able assistance of Mr. Singh learned G.P.2.

The circumstances discussed leave no room for confusion that

the exercise of power by the Additional Collector while entertaining the Mutation Appeal No. 5 of 1990-91 preferred by the private respondent was patently illegal for he possessed no statutory powers to entertain a second appeal against an appellate order passed by the Land Reforms Deputy Collector. Even when the remedy for the private respondent lay before the Collector of the District under Section 16 of the Act, he chose to knock a wrong forum. The exercise was clearly suffering from the vice of 'corum non judice' and thus cannot be upheld and consequently the order passed by the Commissioner while dismissing the Revision Case No. 24 of 1995-96 also cannot be upheld.

For the reasons aforementioned, the order dated 19.7.1995 passed by the Additional Collector in Mutation Appeal No. 5 of 1990-91 together with the order dated 25.3.1998 passed by the Commissioner, Darbhanga Division in Revision Case No. 24 of 1995-96 along with the order dated 29.4.1998 whereby the restoration was rejected cannot be upheld and are set aside.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

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