
(1996) 11 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 1610 of 1989 (R)

Abdul Rajjak @ Rajak Mian Churihar

APPELLANT

Vs

Commissioner and Others

RESPONDENT

Date of Decision : 21-11-1996

Acts Referred:

Citation : (1996) 11 PAT CK 0040

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—The order dated 30.7.89 passed in Hazaribagh Land Restoration Revision No. 109 of 1987 has been impugned by the petitioner in this writ application.

2. The facts of the case may be briefly stated. In January, 1984 one Bisua Karamali, respondent No. 4 filed an application before the Land Reforms Deputy Collector, Hazaribagh respondent No. 3 purportedly u/s 46 (4-A) of the Chotanagpur Tenancy Act for restoration of the possession of the lands measuring about 1.52 acres appertaining to plot Nos. 1033 and 1035 under Khata No. 1 of village Kujju, P.S. Mandu. district Hazaribagh in his favour. The said application is Annexure 1. It is stated in the petitioner that his land's were settled to him and his brother by ex-landlord in Sambat 1986 (i.e.. in the year 1929). On this application being filed, a Land Restoration Case No, 1/84 was registered. On being noticed petitioner filed a show cause contending, inter alia, that relief u/s 46 (4-A) was not available to the respondent No. 4 inasmuch as the application itself was barred by limitation and the petitioner having perfected his title by adverse possession even ingredients of Section 46 (4-A) are not applicable. Further case was that those Land were Gaijr Majarua Khas lands of the ex-landlord of which some portion was abandoned land. Those abandoned lands were reclaimed by the petitioner and by means of Hukumnama dated 5.6.1944 under Parwane No. 225 of 1944-45, the same was settle to the petitioner by the ex-landlord Petitioner continued in possession since then by paying rent to the ex-landlord and after vesting to the State of Bihar. Further,

case is that the petitioner amalgamated other plots and surrounded the total area by a man height brick-wall. It is said that in the year 1969 the brother of respondent No. 4 filed Title Suit No. 1493/69 against the petitioner in respect of the said lands but ultimately the suit was compromised on 19.12.69 in which the plaintiff, brother of respondent No. 4 admitted that the petitioner is in possession over the land in question for a period of more than 20 years. The show cause filed by the petitioner is Annexure 2.

3. The respondent No. 3, after considering the pleadings and documentary evidence available on records, rejected the prayer of respondent No. 4 by dismissing the said Land Restoration Case No. 1/84. The respondent No. 3 while dismissing the petition of respondent No. 4 has found that the petitioner was in possession over the lands since more than 12 years. This order dated 21.2.84 is Annexure 3. Respondent No. 4 appealed against the said order being Restoration Appeal No. 11/84 and his appeal was allowed by the Additional Collector, Hazaribagh respondent No. 2) by an order dated 22.7.85 directing to take necessary action for mutation of the name of the respondent No. 4. Being aggrieved, the petitioner moved the Commissioner, respondent No. 1 in Revision No. 118/85 and by an order dated 6.1.86/28.1.86, revision application was allowed and respondent No. 1 remitted the matter to the appellate authority i.e. Additional Collector for be-hearing. The revisional order is Annexure-5. On remand, respondent No. 2 dismissed the appeal preferred by the respondent No. 4 holding, inter-alia, that the case does not come within the purview of Section 46 (4-A) of the Act and the parties may get their respective plaint of settlement decided by a competent civil court. This appellate order on remand is dated 15.7.87 (Annexure 6). Again a revision application was preferred by the respondent No. 4 against the said appellate order which was registered as Land Restoration Revision No. 109/87. By the impugned order dated 31.7.89, the revisional court while allowing the appeal announced the alleged transfer of lands and directed the petitioner to restore the possession of the land in question to respondent No. 4. This order is Annexure 7 to this application.

4. While admitting this application on 7.9.89, this Court stayed the operation of the order dated 31.7.89 as contained in Annexure 7.

5. One of the points urged by Mr. A.K. Sahani, learned Counsel for the petitioner is that when the respondent No. 3 on appreciating the documentary evidence found that the application filed by the respondent No. 4 was barred by limitation which was subsequently confirmed by the appellate court after remand, the revisional court has erred in exercising his jurisdiction to allow the prayer of the respondent No. 4 without going into the question as to whether application for restoration was barred by limitation or not. He further contends that there is no iota of evidence to suggest that lands in question was ever settled with the respondent No. 4 or his brother. In this connection, he has drawn my attention to the finding of the respondent No. 3 to the effect that the applicant, respondent No. 4 failed to file any Government rent receipt before the concerned

authority.

6. Mr. P.K. Prasad, learned Counsel appearing on behalf, of the respondent No. 4 on the other hand, has submitted that the land was settled with the respondent No. 4 in 1929 and the revisional court having found that Hukumnama and rent receipts filed by the petitioner cannot be believed and as he has come to a correct conclusion that the petitioner has failed to satisfy the courts about story of settlement and possession thereof.

7. Mr. Prasad, however, fairly submitted that in such case when respondent No. 4 admittedly did not file any official document to prove his claim and petitioner has failed to produce some documents which were not beyond suspicion, the courts below ought to have decided the matter by directing the parties to produce oral evidence in this regard.

8. Recently in the case of Ishwar Prasad Agrawalla Vs. State of Bihar and Others , I have the opportunity to deal with extenso the provisions laid down in Section 46 (4-A) and procedure to be followed in deciding an application for annulling the transfer. I have held that if an application u/s 46 (4-A) is not filed by the occupancy raiyat for annulling the transfer within a period of 12 years from the date of transfer of his holding, the said application cannot be entertained on the ground of limitation

9. In the instant case, the petition filed by the respondent No. 4 (Annexure-A) does not specifically state the date of his dispossession by the petitioner. Column 4, which is meant for such entry of date is blank. Similarly column 5 requires that applicant should state how he was illegally disposed. This column 5 is also without any date. Only in column 6 (1) is stated that applicant and his brother got the settlement of the land from ex-landlord in Sarbat 1986 i.e. in the year 1929. The petitioner filed the show cause detailing nature of settlement and period of possession. Respondent No. 4, applicant. It appears, filed a copy of the Jamabandi right of the ex-landlord and Jarnindari rent receipts. He also filed a notice issued by the Anchal Adhikari Mandu, of which objection was invited for the settlement of the said land. Except that no other documents were filed by the respondent before the LRDC, Hazaribagh, on the hand, the petitioner along with his show cause, filed some documents before the LRDC. On appreciating documentary evidences on record, the LRDC came to a finding that the petitioner has been coming in possession over the land since more than 12 years and as such, order for restoration cannot be passed.

10. I may mention here that the respondent No. 3 correctly appreciated the fact that if land was actually with the respondent No. 4 and his brother by the ex-landlord in 1929 itself, there was no occasion for the Anchal Adhikari, Mandu to notify objection for the settlement of same land. Admittedly respondent No. 4 did not file any document such as Government rent receipts etc. to satisfy the court below that after vesting he and his brother used to pay rent to the Government. The respondent No. 3 scrutinised the documents filed by the petitioner which

reveals that after vesting of the land to the State of Bihar, petitioner got his name mutated and rent receipts were issued. In a Title Suit between petitioner and brother of respondent No. 4, in compromise petition, there was admitted possession of the petitioner for more than 20 years and on this score, the respondent No. 3 found that the petitioner was in possession for more than 12 years and the petition u/s 46 (4-A) is not maintainable.

11. The first appellate court's order need not be dealt with by me because first revisional order shows that it was completely without the jurisdiction of the appellate court and as such, the Commissioner remained the matter. The Commissioner, by his order dated 28.1.86 found that the Additional Collector dealt with the case as it was a case of opening a Jamabandi. However, after remand, the Additional Collector, after hearing the parties and perusing the documentary evidences, dismissed the appeal holding that it was not a transfer which contravened the provisions of the Act and from the facts and circumstances of the case, it appears to be a civil nature. The appellate court, while disposing of the appeal, gave Liberty to the parties to settle the matter of least by a competent court. The revisional court, however, by the impugned order did not agree with the findings and observations of the appellate court and allowed annulment of the transfer, as stated above.

12. After hearing the learned Counsel for the parties and perusing of the documents, in my considered opinion, all the courts below, right from LRDC to the Commissioner, erred in treating the case as a case for restoration of land inasmuch as no case could have been actually registered on the basis of application as contained in Annexure 1. For registering a case, it is well settled, a proper application must be there but in the instant case, as I have found that the very basis for registering a case u/s 46 (4-A) is lacking. Under these circumstances in my opinion no case could have been instituted on the basis of relief claimed by the respondent No. 4.

13. In such view of the matter, without going into the merit of the case. I quash the proceeding of Land Restoration Case No. 1/84 itself and the other orders including Annexures 4, 5, 6 and 7. The parties are at liberty to get their claim decided in accordance with law before an appropriate civil court, if so advised.

14. In the result, this writ application is thus allowed. No order as to costs.