IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.811 of 2024

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Pramod Kumar Parsuram Puria @ Pramod Kumar Son of Kanhiya Lal, Resident of Ward No. 10, Gullowara, P.S.- Darbhanga Town, Police Station, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Urban and Housing Development Department, Government of Bihar, Patna.
3. The Municipal Commissioner, Darbhanga, Municipal Corporation, Darbhanga.
4. The District Magistrate, Darbhanga, District- Darbhanga.
5. Santosh Kumar Parsuram Puria @ Santosh Kumar Mittal, S/o Late Kanhiya Lal, R/o ward No. 10, Gollowara, P.S.- Darbhanga Town, District- Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sarveshwar Tiwary, Advocate
For the Respondent/s	:	Mr.Standing Counsel (21)
For the Corporation	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 13-02-2024

Heard Mr. Sarveshwar Tiwary, learned counsel appearing on behalf of the petitioner; learned SC 21 for the State and Mr. Bindhyachal Rai, learned counsel for the Municipal Corporation.

2. Learned counsel appearing on behalf of petitioner submits that the lease deed with respect to shop Nos.2 and 3 situated Nagarpalika Bazaar, Lalbagh, Subash Chowk, Darbhanga, which was settled in the year 1990 on the ground that his own brother has filed a complaint before the Municipal

Commissioner, Darbhanga Municipal Corporation stating that the petitioner has sub-let the shops to him and made a request for granting licence in his name. Learned counsel further submitted that notice dated 03.11.2022 based on the objection or application made by the own brother of the petitioner that the shops have been sub-let to him by the petitioner is without jurisdiction, as prior to proceeding to issue notice, the Municipal Commissioner has not proceeded to enquire into the matter, either by visiting the site or examining any document with respect to the alleged claim of the brother of the petitioner that the said shops have been sub-let by the petitioner to the claimant who is the own brother of the petitioner.

3. Per contra, Mr. Bindhyachal Rai, learned counsel appearing on behalf of the Municipal Corporation, Darbhanga submits that the notice itself is clear and the allegation has been dealt with considering the application made by his own brother claiming himself to be the *sub-letee*, which is enough to hold the petitioner to have violated the terms and conditions of the lease agreement and considering the said fact, the Municipal Commissioner had no other alternative than to cancel the lease license of the petitioner with respect to the two shops in accordance with law.

4. Having considered the rival submissions made on behalf of the parties and the pleading and documents on record, it is admitted that the petitioner was leased two shops in Nagarpalika Bazaar, Lalbagh, Subash Chowk, Darbhanga being shops No. 2 and 3, and rent is paid upto March 2024 from the date of allotment of the shop.

5. The notices contained in Annexures 2, 3, 4, 5 and 6 on the basis of the complaint of the petitioner's brother, claiming himself to be the sub-leasee in absence of the sub-lease being produced, appears to have been issued without application of mind by the Municipal Commissioner. The Commissioner was required to discuss the jurisdictional facts before asuming jurisdiction to issue notices. The action can be held to be without application of mind.

6. The Apex Court in the case of ***Arun Kumar and others v. Union of India and others*** reported in ***(2007) 1 SCC 732,*** has elaborately discussed the fundamental jurisdictional facts which much exist before a Court, a tribunal or an authority can assume jurisdiction. In this regard, relevant paragraphs of the said judgment of ***Arun Kumar(supra)*** are reproduced hereunder***:-***

> *" **74.** A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A*

jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

***75.** In Halsbury's Laws of England, it has been stated:*

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

***76.** The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.*

***77.** In Raja Anand Brahma Shah v. State of U.P. [(1967) 1 SCR 373 : AIR 1967 SC 1081] sub-section (1) of Section 17 of the Land Acquisition Act, 1894 enabled the State Government to empower the Collector to take possession of "any waste or arable land" needed for public purpose even in the absence of award. The possession of the land that belonged to the appellant had been taken away in the purported exercise of power under Section 17(1) of the Act. The appellant objected against the action inter alia contending that the land was mainly used for ploughing and for raising crops and was not "waste land", unfit for cultivation or habitation. It was urged that since the jurisdiction of the authority depended upon a preliminary finding of fact that the land was "waste land", the High Court was entitled in a proceeding for a certiorari to determine whether or not the finding of fact was correct.*

***78.** Upholding the contention and declaring the direction of the State Government ultra vires, this Court stated: (SCR p. 380 D-F)*

"In our opinion, the condition imposed by Section

17(1) is a condition upon which the jurisdiction of the State Government depends and it is obvious that by wrongly deciding the question as to the character of the land the State Government cannot give itself jurisdiction to give a direction to the Collector to take possession of the land under Section 17(1) of the Act. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding of writ of certiorari to determine, upon its independent judgment, whether or not that finding of fact is correct…."

(emphasis supplied

79. *In State of M.P. v. D.K. Jadav [(1968) 2 SCR 823 : AIR 1968 SC 1186] the relevant statute abolished all jagirs including lands, forests, trees, tanks, wells, etc., and vested them in the State. It, however, stated that all tanks, wells and buildings on occupied land were excluded from the provisions of the statute. This Court held that the question whether the tanks, wells, etc., were on "occupied land" or on "unoccupied land" was a jurisdictional fact and on ascertainment of that fact, the jurisdiction of the authority would depend.*

80. *The Court relied upon a decision in White & Collins v. Minister of Health [(1939) 2 KB 838 : 108 LJ KB 768 : (1939) 3 All ER 548 (CA) sub nom Ripon (Highfield) Housing Order, 1938, Re] wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.*

81. *Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated: (All ER p. 559 G-H)*

"The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact, for, <u>unless the land can be held not to be part of a park, or not to be required for amenity or convenience, there is no</u>

<u>jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case it seems almost self-evident that the court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which depends the existence of the jurisdiction relied upon. If this were not so, the right to apply to the court would be illusory.”</u>

(See also R. v. Shoreditch Assessment Committee [(1910) 2 KB 859 : 80 LJ KB 185 : (1908-10) All ER Rep 792] .)

***82.** A question under the Income Tax Act, 1922 arose in Raza Textiles Ltd. v. ITO [(1973) 1 SCC 633 : 1973 SCC (Tax) 327 : AIR 1973 SC 1362] . In that case, the ITO directed X to pay certain amount of tax rejecting the contention of X that he was not a non-resident firm. The Tribunal confirmed the order. A Single Judge of the High Court of Allahabad held X as non-resident firm and not liable to deduct tax at source. The Division Bench, however, set aside the order observing that:*

“… [ITO] had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by a wrong decision on this question of residence.” (SCC p. 634, para 3)

X approached this Court.

***83.** Allowing the appeal and setting aside the order of the Division Bench, this Court stated: (SCC pp. 634-35, para 3)*

“The Appellate Bench appears to have been under the impression that the Income Tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned Single Judge has done in this case, that the Income Tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income Tax Officer can erroneously decide a jurisdictional fact and

thereafter proceed to impose a levy on a citizen."

(emphasis supplied

***84.** From the above decisions, it is clear that existence of "jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of "jurisdictional fact", it can decide the "fact in issue" or "adjudicatory fact". A wrong decision on "fact in issue" or on "adjudicatory fact" would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present."*

7. On perusal of the notice, I find that the Municipal Commissioner has assumed jurisdiction without there being even any chit of evidence before him to issue notice and, as such, the notices contained in Annexurs 2 to 4 are quashed and set aside.

8. Accordingly, the writ petition is disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
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