

(1994) 03 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2369 of 1984

Amir Hassan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 11, 11(2), 13, 6, 6(1)

Citation : (1994) 1 PLJR 684

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Advocate : Vishwanath Prasad Sinha, Vinod Kumar Sinha, Anil Kumar Singh and Lal Narain Singh, for the Appellant; Narendera Kishore Sinha and Ravi Bhushan Prasad Verma for Respondent Nos. 1 to 5 and Shashi Nath Thakur, for the Respondent

Final Decision : Allowed

Judgement

B.K. Roy, J.—The Petitioner prays to quash (i) the order dated 26-8-1983 passed by the Anchal Adhikari, Darbhanga (Respondent No. 5) in case No. 7 of 1982-83 directing him to remove encroachment from plot No. 6001 of village Loam, Anchal Sadar District Darbhanga (as contained in Annexure-6), (ii) the appellate order dated 3-10-1983 passed by the Additional Collector, Darbhanga in appeal case No. 2 of 1982-83 dismissing his appeal on the ground of limitation (as contained in Annexure-7), (iii) the notice dated 7-11-1983 issued by the Deputy Collector Land Reforms, Darbhanga, (as contained in Annexure-8), (iv) the notice dated 21-11-1983 issued by the Respondent No. 5 (as contained in Annexure-9) asking him to remove the encroachment in question failing which the same shall be removed forcibly, the cost of which shall be recovered from him and that he may be imposed a fine of Rs. 2000/- or imprisonment for one year and (v) the revisional order dated 27-3-1984 passed by the Commissioner, Darbhanga Division (Respondent No. 2) in Revision Case No. M-115 of 1983 (as contained in Annexure-11). The Petitioner also prays for issuance of a writ of prohibition commanding the Respondents not to interfere with his right, title and possession

over the land bearing C.S.P. Nos. 4136, 4083 and 4072 of the aforesaid village save and except in accordance with law.

2. This writ application was admitted on 16-5-1984 and by order of that date, the operation of the orders as contained in Annexures 6, 7, 8, 9 and 11 was directed to remain stayed.

3. Mr. Vishwanath Prasad Sinha, learned Counsel appearing for the Petitioner, submitted as follows:

(i) The Petitioner had preferred revision before the Commissioner, Darbhanga Division (Respondent No. 2) under a wrong but bona fide advice though no such revision lay and accordingly, the revisional order was passed without jurisdiction.

(ii) The appellate authority has incorrectly dismissed the appeal on account of limitation. By amending Section 11 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the Act), Vide Act 3 of 1982, the period for preference of appeal was 60 days of the passing of the order appealed against and in this view of the matter the Petitioner's Encroachment Appeal No. 2 of 1983-84 which was preferred on 3-10-1983 against the order dated 26-8-1983 of the Anchal Adhikari, Sadar Darbhanga was well within 60 days and accordingly could not be dismissed on account of limitation at all and should have been entertained and disposed of on merit. The Petitioner was told bona fide that there was 30 days for preference of the appeal and accordingly he filed bona fide a petition for seeking condonation of delay counting 30 days from 26-8-1983 on which Respondent No. 5 had passed his ex parte order but that was also wrongly dismissed without correctly appreciating the true meaning of the words "sufficient cause" as explained repeatedly by the Apex Court and this Court.

(iii) The Petitioner has title to the land in question inasmuch as it was settled with him in the year 1949 whose name was also mentioned in the return submitted by the landlord at the time of vesting of his Zamindari and rent receipt was also granted by the State of Bihar but this aspect of the matter was completely lost sight of by the authorities, (iv) Alternatively if his title is not accepted, then he would be a landless person who had encroached below 12? decimals of public land before 10-10-1985 and accordingly u/s 6(1)(c) proviso, no action should have been taken against him under the Act or even assuming that he had made encroachment, the same being below 10 decimals of public land contiguous to his agricultural holding which was used for agricultural purposes in view of Section 6(1)(c) of the Act, the Collector under the Act should have taken steps for settlement of that land with the Petitioner.

4. Mr. Narendra Kishore Sinha, learned Government pleader No. 3, appearing on behalf of Respondents Nos. 1 to 5 submitted as follows: (i) It is true-that in the instant case, the Commissioner had no jurisdiction to entertain and dispose of the revision application of the Petitioner and accordingly his order is without jurisdiction (ii) It is also true that according to Section 11(2) of the Act, which was introduced by Act 3 of 1982, 60 days" period is there for preference of an

appeal(iii) The claim of the Petitioner that the land in question was settled with him in 1949 or that he was/is a landless person to which Section 6(1)(c) proviso or Section 6(1)(c) of the Act applies are all incorrect and un-tenable.

5. Mr. Shashi Nath Thakur, learned Counsel for Respondent No. 6, apart from following the arguments of Mr. Narendra Kishore Sinha, submitted that in the counter affidavit it has been demonstrated that the documents filed by the Petitioner are forged and fabricated and accordingly he is not entitled to for any relief from this Court.

6. Section 11 of the Act runs as follows:

Appeals. -- (1) From every order passed under Sections 6, 7 or 8 an appeal shall lie--

(1) If such an order is passed by any officer other than the Collector of the district, to the Collector of the district or to any officer specially empowered by the State Government by notification in the official gazette.

(ii) If such order is passed by the Collector of the District, to the Commissioner of the Division.

(2) An appeal under this section shall be preferred within 60 days of the passing of the order appealed against:

Provided that an appeal may be admitted after the said period when the appellate authority is satisfied that the Appellant had sufficient cause for not preferring the appeal within such period.

7. The Act does not provide for preference of revision. Section 11 prescribes preference of appeal within 60 days from the order appealed against. Section 13 talks of review jurisdiction of the authorities who has passed orders under the Act.

8. It cannot be said that the Commissioner, Darbhanga Division (Respondent No. 2) was exercising his Appellate powers u/s 11(1)(ii) of the Act. In this View of the matter, the revisional order as contained in Annexure-11 passed by Respondent No. 2, is held to be without jurisdiction.

9. Coming to the second submission, namely, that the appeal of the Petitioner was illegally dismissed on account of limitation, I find substance in the argument of Mr. Sinha. On a bare perusal of Section 11(2) of the Act, it is clear that the Legislature has provided 60 days period for preferring an appeal against an order passed by the officer other than the Collector of the district to the Collector of the district or to any officer specially empowered by the State Government by notification in the official gazelle. In that view of the matter, the dismissal of the appeal of the Petitioner, which was preferred on 3-10-1983 against the order dated 26-8-1983 of the Anchal Adhikari, Darbhanga, by the Additional Collector, his order dated 3-10-1983 before the expiry of the statutory period of 60 days on account of limitation, was wholly misconceived and without jurisdiction.

10. The other questions raised on behalf of the Petitioner and replied by Respondent No. 6 are question of fact which are required to be gone into by the appellate authority, if pressed before him and I express no opinion of mine.

11. In the facts and circumstances of the case, I am also satisfied that it is a fit case which I should exercise my discretion.

12. Accordingly, the appellate order as contained in Annexure-7, and the revisional order as contained in Annexure-11 and the consequential notices as contained in Annexures 8 and 9 all are quashed and Encroachment Appeal No. 2 of 1982-83 is remitted back to the Court of the Additional Collector, Land Reforms, Darbhanga (Respondent No. 3) for its disposal on merits.

13. This writ application is thus allowed, to the extent indicated above, but in the peculiar facts and circumstances, I make no order as to cost.

14. Let a writ of certiorari issue accordingly.