

Manohar Lal Jain Vs State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: June 23, 2004

Acts Referred: Bihar Tenants Holdings (Maintenance of Records) Act, 1973 â€” Section 10, 11, 12, 14, 17

Citation: (2004) 3 JCR 362

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Ram Balak Mahato, sisted by Pakash Kishore Prasad, Vikash Kishore Prasad and Bhaiya Nagendra Narayan, for the Appellant; U.N. Bacchawat, assisted by Raj Nandan Sahay, Mrinal K. Roy and A.K. Jain, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.

In this Writ Application the petitioner, who is the Manager of ""Sri Digambar Jain Bispanthi Kothi"" at Madhuban in the

District of Giridih, has prayed for issuance of a writ of certiorari for quashing the order dated 6.5.2002 as contained in Annexure-7 passed by the

respondent No. 2 in Misc. Revision Case No. 14/2000 allowing the revision filed by the respondent No. 6. The ground for making the said prayer

is that Commissioner, North Chhotanagpur Division, Hazaribagh (respondent No. 2) had no jurisdiction to entertain a second revision under the

Bihar Tenants" Holding (Maintenance of Record) Act, 1973 (hereinafter referred to for the sake of brevity and precision as the said Act).

2. Let it be recorded that by reason of the impugned Order, the respondent No. 2 observed as follows :--

Though the OP claims to be in possession but they failed to adduce any evidence to the effect as to how they obtained the ownership over the

land in dispute. They even failed to adduce evidence about legal possession over the land in dispute. From records it transpires that entire claim of

OP is based on forged and fabricated documents i.e. hukumnama and Government rent receipt. Mere possession does not confer any right and

title to them to hold the land in dispute, when the same is encircled from all directions by the land of the petitioners. It is well established that any

Government land cannot be claimed by any individual or organization only because some revenue officer has allowed issue of rent receipt in his

favour. It is also clear that the proprietary of the entire land was purchased by the petitioner way back in 1911 and after that date the outgoing

landlord lost all interest in the land and had no right to settle the land or a part thereof in favour of anybody. The hukumnama on the basis of which

OP claims title or possession even if not forged is without any authority.

Further the land in dispute is a part of forest and is so recorded in Survey Khatiyan also. Hence the construction made over the land in dispute by

the OP are in violation of Section 2 of the Forest (Conservation) Act, 1980.

The word "OP" referred to in the impugned Order of the Commissioner means the petitioner herein while the words "petitioner" referred to therein

means the respondent No. 6 herein.

3. Detailed submissions, both of substance and erudition, were advanced by the respective learned counsel for the parties, namely Mr. Ram Balak

Mahto and Mr. U.N. Bacchawat, Senior Advocates, but considering the fact that this can be disposed off on a short point, this Court is not

inclined to deal with all the points arguments because if it is so done then it would have the effect of giving findings which would affect rights and

title of the parties, including that of the State. It would, therefore, only be necessary to deal with the relevant points together with some of the

factual aspects which are involved herein so as to arrive at a reasonable conclusion. The facts pleaded in the Writ Application are as follows :

1. Factual Background

(3) (a) The most important and venerated place of worship and pilgrimage of the Jain community is the Sri Sammad Shikhar" popularly "referred

to as the Parasnath hill situated in the district of Giridih within the State of Jharkhand.

(3) (b) The Jain community consider this place to be the sanctum sanctorum from where, they believe, that at least 20 out of the 24 "tirthankars

attained their salvation from the different peaks of the said hill and who, left their "Charan Chinhas" (foot impressions) which are said to be located

on these peaks. These holy places are visited and worshiped by the Jains in multitudinous numbers each years. The foot impressions are located in

the shrines which are to be found at heights more than 4000 Feet above mean sea level and the devotees arduously undertake journey of about 30

Kilometers from the foot hill at Madhuban to reach these holy shrines situated at the top of the hill.

(3) (c) The track/trekking path which begins at the foot hill and goes upto the shrines up above, is interspersed midway by a natural flow of water

commonly referred to as the "gandarva nala" and beside this natural flow, two small resting places known as "bhata ghar" are situated one of which,

belongs to the Digambars while the other to the Svetambars--the two sects of the Jain Community.

(3) (d) The petitioner, Manager of the Digambar Jain Community, States that in order to facilitate the comfort of the devotees of the Digambar

sect, a raiyati settlement was taken in respect of an area measuring 0.34 Acres on Plot No. 179, Khata No. 79 in the year 1944. This Plot is

situated in village Parasnath. According to the petitioner, the settlement was made by the issuance of a ""sada hukumnama"" by the ex-landlord on

payment of ""salami"" which was fixed at Rupees 6 and 4 Annas and rent which was also fixed at Rupees 2 and 8 Annas. This settlement was

followed by delivery of possession and issuance of rent receipts in the year 1944 itself. On the basis of such a transaction, the petitioner acquired

raiyati right over this land and constructed the aforementioned ""bhata ghar"".

(3) (e) It is the further case of the petitioner that upon vesting of Zamindari under the provisions of the Bihar Land Reforms Act, 1950, jamabandi

was created in favour of the petitioner and rent receipts were issued recognizing the status of the petitioner as a tenant of the State Government.

These rent receipts are Annexure-1 series.

(3) (f) After vesting and after the issuance of rent receipts and after realizing rents for a long period in the manner stated hereinafter, the authorities

stopped issuing further rent receipts without any reason although Jamabandi continued in favour of the petitioner. The details of these rent receipts

brought on records are :--

Annexure-1 Year Receipt No.

(Page 20) 1954-55, 1955-56, 1956-57 and 406739

1957-58

(Page 21) 1960-61, 1961-62, 1962-63 and 557283

1963-64

(Page 22) 1964-65 to 1995-96 and 1996-97 695158

(Page 23) 1998-99 and 1999-2000 027171

(Page 24) 2000-2001 502798

(Page 25) 2001-2002 353582

(3) (g) There are some other receipts which are at pages 26 and 27 and which are said to have been issued by the ex-landlord.

(3) (h) In view of the sudden stoppage of issuance of rent receipts, the petitioner, feeling aggrieved, filed an application before the Circle Officer

which was registered as Case No. 8/1995-96 wherein it was inter alia prayed that the matter be regularized and rent be accepted and rent receipts

be issued. It is indeed strange that although the petitioner claims to have filed this application on 19.1.1996, yet they have not brought this on

record. On the contrary, the respondent No. 6, in their counter affidavit, have brought this application to the notice of this Court by making it as an

Annexure vide Annexure-T/3 and which is to be found at running page 109 of the Writ Petition.

(3) (i) After receiving the application referred to above, the Circle Officer called for a report whereafter an inquiry was conducted and it was found

that the claim of the petitioner was genuine and so, by order dated 2.3.1996, the Circle Officer passed an order vide Annexure-2, directing the

karamchari to issue rent receipt.

(3) (j) This order dated 2.3.1996 was challenged by the respondent No. 6 in an appeal before the respondent No. 4 vide Case No. 136 of 1996-

97.

(3) (k) The respondent No. 4 dismissed the appeal by his order dated 6.7.1998 vide Annexure-3 and upheld the order of the Circle Officer.

(3) (l) Being aggrieved, the respondent No. 6 then filed a revision before the Additional Collector, Giridih vide Case No. 42 of 1998-99.

(3) (m) By order dated 4.10.1999, (Annexure-4) the Additional Collector, Giridih, also dismissed the revision, thereby upholding the order of the

Circle Officer.

(3) (n) According to the petitioner, this order became final and no second revision was maintainable but nevertheless, the respondent No. 6, again

filed a Miscellaneous Revision before the Commissioner, North Chhotanagpur Division, Hazaribagh (respondent No. 2) vide Misc. Revision No.

14/1999-2000 (Annexure-5) and in answer to the notice received, the petitioner file a written note of argument wherein the point in relation to the

maintainability of a second revision was also raised. This written note of argument is Annexure-6 to the Written Petition.

(3) (o) The further case of the petitioner is that notwithstanding there being not provisions for a second revisions and this point having been set at

rest by various Judgments, the respondent No. 2, in spite thereof, proceeded to entertain the same and by order dated 2.5.2002 (Annexure-7 i.e.

the impugned order), allowed the revision holding that under his powers of superintendence, he had the necessary competence to interfere and

accordingly set aside the order dated 4.10.1999 passed by the Additional Collector. It is against the aforesaid order that the petitioner has filed the

instant Writ Petition.

2. Points Argued

(4) (a) Mr. Ram Balak Mahto, learned Sr. Advocate appearing for the petitioner, submits, that the rent receipts brought on record, are documents,

showing recognition of the rayati status of the petitioner both prior to vesting and also, after vesting. He further submits that these receipt support

the factum of settlement by ""soda hukumnama"" (Annexure-8) made by the ex-landlord on 7.7.1944 on the basis whereof, these rent receipts came

to be issued, firstly, by the landlord prior to vesting, and then by issuance of similar rent receipts by the State of Bihar, after vesting. According to

him, these are documents which go to show that the petitioners are in possession and since possession is the only relevant criteria for purposes of a

proceeding for issuance of Rent Receipt, the only question that was required to be considered was whether such rent receipts were necessary to

be issue on the basis of appropriate entry in the revenue records. The answer, according to him, is in the affirmative and that was why the Circle

Officer correctly passed the Order. This, according to him, was done perfectly in accordance with law but that was upset by the impugned order

illegally and without any authority. Mr. Mahato further submits that the impugned order dated 6.5.2002 as contained in Annexure-7 is wholly

without jurisdiction in as much as it amounts to entraining a second revision which could not have been done at all as there is no power conferred

under the statute for entertaining a second revision because that power was admittedly taken away by the legislature by deleting Section 17 from

the said Act. According to him the Commissioner could not have bye-passed the curtailment of his powers by taking recourse to a general power

of superintendence conferred upon him u/s 28 of the said Act. Mr. Mahato further submits that it is true that by virtue of a ""sada hukumnama"" title

cannot be conferred but, such a ""sada hukumnama"" coupled with rent receipts would confer good title and in support of the aforementioned

proposition he relies on a quotation made by a Full Bench of the Patna High Court in paragraph 6 of the case of Mt. Ugni and Another Vs. Chowa

Mahto and Others, . He further submits that in view of another judgment of a learned Single Judge of the Patna High Court in the case of Depta

Tiwari and Ors. v. State of Bihar and Ors. reported in 1987 PLJR 1037, an order with regard to mutation has to be passed only on the basis of

possession and the High Court will not interfere with findings of fact arrived at by the mutation authorities. He further submits that the said Act

came into force with effect from 2.10.1990 and the instant proceeding was initiated on the basis of an application filed on 19.1.1996 when

admittedly, Section 17 stood deleted by reason of the Amending Act of 1983 (Act 3 of 1983). In that view of the matter, the Commissioner could

not have proceeded to entertain the second revision application at all therefore, the entire proceeding in so far as it related to the second revision

being Misc. Revision No. 14/2000 was wholly misconceived and not maintainable. In support of the aforementioned contention, Mr. Mahato

relied upon the judgments passed in the case of Dattatray Nath Pandey v. State of Bihar reported in (1994) 1 BLJR 406 and also in the case of

Arun Kumar Sinha and Anr. v. Suresh Prasad and Ors. reported in (1998) 1 BLJ 526. He also relies on the proposition that the deletion of

Section 17 with effect from 2.10.1990 will have effect upon all proceedings initiated after 2.10.1990 and therefore, the Commissioner could not

have proceeded in hearing the second revision. To that extent, he also relies on the judgment passed in the case of Ram Shankar Bhagat v. State of

Bihar reported in (2003) 2 PLJR 331. In that case, the Commissioner dismissed the revision application on the ground that a second revisions was

not maintainable and the Division Bench observed inter alia in paragraph 4 therein that ""Had the proceedings been initiated after coming into force

of the Act, then his view was right, but as stated above, as the proceeding was initiated prior to coming into force of the Act, the revision was

maintainable"". In the instant case, the aforementioned Act came into effect from 2.10.1990 and the proceedings was initiated thereafter, i.e. on

19.1.1996 and therefore, according to Mr. Mahato, the aforementioned observation of the Division Bench should be taken into consideration to

mean that a second revision was not. maintainable. The same question, according to Mr. Mahato, again fell for consideration before a Full Bench

of the Patna High Court (Ranchi Bench) in the case of Ram Chandra Ram v. Commissioner North Chhotanagpur and Ors. reported in 1986

BBCJ 634. In paragraph 11 of the said judgment the Full Bench held that the answer to the question as to whether a second revision was

maintainable despite the repeal of Section 17, would be in the negative. It was held that a second revision would not be maintainable in mutation

proceedings after repeal of Section 17 of the Act.

(4) (b) The next submission of Mr. Mahato was that the orders dated 2.3.1996 (Annexure-2), 6.7.1998 (Annexure-3) and 4.10.1999 (Annexure-

4) consistently proved, on the basis of evidences recorded, that the petitioners were in possession. To upset there 3 consistent findings, the

Commissioner adopted a strange procedure of taking recourse to Section 28 of the said Act with Rule 76 of the Bihar Practice and Procedure

Manual for purposes of evading the aforementioned judicial pronouncements and passed an order which amounts to a nullity--having been passed

without the authority of law.

(4) (c) Mr. U.N. Bacchawat, learned Sr. counsel appearing on behalf of respondent No. 6 has raised various contentions to the effect that the

impugned order is a justified order and that it should not be interfered with. One of the preliminary objections that he has raised is that an LPA is

pending consideration before this Court vide LPA No. 332/97. This Court can take judicial notice of the fact that the subject-matter involved in

the LPA is the effect of vesting of the Bihar Land Reforms Act in relation to entire area and also, as to which of the two communities would be

entitled to claim the status of propriety. This case concerns the jurisdiction of the Revenue Courts including the original Court and therefore, it is not

necessary to go into the merit of the question that since LPA is pending, this Court should await.

(4) (d) Mr. U.N. Bacchawat, learned Senior Advocate appearing for the respondent No. 6 submitted that in order to appreciate the rival

contentions of the parties, four propositions are necessary to be taken note of for adjudication of this case. These four propositions are as follows

:-

(i) In view of the facts involved in this case, even deletion of Section 17 from the Act, would not wrest the power of the Commissioner to undo an

illegality and if this Court comes to a finding that the original authority acted de hors the provisions of the statute, then the decisions cited on behalf

of the petitioner would not act as binding precedents and consequently, the Commissioner's Order could not be set aside as being illegal.

(ii) Even assuming that the order of the Commissioner is without jurisdiction, even then, it should not be interfered with because it would revive the

order of the Circle Officer dated 2.3.1996 which is illegal.

(iii) The order of the Circle Officer is illegal because it did not originate on the basis of a valid procedure which was mandatory.

(iv) The Writ Petition deserves to be dismissed as it suffers from the vice of suppression and the claim is based on forged and fabricated

documents. (5) Adjudication by Court

(5) (A) Some of the chief events that stand out loud and clear are summarised briefly as follows :-

Sl. Date Annexure Event

No.

1 19. 1.1996 Annexure- An Application was filed by the petitioner before the Circle Officer, Pir land at

T/3 Giridih stating that rent receipts were not being issued in relation to the Bispanthi

(Counter Kothi situated on 0.34 Decimals of land on Plot No. 179, Khata No. 29 although

Affidavit of in the past, such receipts had been issued. It was further stated that this land was

the in the possession of the petitioner and . in spite of repeated efforts made before

respondent the Karamchari, rent receipts were not issued on the ground that the order of the

No. 6) Circular Officer was necessary for that purpose. Consequently, it was prayed

that the Karamchari be directed to issue rent receipts.

2 2. 3.1996 Annexure- The Circle Officer passed an order directing the Karamchari to make necessary

2 (Writ entry in Register-2 and issue rent receipts.

Petition)

3 6. 7.1998 Annexure- Being aggrieved, the respondent No. 6 filed an appeal before the L.R.D.C. vide

3 (Writ Case No 136 of 1996-97 and by order dated 6.7.1998, the L.R.D.C. dismissed

Petition) the appeal.

4 4.10.1999 Annexure- The Additional Collector upheld the order of the L.R.D.C. in revision vide Case

4 (Writ No. 42 of 1998-99 and dismissed the revision.

Petition)

5 6. 5.2002 Annexure- The respondent No. 6 filed a second revision before the Commissioner which

7 (Writ was registered as Misc. Revision No. 14/2000. On 6.5.2002, the Commissioner

Petition) set aside the order dated 4.10.1999 passed by the Additional Collector and

allowed the appeal.

(5) (B) Thus, the fact relating to a second revision having entertained at the level of the Commissioner cannot be disputed.

(5) (C) In exercise of powers conferred by Sub-section (3) of Section 1 of "The Bihar Tenants" Holding (Maintenance of Records) Act, 1973

(Bihar Act 28 of 1975), the Governor of Bihar was pleased to appoint 2nd day of October, 1990 as the date on which the said Act will be

deemed to have come into force in respect of all the remaining Districts/Anchals which had not been notified previously. It is true that the

proceedings was initiated thereafter, i.e. on 19.1.1996. It is also true that Section 17 stood withdrawn by the Bihar Act 3 of 1983. Therefore,

logically, a second revision is not maintainable after the appointed day as has been held in the judgments cited by Mr. Ram Balak Mahato.

However, what is relevant to be taken note of is that in all the cases cited by Mr. Mahato, the proceeding were initiated in a regular manner and in

accordance with the procedure prescribed. In the instant case, the very initiation of the proceeding was neither in a regular manner nor in

accordance with the prescribed procedure.

(5) (D) In this context, it is relevant to take note of Section 14 of Chapter III of the Act. Section 14 clearly lays down that ""on receipt of a notice

under Sections 4, 5, 6, 7, 8, 9, 10 or an application under Sections 11 and 12 or a report u/s 13, the Anchal Adhikari shall start a mutation

proceeding and after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such inquiry to be made

as may be deemed necessary.

(5) (E) In the instant case, the entire proceeding took birth on the basis of the application filed by the petitioner on 19.1.1996 and which has been

brought on record not by the petitioner, but by the respondent No. 6 in their counter-affidavit vide Annexure-T/3. It is strange that this application

did not form a part of the Writ Petition. In all fairness, this Application should have been brought on record by the petitioner himself so as to enable

this Court to scrutinize the same for purposes of examining as to whether it conferred jurisdiction upon the Circle Officer to pass the first order

dated 2.3.1996. This becomes all the more important taking into consideration the arguments of the learned counsel for the petitioner to the effect

that a second revision was not maintainable and that the order of the Circle Officer was proper. This Petition/Application dated 19.1.1996 read

thus :--

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(5) (F) When this Court had the occasion to go through and peruse that petition (Annexure-T/3) quoted above and on the basis whereof the

proceedings herein were initiate, it is found that the same is neither a notice under Sections 4 to 10 nor an application under Sections 11 and 12

nor can it be said to be a report u/s 13. It is thus evident that the very imitation of the proceeding was on the basis of an application filed by the

petitioner that was alien to the provisions as contained in the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973.

(5) (G) Moreover, Section 12 of the said Act makes it mandatory that persons claiming interest can filed an application before the Anchal Adhikari

only in the prescribed form. The prescribed form for purposes of Section 14 (1) in Form No. 28. The petition dated 19.1.1996 as contained in

Annexure-T/3 referred to above, is not in the prescribed manner. This Section 14(2) makes it mandatory upon the Circle Officer to issue a general

notice and also to issue a notice to the concerned parties to file objections. Thereafter, on receipt of any objections, the Circle Officer is required

to give reasonable opportunity to the parties concerned to adduce evidence, if any, and also to give opportunity of being hearing and only

thereafter, he can dispose off the objection. In the instant case, and on perusal of the order-sheet, it does not appear that any of these mandatory

procedures were recourse to the Circle Officer before the passed the order. The respondent No. 6, in their counter-affidavit, in paragraph 6(B)

have specifically stated about the aforementioned irregularity committed at the level of the Circle Officer. They have specifically stated that ""in the

instant case neither application was entered in the prescribed mutation case register nor the general notice was issued, nor notice was issued to the

parties concerned. Anchal Adhikari called for the report of the Karamchari and Anchal Inspector and only on the basis thereof, passed the order

of mutation"". Although the petitioners have filed a reply to this counter-affidavit and although they have dealt with the statements of the respondent

No. 6 at paragraph 10 therein but the specific assertion of the respondent No. 6 relation to non-compliance of the statutory provisions contained in

Sections 12 and 14 have not been answered.

(5) (H) Another interesting factor, is that the entire case of the petitioner is built upon the ""sada hukumnama"" but strangely, the application

(Annexure T/3) does not even whisper about the same.

In that view of the matter, it is evident that the Circle Officer proceeded to entertain an application which was alien to the statutory provision and

acted in a manner which is not contemplated within the statute. Let it be recorded that a Circle Officer is a statutory functionary and each and every

act of such a statutory functionary must be within the confines of the statute and any deviation therefrom must be struck down as being non est and

illegal.

(5) (I) Taking into consideration the above facts, the Judgments cited by Mr. Ram Balak Mahato to the effect that they are binding precedents

cannot be accepted because these particular aspects were not the subject matter of those judgments. Moreover, a decision is not an authority for a

proposition of law which was not canvassed before it, namely, whether in spite of non-observance of statutory requirements, an order passed can

still be held to be valid and as to whether an order passed by a statutory functionary by not following the statute can be still be allowed to be

upheld on the ground that a second revision arising therefrom was not maintainable? The answer to both these questions would have to be in the

negative.

In that view of the matter the judgments cited by Mr. Mahato, in the opinion of this Court, do not create any binding precedent. Reference in this

context may be made to the case decided by the Supreme Court in the case of Arnit Das Vs. State of Bihar, . In paragraph 20 of the said

judgment, the Supreme Court has observed thus :--

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a

law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi.

(5) (J) In the case at hand, it is found that the very initiation of the proceeding was not as per the statute, therefore, the proceeding itself was a

nullity. None of the judgments cited by Mr. Mahato were cases where this point was in issue. Since the foundation upon which the facts of this

case have been woven, spring from an inherent lack of jurisdiction, the final outcome must also therefore, be deemed to be illegal and wholly

misconceived. This is what the principle ""Debile fundamentum fallit opus"" (a weak foundation destroys the superstructure) signifies. For the same

reason, the order of the Circle Officer must be held to be wholly without jurisdiction and therefore, it is of no consequence because it is ""Judicium a

non suo iudice datum nullius est mementi"" (a judgment given by a judge without jurisdiction is of no importance).

(5) (K) The Full Bench judgment reported in 1996 BBCJ 634, was taken into consideration by another Division Bench in the case of Dattatray

Nath Pandey v. State of Bihar, reported in (1994) 1 BLJR 406. At paragraph 17 of the said judgment it has been held that a mutation proceeding

is not a judicial proceeding but it is administrative in nature and involves civil consequences. In that view of the matter, there can be no dispute nor

any doubt that the mutation authorities are bound to act within the four corners of the statute. It is well known that when a statutory functionary acts

under a particular statute, his actions must be confined within the four corners of the said statute and if there is any deviation from the procedure

prescribed therein, his action has to be struck down as being ultra vires that statute because "Non observata forma infertur adullatio actus" (when

form is not observed, a failure of action ensues).

(5) (L) In the instant case, we have to judge the orders in the context of the concerned statute, namely The Bihar Tenants' Holdings (Maintenance

of Records) Act, 1973. This statute has specifically provided particular acts to be done in a particular manner as would be evident from the

relevant provisions taken note of in the preceding paragraphs. The best interpreter of a statute (all the separate parts being considered) is the

statute itself "Optima statuti interpretatrix est [omnibus particulis ejusdem inspectis] ipsum statutum". Therefore, a statutory functionary cannot

conduct himself in a manner that is not provided by the statute. This Court is reminded of the famous observations made by the Supreme Court in

the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, At paragraph 10, the Supreme Court observed thus

:-

It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to

be judged and it must scrupulously observed those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr.

Justice Frankfurter in Vitarelli v. Seaton (1959) 359 US 535 : 3 L Ed 1012, where the learned judge said "An executive agency must be rigorously

held to the standards by which it professes its actions to be judge.....Accordingly, if dismissal from employment is based on a defined procedure,

even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule

of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

(5) (M) Consequently, this Court holds that the Circle Officer not having acted within the parameters of law, his order was illegal and de hors the

provisions of the statute. Since it is held that the original order passed by the Circle Officer was illegal, the Appellate and Revisional Orders dated

6.7.1998 and 4.10.1999 (Annexures 3 and 4) dismissing the Appeal and the Revision filed by the respondent No. 6, amount to upholding

illegalities and therefore, they must be declared to be also illegal. Consequently, this Court refrains from setting aside the order of the

Commissioner because by doing so, the effect would be to revive the illegal order of the Circle Officer and would virtually mean giving the seal of

approval to an illegality. Therefore, this Court is of the view that the order of the Commissioner was within the confines of Law because by

resorting to his inherent powers, he correctly set aside the order of the Additional Collector which arose out of the said illegal proceedings. In the

instant case therefore, even on deletion of Section 17, the Commissioner must be held to have correctly exercised his powers u/s 28 which has the

effect of rectifying an inherent defect in the orders of his subordinate officers over whom he did have the power of control and superintendence.

(5) (N) For the foregoing reasons this Court upholds the order of the Commissioner and taking into consideration the illegality committed by the

Circle Officer, proceeds to set aside the order dated 2.3.1996 (Annexure-2), the appellate order dated 6.7.1998 (Annexure-3) and the order

dated 4.10.1999 (Annexure-4).

As a result of this order, it will be only apt and appropriate to remand the matter to the Circle Officer to proceed afresh and de novo in

accordance with Law, provided of course, the petitioner files an appropriate application in the prescribed manner. It goes without saying that at the

time of dealing with the matter, the Circle Officer must act strictly within the confines of the statute namely The Bihar Tenants' Holdings

(Maintenance of Records) Act, 1973, and must also take into consideration the observations made herein as also the observations made by the

Commissioner.

(5) (O) Although notwithstanding the fact that an LPA is pending, this Court has nevertheless rejected the preliminary objection raised by Mr.

Bacchawat on grounds stated above but taking into consideration that the LPA concerns itself with the major issues on the effect of vesting, this

Court, therefore, does not enter into the other points argued by Mr. U.N. Bacchawat because if it is so done, it will have the effect of making

observations or giving findings which will affect the rights and title of the parties, including that of the State and may also affect the said LPA.

This Court, therefore, directs that notwithstanding the order of remand being passed herein, the Circle Officer and/or other revenue authorities shall

await the verdict of the said LPA and shall proceed only thereafter.

(5) (P) Let it be recorded that even the learned Advocate General of the State of Jharkhand has argued and submitted that the relevant statutory

provisions namely Sections 12 and 14 had not been complied with.

Thus, it is only on the aforementioned short points, that this Court refrains from interfering with the order of the Commissioner. The writ petition

must, therefore, fail and it is accordingly dismissed. The parties are directed to act as per the directions made above. They shall suffer their own

costs.