

MANU/BH/0019/1963

Equivalent Citation: AIR1963Pat79

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

A.F.A.D. No. 295 of 1957

Decided On: 04.10.1962

Appellants:**Kishun Sah**  
**Vs.**

Respondent:**Harinandan Prasad Sah and Ors.**

**Hon'ble Judges/Coram:**

*Vaidynathier Ramaswami , C.J., Kamla Sahai and Kanhaiya Singh , JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Lalnarayan Sinha and Awadh Kishore Prasad, Advs.*

*For Respondents/Defendant: R.S. Chatterji and Janardan Pd. Singh, Advs.*

**JUDGMENT**

**Kamla Sahai, J.**

**1.** The only question which requires consideration in this case is whether the Civil Court has jurisdiction to adjudicate upon the correctness of the finding of the House Controller in a case for eviction of a tenant under Section II of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter to be referred to as the Act) that the relationship of landlord and tenant exists between the parties.

**2.** The facts, relevant for decision of this case, are as follows. Mahabir (defendant No. 8) inducted the plaintiff as a monthly tenant in the house in suit in 1945. He filed an application before the House Controller for eviction of the plaintiff; but the controller rejected the application by an order dated the 7th September, 1949. The defendants-first-party are descendants of defendant No. 8 by his first wife. There was a partition suit between the defendants inter se which was decreed on compromise. The house in question fell, according to the compromise, in the share of the defendants-first-party, who filed an application under Section II of the Act for eviction of the plaintiff on two grounds, viz., (1) non-payment of rent and (2) personal necessity. The Controller rejected this application; but the Collector allowed it on the ground of personal necessity. The plaintiff then instituted a suit for declaration that the decree passed in the partition suit was collusive and fraudulent, and that the Collector's order for ejection of the plaintiff, which was confirmed by the Commissioner, was void, inoperative and without jurisdiction as there was no relationship of landlord and tenant between him and the defendants-first-party.

**3.** The Munsif, who tried the suit, held that the decree in the suit for partition between the defendants was fraudulent and collusive, and that the order of eviction of the plaintiff passed by the Collector and confirmed by the Commissioner relating to the house in suit was void, without jurisdiction and ineffective in law. On these findings, he decreed the suit.

**4.** The appeal filed by the defendants-first- party was heard by the 3rd Additional Subordinate Judge of Muzaffarpur. He has held that it was within the exclusive jurisdiction of the House Control Court to decide whether the relationship of landlord and tenant exists between the parties and to pass an order of eviction if such relationship exists. He has further held that section 18 of the Act bars the jurisdiction of the Civil Court to review the order of eviction passed by the Collector. Without deciding the case on merits, therefore, he has allowed the appeal, and dismissed the suit.

**5.** The plaintiff has filed the present second appeal. It was placed for hearing before a Division Bench which has referred it to this Bench as it took the view that there was a conflict between two Bench decisions of this Court, viz., *Bajjnath Sao v. Ram Prasad* MANU/BH/0057/1951 : AIR 1951 Pat 529 and an unreported decision in *Maheshwari Prasad Narain Sahi v. The Rupak Ltd.*, Civil Revn. No. 600 of 1955, disposed of on 18-10-1955.

**6.** I do not think that the problem presents any difficulty. It is well settled that, unless the legislature expressly confers upon a tribunal of Limited jurisdiction the exclusive power to decide facts upon which it can assume jurisdiction to do a certain act or to pass a certain type of order, it has no jurisdiction to decide those preliminary or jurisdictional facts finally. While it has necessarily to come to its own conclusions on those facts in order to exercise its jurisdiction relating to matters within its exclusive jurisdiction, its decision on those facts is liable to be challenged in the Civil Court. A tribunal of limited jurisdiction cannot have unlimited power to determine the limit and to assume jurisdiction or, in other words, it cannot usurp jurisdiction on a wrong decision relating to jurisdictional facts. These principles have been discussed in a Full Bench decision of this Court in *Patna Municipal Corporation v. Ram Bachan Lal* 1961 BLJR 3: ATR 1961 Pat 142. That was a case in which enhancement of municipal tax under Section 107(I)(c) of the Bihar and Orissa Municipal Act by the Special Officer was questioned. I have pointed out in my judgment in that case that the jurisdiction of the municipality to enhance the assessment under Section 107 (1) (c) depends upon two facts, viz., (1) that the holding has been incorrectly valued or assessed; and (2) that the incorrect valuation or assessment has been made by reason of fraud, misrepresentation or mistake, which are both jurisdictional facts, and that the municipality had no jurisdiction to decide those facts finally. The principle has been expressed in that case in the following terms:

".....a local authority, an administrative authority or any tribunal of limited jurisdiction cannot assume jurisdiction to do anything or to pass any order by arriving at a wrong decision on facts. Such facts have been referred to in various decisions as preliminary or collateral facts or as jurisdictional facts. The Civil Court or the High Court, in exercise of its power to issue an appropriate writ in suitable cases, can investigate the correctness of the decision of the inferior tribunal of limited jurisdiction relating to such facts. To hold otherwise would create a curious and illogical situation because a tribunal of limited jurisdiction would have unlimited power to assume jurisdiction in any case in which, on a correct decision on the jurisdictional facts, it cannot possibly have any jurisdiction."

I may also quote the observation of Lord Esher in *The Queen v. Commrs. for Special Purposes of Income Tax* (1888) 21 QBD 313:

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a 'certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such thing, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

**7.** A tribunal of limited jurisdiction has no power in the first type of cases but has power in the second type of cases to decide the jurisdictional facts. No power has been given to the Controller under the Act to decide finally and conclusively the question of existence of the relationship of landlord and tenant between the parties or the question as to whether the premises occupied by the tenant is a building. These are jurisdictional facts, and, with regard to these facts, the Controller or his higher authorities cannot possibly be held to have exclusive jurisdiction. The provision relating to the finality of their decision in Section 18 of the Act can only apply to their decision relating to matter, which are within their exclusive jurisdiction. It follows, therefore, that a decision of the Collector as to existence of the relationship of landlord and tenant between the parties is not final, and its correctness is liable to be examined by the Civil Court. It clearly is a case of the first type described by Lord Esher.

**8.** In a Bench decision of this Court in AIR 3951 Pat 529 the question which arose for consideration was whether the order of eviction passed by the Commissioner on an application under Section 11 of the Act could be challenged in the Civil Court on the ground that he had no jurisdiction to pass the order because there was no relationship of landlord and tenant between the parties. C. P. Sinha, J., who has delivered the Judgment of the Bench, has observed:

"In my view, if a Court or a tribunal with limited Jurisdiction is given authority under law to decide a particular matter, but the decision of that particular matter depends upon certain preliminary findings of fact, that tribunal must have jurisdiction to decide those preliminary points of fact and the Civil Court will have no jurisdiction to go into the correctness or otherwise of the findings of the tribunal in regard to those preliminary questions of fact."

With great respect, I am unable to agree with the opinion expressed in this observation. As I have already stated, a tribunal of limited jurisdiction has no power to decide the preliminary facts finally unless that power has been expressly conferred upon it by the legislature. To this extent, therefore, that decision is overruled.

**9.** The lower appellate Court has relied upon *Brij Raj Krishna v. S. K. Shaw and Bros.* MANU/SC/0053/1951 : AIR 1951 SC 115. Their Lordships have held in that case that the Controller has exclusive jurisdiction to determine whether there is non-payment of rent or not and to order eviction of a tenant on a finding that there has been such non-payment. Their Lordships have expressed the view that the case falls within the second type of cases mentioned by Lord Easher in the decision which I have referred to above. That case is clearly distinguishable because, as I have already observed, the instant case falls within the first category of cases mentioned by Lord Esher.

**10.** Reference may now be made to the decision of *Rai and Raj Kishore Prasad, JJ.* in Civil Revn. No. 600 of 1955. One of the points which their Lordships had to decide was whether the decision of the House Controller that he had jurisdiction to determine the fair rent of the property in question was liable to be challenged in the Civil Court when the property was, in fact not a building. It was held that the Civil Court had jurisdiction to review the Controller's decision because the question whether the property was a building was a preliminary fact, and the Controller could not assume jurisdiction on a wrong finding that it was a building when actually it was not a building. I respectfully agree with the decision on this point because the Controller cannot have jurisdiction unless the application before him is in respect of a building, and, this being a jurisdictional fact, which he has no exclusive power to decide, his decision cannot be held to be final.

**11.** For the reasons given above, the appeal is allowed, and the decision of the lower appellate court is set aside. The case is remanded for fresh decision on merits. Costs will abide the result.

**Vaidynathier Ramaswami, C.J.**

**12.** I agree.

**Kanhaiya Singh, J.**

**13.** I entirely agree.

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