

(1978) 02 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1370 of 1975

Ahmad Ali Khan and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-1978

Acts Referred:

Bihar Tenancy Act, 1885 — Section 23(1), 23(2)

Citation : AIR 1978 Patna 250

Hon'ble Judges : S. Ali Ahmed, J; Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : R.K. Verma, M. Haque and Hasibuddin, for the Appellant; K.N. Singh, Standing Counsel IV and Madan Mohan Prasad Singh, Jr. Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners are raiyats in respect of two plots of land, fully described in the writ application. A report was submitted by the Karamchari of the village where the land is situate, stating that the petitioners were holding weekly market (Hat) over the land instead of taking steps for cultivating it. A proceeding was started thereafter, and the Deputy Collector, Land Reforms, Darbhanga (respondent No. 5) held that the petitioners had used the land in such a way that the value of the land had been impaired within the meaning of Section 23, Bihar Tenancy Act, and he ordered that the petitioners' tenancy would not be allowed to be continued. The Jamabandi in their names was accordingly cancelled. The order is contained in Annexure 3 to the writ application. The petitioners appealed, and the Additional Collector, Darbhanga, respondent No. 4, confirmed the order. The petitioners thereafter moved the Commissioner, Darbhanga (respondent No. 3), who also refused to interfere in the matter. Ultimately, the petitioners unsuccessfully moved the Board of Revenue under its general power of superintendence. The present application under Articles 226 and 227 of the Constitution has thereafter been filed with a prayer that the impugned orders

contained in Annexures 3, 4, 5 and 6 be quashed.

2. The authorities concerned appear to hold the view that since the petitioners are holding weekly market on the land, its value has been impaired and it has been rendered unfit for cultivation. It has been assumed that the three illustrations given in Sub-section (2) of Section 23 are the only cases in which it can be said that a raiyat does not exceed his right if he uses the land in any other way except for agriculture. This construction of Section 23 appears to be wholly uncalled for. The right of a raiyat to use the land in any manner he likes, provided it does not materially impair the value of the land or render it unfit for cultivation, has been expressly declared in Sub-section (1) which reads as follows: --

"23. (1) When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for purposes of the tenancy."

The illustrations in Sub-section (2) are merely by way of exceptions to the rule that a raiyat should not by its use, impair the value of the land or materially affect it. The various other modes in which he can use his land without damaging it cannot be enumerated, and the legislature has not attempted to do so u/s 23 (2). It will, therefore, have to be seen as to whether by holding a weekly Hat the petitioners have either rendered the land unfit for the purposes of the tenancy or impaired its value.

3. The learned Commissioner has mentioned that if a market is held on the land every week, the land shall cease to be fit for agricultural use. This assumption is entirely uncalled for. As soon as the holding of the market is stopped, the land can be put to agricultural operation. It has not been shown as to how the collection of some men or cattle on the land will impair the quality of the land in such a way that in future it will be unfit for cultivation. The limitation on the power of a raiyat refers to some damage to the land, permanent in nature. The fact that a piece of land is not in a position to be cultivated temporarily is not covered by the disability of the raiyat in that respect. For these reasons, we are of the view that the decision of the authorities in the present case is not correct.

4. Besides, it appears from the khatian, which is Annexure 1 to the writ application, that the land was an orchard before it went into the bed of the river Kosi. After it has come out of water, the question arose about the manner in which it was most profitable to use it. The petitioners, in that situation, started holding the market, and the Karamchari objected to this course. These circumstances are supported by his report (Annexure 2). It follows that the purpose of the tenancy has not been proved to be agricultural, and if the raiyats are refusing to start cultivation, as suggested by the revenue authorities of the State, they cannot be forced to do so on pain of forfeiture of their tenancy.

5. In the result, this writ application is allowed and Annexures 3, 4, 5 and 6 are quashed. There will be no order as to costs.