
(2004) 05 PAT CK 0034
In the Patna High Court
Case No : CWJC No. 4615 of 1994

Abhay Chand Bothara

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4

Citation : (2004) 3 BLJR 1657 : (2004) 3 PLJR 368

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Anil Kumar Mukund for the petitioner, and Mr. Sanjay Singh, learned Standing Counsel No. IX for the respondents. This writ petition has been preferred with the prayer to issue a writ of mandamus to Anchal Adhikari, Chhatapur, to issue rent-receipts to the petitioner with respect to the land bearing Khesra No. 324 (old)/ 619 (new), appertaining to Khata No. 341 (old), measuring a total area of 48 decimals.

2. This litigation has a chequered history. It relates back to proceedings u/s 4(h) of the Bihar Land Reforms Act, 1950 (hereinafter referred to as the "Act") with respect to certain areas of lands including the aforesaid land which constituted Harawat Estate in the district of Supaul. There were proceedings u/s 4(h) of the Act regarding the alleged malafide transfer of lands of plot Nos. 326, 322, 324, 325, 318, 329, and 148, of Khata No. 341, of Mauza Chhatapur, by the Harawat Estate in favour of Manick Chand Bothra, father of the present petitioner. There were altogether 15 proceedings which were registered as Misc. Case Nos. 10-24 of 1961 -62 (State of Bihar v. Nirmal Chand Bothra and Ors.). By his order dated 21.9.1962 (Annexure-A to the counter affidavit), passed in the said proceeding, the learned Additional Collector, Saharsa, found that the aforesaid transfers were bogus, were intended to defeat the provisions of the Act, were hit by the provisions of Section 4(h) of the Act, were bad in law and had, therefore, vested

in the State of Bihar. The same was affirmed in appeal by the learned Commissioner of the division, and was ultimately confirmed by the State Government. The transferees preferred CWJC No. 1392 of 1977 (Labendra Chand Bothra and Ors. v. The State of Bihar and Ors.), and the analogous CWJC No. 2292 of 1977 (Nirmal Chand Bothra and Ors. v. The State of Bihar and Ors., which were allowed by a Division Bench of this Court by a common judgment dated 20.1.1983 (Annexure-B to the counter affidavit), whereby the said order of the learned Collector, the appellate order of the learned Commissioner, and the final order of confirmation of the State Government were set aside. Aggrieved by this order, the State of Bihar preferred Civil Appeal No. 1535 of 1987 (State of Bihar v. Labendra Chand Bothra and Ors.) and the analogous Civil Appeal No. 4011 of 1994 (State of Bihar and Ors. v. Nirmal Chand Bothra and Ors.), which were allowed by judgment dated 11.7.1994 (Annexure-C to the counter affidavit), whereby the judgment of the High Court was set aside and the orders of the authorities under the Act, were restored, The judgment of the Supreme Court is reported in 1995 (2) PLJR 21 (SC) (State of Bihar and other v. Labendra Chand Bothra and Ors.).

3. During the pendency of the proceedings before the Supreme Court, Jamabandi with respect to the land in question was created in favour of the petitioner by order dated 20.11.1991 (Annexure-1), passed by the Land Reforms Deputy Collector-cum-Sub- Divisional Officer, Birpur, in Rent Fixation Case No. 28/5 of 1991-92. Thereafter the petitioner preferred the present writ petition with the prayer that the Anchal Adhikari, Chhatapur, may be directed to issue rent-receipts with respect to the land in question for which rent has already been fixed. This writ petition was earlier disposed of by a learned Single Judge of this Court by order dated 15.2.1995, whereby the Anchal Adhikari was directed to issue rent receipts. The review petition and the Letters Patent Appeal at the instance of the State of Bihar in this Court were dismissed.

4. The State of Bihar challenged the said orders of the High Court before the Supreme Court by preferring Civil Appeal No. 3245 of 2000 (The State of Bihar and Anr. v. Abhay Chand Bothra), which was allowed by judgment dated 5.5.2000, whereby the said order dated 15.2.1995, disposing of the present writ petition, has been set aside, and the matter has been remitted back to this Court for disposal of the writ petition afresh in accordance with law.

5. Heard learned counsel for the parties at length. After conclusion of the arguments, learned counsel for the petitioner sought permission to withdraw this writ petition. The learned Government counsel has opposed this prayer and submits that the petitioner is playing tricks with this Court to misuse this order. I have, therefore, chosen to record my observations on the merits of the matter lest the apprehension of the respondents come true. It is of paramount importance that with the judgment dated 11.7.1994 of the Supreme Court (State of Bihar and Ors. v. Labendra Chand Bothra and Ors.) (supra), the aforesaid judgment dated 20.1.1983 (Annexure-B to the counter affidavit) of this Court in

CWJC No 1392 of 1977 and the analogous CWJC No. 2292 of 1977 has been set aside, and the order dated 21.9.1962 (Annexure-A to the counter affidavit), passed by the learned Additional Collector, duly affirmed by the learned Commissioner in appeal and approved by the State Government under the provisions of the Act, has been restored and governs the field. In this background, we have to examine the facts of this case.

6. As stated hereinabove, this writ petition relates to Khasra, No. 324 (old)/619 (New). The petitioner's case is that the buildings standing on this plot was/is his residence, was beyond the mischief of the Act, and could not have vested in the State of Bihar. The petitioner's case was rejected by the learned Additional Collector and it was held that the same was the intermediary's Kutchery and had vested in the State Government, Taking advantage of the intermediate position between the judgment dated 20.1.1983 of this Court and that of the Supreme Court of 11.7.1994, the petitioner had moved the revenue authorities for creation of jamabandi, fixation of rent, and issuance of rent-receipts with respect to the lands in question. The petitioner was able to manage the order dated 20.11.1991 (Annexure-1), whereby jamabandi was created in favour of the petitioner and rent was fixed. However, before the rent-receipts could be issued, the judgment dated 11.7.1994 of the Supreme Court was handed down, setting aside the judgment dated 20.1.1983 of this Court, and restoring the orders of the learned Additional Collector, learned Commissioner and the State Government u/s 4(h) of the Act. Therefore, determination of the nature, character and user of the land in question is now governed by the order of the learned Additional Collector and any observation or finding by any other revenue authority which militates against the same is a nullity.

7. The learned Additional Collector has found in paragraph 8 of his order that "...for all these reasons, I am satisfied that the building standing on plot No. 324 was a kutchary building of the Harawat Estate and that it was being used primarily for collection purposes till the estate vested under the provisions of the Bihar Land Reforms Act, 1950". The schedule thereto sets out the details of the lands of Harawat State which have vested in the State Government. The relevant portion of the same is set out hereinbelow for the facility of quick reference :

Table -----	"1.
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-----	2. ---
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-----	3. ---
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-----	4. ---
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-----	5. Date
on which the transfer/lease/settlement came into effect :	X
-----	6. Name

of the transferee/lessee/settlee : Shri Nirmal Chand Bothra S/o Nehal Chand Bohra of Chhatapur.

7.				
Description of the property transferred/leased/settled :				
Jamabandi	Khata	Khesra	Area/A.	Mauza Dec.
Chhatapur	420	16/1	313	0.63
				95 308
0.35				
352	95		309	0.08
				xxx 310
2.23				
156		317		0.03
				134 318
0.03				
319				0.04
				320
0.04				
321				0.05
				72 330
0.21				
331				0.67
				167 332
0.55				16
313				0.22
				Mauza
Jamabandi	Khata	Khesra	Area/A.	Dec.
Chhatapur	95		310	0.12
				341 326
0.06				
322				0.06
				324
0.48				
325				0.07
				328
0.21				
329				0.23
				342 343
0.05				
333				0.03
				6.07
				419 341
148				11.35

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It is thus manifest that it has been finally established in the proceedings u/s 4(h) of the Act, and upheld by the Supreme Court, that the Kutchery of Harawat Estate stood on the land in question, namely, Khesra No. 324 (old). The same vested in the State of Bihar under the provisions of the Act. Any order contrary to the same is a nullity. The order dated 20.11.1991 (Annexure-1), passed by the learned Land Reforms Deputy Collector is, therefore, bad in law and will be deemed to have been automatically over-ruled by the judgment of the Supreme Court. The writ petitioner completely overlooks the judgment of the Supreme Court.

8. There is yet another aspect of the matter. Learned Government Counsel is right in his submission that the petitioner has not approached this Court with clean hands. The orders of the Additional Collector of 21.9.1962 (Annexure-A), affirmed in appeal and thereafter by the State Government under the provisions of the Act, and the judgment dated 11.7.1994 (Annexure-C) of the Supreme Court, which entirely covers the present writ petition, have not been disclosed to this Court by the petitioner. I must at this stage state that this writ petition was lodged in this Court on 12.5.1994, and the judgment of the Supreme Court was handed down on 11.7.1994 and could not, therefore, have been disclosed in the writ petition. However, there was ample opportunity for the petitioner to disclose the orders before the matter was taken up by this Court. The writ petition was for the first time taken up on 27.1.1995 on which date time was granted, to the respondents to file the counter affidavit, and was finally disposed of in the absence of the counter affidavit on the very next occasion, namely, 15.2.1995. The same have been brought to the notice of this Court in the counter affidavit. Had the same been disclosed by the petitioner at the earliest possible opportunity, this Court would not have been misled into passing its earlier order dated 15.2.1995 allowing this writ petition, particularly in a situation where the counter affidavit was then not filed because the revenue authorities were in collusion with the petitioner.

9. It is now settled by a long line of cases of high authority that the petitioner disentitles himself of any relief in the discretionary, prerogative writ jurisdiction if he does not approach the Court with clean hands, is guilty of suppression of material facts, and has made attempts to mislead this Court. The petitioner's fraud has caused this writ petition. The petitioner, being in collusion with the revenue authorities, did not allow counter affidavit to be filed on the previous occasion, as a result of which the writ petition was erroneously allowed, leading to a most redundant review petition, letters patent appeal, the appeal in the Supreme Court, and rehearing of the present writ petition.

10. The Supreme Court has observed in its aforesaid order dated 5.5.2000 that

"...We are informed by Mr. B.B. Singh, learned Counsel appearing for the State, that action has since been initiated against the concerned official and even a First Information Report has been filed and investigation is in progress." The respondent authorities have filed supplementary counter affidavit in this Court, paragraph 14 of which is set out herein below for the facility of quick reference ;

"14. That accordingly a criminal case was instituted against the ten (10) persons which was recorded as Chhattarpur P.S. Case No. 27 of 2000 dated 10.4.2000, under Sections 167, 418, 420, 467, 468, 471, 120B, and 108 of the Indian Penal Code. Thereafter the case has only proceeded till the supervision report dated 4.7.2003 and since then no development has taken place. These ten named persons in the first information report are as follows ;

1. K.K. Verma-Deputy Collector, Land Reforms, Birpur. (Retired).
2. Ramji Thakur :, Same.
3. Birendra Narayan Singh :, S.D.O. Birpur (Rtd)
4. Yadunandan Lal Das, Assistant (Rtd)
5. Kutianand Jha, Assistant
6. Jatadhar Jha, Assistant
7. Shamshul Hoda, Assistant (Rtd)
8. Ashok Kumar, Assistant
9. Chedi Sardar, Head Clerk (Rtd)
10. Abhay Chandra Bhothia, Petitioner.

10.1. I must also reproduce hereinbelow the order dated 16.7.2003, passed on this writ petition :

"Heard learned counsel for the parties. Mr. Sanjay Singh, learned Standing Counsel, prays for a reasonable adjournment to enable him to complete the pleadings and place on record a supplementary counter affidavit stating in detail the action taken by the State government against the Deputy Collector, Land Reforms, Birpur, adverted to in the order dated 5.5.2000, passed by the Supreme Court in Civil Appeal No. 3245 of 2000. He also assures the Court that in case he has superannuated from service, then action shall be taken against him under the Bihar Pension Rules also.

As prayed for put up after four weeks with a view to its final disposal."

11. I am, therefore, convinced that the petitioner was able to obtain the order dated 20.11.1991 (Annexure-1) by being in collusion with the revenue authorities, for which action both civil and criminal have been initiated against them. The learned Standing Counsel assures this Court that the same will be carried to their logical conclusions in accordance with law.

12. This writ petition has no merit. The order dated 20.11.1991 (Annexure-1) is a nullity, is non-est in law, and wholly inoperative.
13. As prayed for, this writ petition is dismissed as withdrawn.