

**Sunaina Devi Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** May-10-2004

**Judge :** S.K. Katriar, J.

**Acts :** Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 - Sections 17

**Appeal No. :** CWJC No. 3928 of 2003

**Appellant :** Sunaina Devi

**Respondent :** The State of Bihar and ors.

**Disposition :** Petition dismissed

**Prior history :** S.K. Katriar, J. 1. Heard Mr. Manoj Kumar Ambastha for the petitioner, Mr. Abbas Hsaider J.C. to GP No. II for respondent Nos. 1 to 4 and Mr. Dhruv Narayan for respondent No. 5. This writ petition is directed against the order dated 6.9.2002 (Annexure- 7), passed by the learned Divisional Commissioner, Munger, in Munger Revenue Mutation Revision No. 9/96-97 (Sunaina Devi v. Sheonandan Singh and Ors.), whereby the revision application preferred by the present petitioner under Section 17 of the

**Judgement :**

**S.K. Katriar, J.**

1. Heard Mr. Manoj Kumar Ambastha for the petitioner, Mr. Abbas Hsaider J.C. to GP No. II for respondent Nos. 1 to 4 and Mr. Dhruv Narayan for respondent No. 5. This writ petition is directed against the order dated 6.9.2002 (Annexure- 7), passed by the learned Divisional Commissioner, Munger, in Munger Revenue Mutation Revision No. 9/96-97 (Sunaina Devi v. Sheonandan Singh and Ors.), whereby the revision application preferred by the present petitioner under Section 17 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973, (hereinafter referred to as 'the Act') has been rejected on the ground that the same is not maintainable.

2. According to the writ petition, the petitioner acquired right, title and interest with respect to the lands in question by a registered deed of absolute sale dt. 31.12.85. Thereafter she filed an application under the provisions of the Act, for mutation which was registered as Case No. 55/86-87. The learned Circle Officer, Dharhara, passed his order dated 6.6.87 (Annexure-2) also inviting objections. He passed orders for a general citation which was published soon thereafter, a copy whereof is marked Annexure-2A to the writ petition. It is further stated in the writ petition that no objection was received. By order dated 13.7.87 (Annexure-3), passed by the learned Anchal Adhikari, Dharhara, the petitioner's application for mutation was allowed. Aggrieved by the same, on Sheo Nandan Singh filed the statutory appeal in items of Section 15 of the Act, which was registered as Mutation Appeal No. 22/88-89 (Sheo Nandan Singh v. Sunaina Devi and Anr.). Appeal was allowed by order dated 18.12.90 (Annexure-5), primarily on the ground that it raised issues relating to right, title and interest. The present petitioner preferred revision application in terms of Section 16 of the Act, which was registered as Mutation Appeal No. 4/90-91 (Sunaina Devi v. Sheo Nandan Singh) which was dismissed on same or similar ground. The petitioner thereafter preferred second revision application before the learned Commissioner of Munger Division which has been rejected by the impugned order on the ground of maintainability, namely, Section 17 of the Act has already been deleted.

3. While assailing the validity of the impugned order, learned counsel for the petitioner submits that second revision application before the learned Commissioner is maintainable. He relies on the judgments of this Court reported in

1994 (2) PLJR 612 (Dattaray Nath Pandey v. State of Bihar and Ors.) and 2003 (2) PLJR 331 (Ram Shankar Bhagat v. The State of Bihar)

4. Learned counsel for respondent No. 5 supports the impugned order and submits that Section 17, had been deleted before the proceeding in the present case had commenced and, therefore, the second revision was not maintainable. He relies on the Full Bench judgment of this Court reported in 1986 PLJR 1057 (Ram Chandra Ram v. Commissioner, North Chotanagrpur and Ors.). He further submits that both sides pray for mutation of the land in question claiming right, title and interest with respect to the same which cannot be decided by the authorities under the Act. He relies on the judgment reported in 1993 (1) PLJR 231 (Sundari Devi v. The State of Bihar and Ors.).

5. Learned Government counsel has also supported the impugned order.

6. I have perused the materials on record and considered the submission of learned counsel for the parties. The first question raised by the learned counsel for the petitioner is not free from difficulties but I take the view that I have taken for the reasons indicated here-in-after. The mutation proceeding is not a judicial proceeding, has been acknowledged to be administrative proceeding involving Civil consequences and was earlier governed, apart from the relevant Tenancy Acts applicable to specified areas, by the Mutation Manual. The Bihar Legislature enacted the Act (Bihar Act No. 28 of 1975), received the assent of the President of India on 5.5.1975, was published in the Bihar Gazette on 20.8.1975, and now occupies the field. Section 1(3) of the Act, lays down that it shall come into force on such date and in such areas as the State Government, may by notification in the Official Gazette, appoint. Different dates may be appointed for different areas of the State. In other words, the legislature intended, and left the discretion with the State Government, to enforce the Act, by appropriate Gazette notification for different areas enforceable from different point of time. In other words, it is possible, and has indeed happened all over the State, that the Act has been enforced to the exclusion of the Mutation Manual, on different dates in the same district or the same sub-division. The question, therefore, which has engaged the attention of this Court on a number of occasions is that in cases mutation

proceedings were initiated under the Mutation Manual, will the provisions of the Act, apply from the date the same was enforced in that area. Even though this question has been attempted to be answered in a number of judgments of this Court discussed here-in-after, the issue is not free from difficulties.

7. The proceedings in the present case commenced in 1986-87 and was numbered as case No. 55/1986-87 when the Mutation Manual was in force in the said area. By order dated 6.6.1987 (Annexure-2), passed by the Anchal Adhikari, Dharhara, the prayer to mutate the land in question in favour of the petitioner was allowed. Aggrieved by the said order, respondent No. 5 preferred the appeal in terms of Clause 10 of the Manual. By order dated 18.12.90 (Annexure-5), passed by the learned L.R.D.C. (Sadar), Munger, in Mutation Appeal No. 22/88-89 (Shiv Nandan Singh v. Smt. Sunaina Devi and Anr.), and it was held that both the sides claim title to the land in question which can be decided only in a suit. The present petitioner filed a revision application in terms of Clause 10 of the Manual which has been dismissed by order dated 6.11.95 (Annexure-6), passed by the Collector of the District of Munger in Revision Appeal No. 4/90- 91 (Suniana Devi and Anr. v. Shiv Nandan Singh). The present petitioner has challenged the same by preferring revision application in terms of Section 17 of the Act. The same has been rejected on the ground that Section 17, has been deleted by Act. No. 3 of 1983 with effect from 11.3.1983. The Act was enforced in the present area with effect from 8.1.1991.

8. The first and foremost question which should be decided in the present case is whether the Mutation Manual shall continue to govern the proceedings, which was in force when the same commenced in 1986-87 till its conclusion or the Act, will supplant the Mutation Manual with effect from 8.1991, the date on which the Act, was enforced in the area in question. This question fell for the consideration before a Full Bench of this Court in Ram Chandra Ram v. Commissioner, North Chotanagpur, (1986 PLJR 1057). The Full Bench held in paragraph 5 of the judgment that the provisions of the Act, shall supplant and substitute all earlier provisions either by way of rules or instructions etc. Inevitably included in this category would be para 10 of the instructions referred to above. It is axiomatic that two parallel procedural provisions could not possibly be allowed to play in the

same identical field and in any case the statutory provisions of a duly enacted statute would over-ride the mere governmental instructions on the point. The Full Bench observed as follows in paragraph 8 of the judgment :

'Mr. Bajaj had then attempted to contend that para 10 of the instructions would still continue to be operative despite the repeal of Section 17 even in jurisdiction where the Act had not extended. This argument is only to be noticed and rejected. As has already been pointed out, the provisions of Chapters III and IV of the Act, are specific provisions with regard to the mutation proceedings and the appeal and revision arising therefrom. They would thus cover the field to the exclusion of any other instruction to the contrary. Obviously enough, a mere instruction cannot be allowed to override an Act, duly enforced by the legislature within the same jurisdiction. It would be thus plain that para 10 would cease to have any force in all those areas to which the Act of 1973 had been duly extended in matters pertaining to mutations. The contention of Mr. Bajaj in this context therefore, must be rejected.'

9. It would thus on the face of it may appear that the Full Bench intended that even though the proceedings were started at a point of time when the Manual was in force, the same shall be supplanted by the procedure prescribed by the Act and shall be take over mid-way.

10. However, the issue was considered afresh at length by a Division Bench of this Court in *Dattatray Nath Pandey v. The State of Bihar*, (1994 (2) PLJR 612) wherein it has been observed that if proceedings were started at a point of time when Mutation Manual was in force, the Act, was yet to arrive, then the proceeding shall continue to be governed by the Manual and the Act, shall not take over mid-way. The Division Bench observed in paragraph 22 of the judgment that the Act, is prospective in nature. It was further observed in paragraphs 40 to 42 of the judgment that a comparison of the provisions of the Manual and the Act, shows that the procedure laid down under the two are absolutely different. New rights and obligations have been created under the Act, and the forum for redressal of grievances have been provided in the Act. The Division Bench, therefore, concluded that the right of second revision as contained in Clause 10 of the

Mutation Manual has not been taken away either expressly or by necessary implication only because provision for second revision as contained in Section 17 of the Act, has been repealed by Bihar Act 3 of 1983. The Division Bench, therefore, concluded that if the proceedings commenced prior to the enforcement of the Act, then it would be governed by the provisions of Manual throughout, and can not be supplanted by the provisions of Act mid-way.

11. The Division Bench also considered the Full Bench judgment of this Court in *Ram Chandra Ram v. Commissioner, North Chotanagpur* (supra), and observed that the Full Bench pronounced its views on issues which did not arise on the facts of the case. The Act, was not in force in that district (Hazaribagh district) and, therefore, there was no occasion for the Full Bench to consider the question whether or not Clause 10 of the Manual shall be supplanted by the Act. The observations are *Obiter Dicta*. The Division Bench further observed that in view of the failure on the part of the Full Bench to consider the decision of the Supreme Court leading to a different conclusion, the judgment of the Full Bench is *Per Incurium* and does not bind the Division Bench.

12. A situation similar to the present case fell for consideration before the Division Bench of this Court in the case of *Ram Shankar Bhagat v. The State of Bihar*, (supra). Without noticing the aforesaid judgment of the Full Bench and the Division Bench, it has been held that with regard to the proceedings pending prior to the date of enforcement of the Act, the same (the Act) has no application and the proceedings will be governed by the Mutation Manual Clause 10 of which provides for a second revision before the Divisional Commissioner. In the case of *Ram Shankar Bhagat* (supra), proceedings under the Mutation Manual had commenced in the year 1987-88, the provisions of the Act were enforced in that area with effect from 2.10.1990 and, therefore, the Division Bench concluded that the proceedings of that case shall continue to be governed by the provisions of Clause 10 of the Mutation Manual.

13. To sum up the position, it appears to me that the judgment of the Full Bench has been duly, and at length, considered by a Division Bench of this Court in *Dattaray Nath Pandey* (supra) and the law laid down therein is in tune with that of

Ram Shanker Bhagat (supra). I must repeat that the Division Bench in Dattaray Nath Pandey (supra) had duly considered the Full Bench. It is, therefore, not given to this Court sitting singly to take a different view from the one laid down in the case of Dattaray Nath Pandey. The position would have been different if the Division Bench had not considered the judgment of the Full Bench. I, therefore, conclude that the proceedings in the present case shall continue to be governed by Clause 10 of the Mutation Manual. In other words, the second revision application before the Commissioner is maintainable.

14. This does not conclude matters. As stated here-in-above, the learned appellate as well as the first revisional authority have concurrently held that both the sides claim title to the property and, therefore, it is not possible for the revenue authorities to decide the issue which can be decided only in a duly constituted suit on the basis of substantive evidence. I therefore, feel that it would not be in the interest of justice to remit the matter back to the learned Commissioner which will only prolong the matter and will cause harassment to the parties.

15. In the result, this writ petition is dismissed. It will be open to the parties to institute a civil suit in a Court of competent jurisdiction for adjudication of the claim.

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