

(1997) 08 PAT CK 0035

In the Patna High Court

Case No : C.W.J.C. No's. 12256 of 1993 and 51 of 1994

Ahmad Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-1997

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 2, 4
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1997) 2 PLJR 644

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : S.C. Ghose and Shyameshwar Dayal, in C.W.J.C Nos. 12256 of 1993 and 51 of 1994, for the Appellant; J.N. Jha in 12256 of 1993 and T.N. Maitin in 51 of 1994, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—The first writ petition was filed for quashing the order of the Deputy Collector, Land Reforms, Manjhaul dated 14.7.1993 in Case No. 1 of 1992-93, whereby and whereunder, after recalling the order of Anchal Adhikari dated 20.11.1992 (Annexure-2), the proceeding was restarted u/s 4(h) of the Bihar Land Reforms Act, 1950 (in short "the Act"). A prayer was also made to quash the notice, contained in Annexure- 1/A, whereby, the Petitioner was asked to appear and produce relevant documents in support of his case. But during pendency of the aforementioned case, the Land Reforms Deputy Collector by his order dated 20.12.1993, cancelled the settlement of the Petitioner as also Jamabandi of the land, C.W.J.C. No. 51 of 1994 was filed, challenging the validity of such orders.

2. Dispute in this case relates to a piece of land measuring 6 Kattha of Plot No. 5480, appertaining to Khata No. 3349 Thana No. 1901, Mauza-Manjhaul. The claim of the Petitioner is that the land in question was settled with his father by the Ex-landlord through a Hukumnama, executed on 19th September, 1945 after

payment of nazrana and till vesting of Jamindari, rent receipts were also granted. The Ex-landlord also submitted return in the name of Petitioner's father and accordingly, Register II was opened. The Petitioner thereafter, continuously paid rent to the State upto the year, 1993 and got rent receipts, copies of such receipts from 1946 to 1993 have been marked as Annexures 5 and 6 series, whereas the copy of Register II is Annexure 7. At no point of time there was any challenge by the State, while recording the land in Petitioner's name.

3. The further case is that in the year, 1987, Land Encroachment Case No. 10 of 1987-88 was started by the State Government against the Petitioner, alleging that he had encroached upon the lands in dispute. The said proceeding was ultimately dropped on 9.7.1987 by the order of the Anchal Adhikari (Respondent No. 5) on the ground that Petitioner was the settle of the land from the Ex-Landlord on the basis of Hukumnama. A copy of the aforesaid order is Annexure-8 to the rejoinder affidavit. But no appeal or revision against the said order was ever preferred by the State Government before the higher authority.

4. It is further stated that case of Petitioner's continuous possession after settlement of the land was also accepted by this Court, while disposing of Cr. Revision No. 1949 of 1971 vide order dated 24.11.1972 (Annexure-10), which was filed against an order, passed in a proceeding u/s 145 of the Code of Criminal Procedure. The Court thus, having affirmed the order of the magistrate, dismissed the revision petition. Therefore, from the facts noticed above, it is evident that Petitioner's father had obtained this land on settlement through Hukumnama, executed by Ex-landlord much before 1.1.1946.

5. The further submission is that even the Anchal Adhikari on the previous occasion after hearing all the relevant parties by order dated 20.11.1992 had dropped the proceeding u/s 4(h) on the ground that Hukumnama was executed prior to 1.1.1946. Because, as per the settled view of the Court through several pronouncements, no proceeding u/s 4(h) can be started with regard to a settlement, which had taken place prior to 1.1.1946 by Ex-landlord through Hukumnama.

6. Apart from what has been stated above, even the reports of Anchal Adhikari dated 1.10.1993 and Karmchari dated 20.4.1993 were also in favour of the Petitioner to show that he was in possession of the land on the basis of settlement through Hukumnama. The State Government also besides issuing rent receipts, had granted licence in favour of the Petitioner to run a shop over the land in dispute. Therefore, it is wrong to state that part of the land is Jalkar.

7. It has been further pointed out that with respect to settlement of different portion of the same plot No. 5480 by the same Landlord made prior to 1.1.1946 in favour of Rameshwar Choudhary and Mahavir Choudhary, the Sub Divisional Officer after accepting genuineness of Hukumnama dropped the proceeding u/s 4(h) on 3.5.1994 in Case Nos. 1 and 2 of 1993-94, copies of the order passed in the proceedings are Annexures 17 and 18 to the rejoinder affidavit.

8. A counter affidavit has been filed on behalf of Respondent No. 4, stating that name of the father of the Petitioner was entered in Register II on the basis of rent receipts, issued by the Ex-landlord and, accordingly, rent receipts were also issued by the State of Bihar. But it is well known that such rent receipts are without prejudice to the right of the State. That apart the Hukumnama in question being unregistered, no right can be conveyed to the Petitioner's father on the basis of such a Hukumnama. The further case is that nature of land being Sairat, in spite of recording the name of Petitioner's father in Register II and opening of Jamabandi, the State Government had full authority to initiate a proceeding u/s 4(h) to cancel such Jamabandi. In any event as yet no final order has been passed by the Sub Divisional Officer on the report of the D.C.L.R. to cancel Jamabandi.

9. Mr. Ghose learned Counsel appearing for the Petitioner raised mainly three questions; (i) That the State Government having accepted rent from the Petitioner with effect from the date of vesting of Jamindari till the year, 1993 and after opening Jamabandi of the lands, covered by Hukumnama is not entitled to challenge the genuineness and validity of such settlement, (ii) The settlement in question having been made before 1st January, 1946 whether the Collector will have any jurisdiction to annul such settlement under the provisions of Section 4(h) of the Act, and (iii) whether the State Government having lost the previous proceeding under the provisions of Section 4(h) by the order of the Anchal Adhikari and an order under the Bihar Land Encroachment Act, can start the instant proceeding again and again without filing appeal or revision against the previous orders. Reference is made to a judgment of this Court in the case of Bidyut Kumar Ganguly v. State of Bihar and Ors. 1980 B.B.C.J. 476.

10. In my view, the first and second contention being co-related, can be conveniently answered together. Admittedly the instant proceeding has been started by the Collector under the provisions of Section 4(h) of the Act for annulment of the settlement, which was made by the Ex-Landlord prior to January, 1946. Section 4(h) of the Act so far it is relevant for the purposes of the present cases, runs as follows:

The Collector shall have power to make inquiries in respect of any transfer including the settlement of lease of any land comprised in such estate or tenure of the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after, the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, disposes the person claiming it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:

Provided that....

Provided further....

11. From a bare reference to the aforesaid provision, it would appear that the Collector shall have power to make inquiry in respect of any transfer, including settlement of any land comprised in such estate or tenure made at any time after the 1st day of January, 1946, provided he is satisfied that such transfer was made with an object to defeat the provision of the Act. But on the other hand, on the face of a document, a transfer or settlement which had taken place prior to January, 1946 would not come under the purview of this provision. Reliance in this regard can be usefully made to a decision of this Court in the case of Umesh Jha v. The State and Anr. 1956 B.L.J.R. 229.

12. In the instant case as noticed above, it would appear that even the Anchal Adhikari on the previous occasion had dropped the proceedings, holding that Hukumnama in question was executed prior to 1.1.1946. Similar was the finding recorded by the Collector under the Act, while dropping the proceeding under the provision of the Land Encroachment Act with respect to same lands.

13. It has also been noticed that with regard to settlements through similar Hukumnamas in favour of Rameshwar Choudhary, Sri Ram Choudhary and Mahavir Choudhary for Anr. portion of the same plot, the Sub Divisional Officer as recently dropped Case Nos. 1 and 2 of 1992-93. It was held since Hukumnama in favour of those persons were executed prior to January, 1946 no proceeding u/s 4(h) can be maintainable. That apart, even this Court while affirming an order of the Sub Divisional Magistrate in a proceeding u/s 145 of the Code of Criminal Procedure, had accepted the contention of the Petitioner that he got possession of the land on the basis of a Hukumnama executed by the Ex-landlord, prior to 1.1.1946.

14. Apart from what has been noticed above, there is no denial on behalf of the State authorities that name of the Petitioner's father was entered in Register II, recognising his settlement through the Hukumnama in question and, accordingly, having accepted the rent, receipts were granted.

15. It is also relevant to notice that State authorities had full knowledge about the settlement through Hukumnama, because at the time of vesting of estate itself, name of Petitioner's father was entered in Register II. But no attempt was ever made either to challenge the genuineness of Hukumnama or the orders, passed by the authorities regarding opening of Jamabandi and entry of the name in Register II. Unfortunately no plausible explanation has been furnished by the State counsel save and except that a settlement by the Ex-landlord through unregistered Hukumnama has no value in the eye of law. Therefore, for the reasons stated above, I am constrained to hold that settlement in question having been made prior to January, 1946, the Collector will have no jurisdiction to take steps for annulment of such settlement under the provisions of Section 4(h) of the Act.

16. While coming to last question, there is no dispute that previous proceeding u/

s 4(h) of the Act was dropped by the Anchal Adhikari, holding that settlement in question was made prior to January, 1946. But from a bare reference to the impugned notice, issued u/s 4(h) by the Deputy Collector, Land Reforms, contained in Annexures 1 and 1/A as well as the order passed on 20.12.1993, as contained in Annexure 1 to the second writ petition, it would appear that proceeding in question was re-started since Anchal Adhikari had no jurisdiction to pass orders u/s 4(h) of the Act, as he was not a Collector under the Act, as defined u/s 2(e) of the Act.

17. Thus, it appears necessary to examine whether the Anchal Adhikari was empowered to decide a proceeding u/s 4(h). There is no dispute that as per Section 4(h), it is the Collector under the Act who is competent to decide a proceeding u/s 4(h). Section 2(e) defines the Collector under the Act in these words:

(e) "Collector" includes any officer (not below the rank of a Sub-Deputy Collector) appointed by the State Government to discharge all or any of the functions of a Collector under this Act;

18. From a bare reference to said provision it appears that an officer not below the rank of Sub-Deputy Collector, appointed by the State to discharge functions of Collector under this Act would be competent to decide proceedings u/s 4(h). Admittedly, the previous proceeding was decided by the Anchal Adhikari. Though he was an officer of the rank of Deputy Collector, but neither any notification nor any other material has been brought before me on behalf of the Petitioner to show that he was vested with a power to decide proceedings u/s 4(h). Therefore, for all practical purposes, the order passed by the Anchal Adhikari under the provisions of Section 4(h) had to be treated illegal and nullity in the eye of law, because an order, passed by an authority who was not authorised to pass such order can not have sanction of law. Therefore, the competent authorities are not precluded from taking a fresh decision in accordance with law, ignoring the previous one. Thus, for the reasons, stated above, I have no option but to answer this question against the Petitioner.

19. In the result both these writ applications succeed to the extent, indicated above, and the impugned notice as well as the order of the Deputy Collector, Land Reforms, dated 20.12.1993 are hereby quashed. But in the facts and circumstances, there shall be no order as to costs.