
(1990) 01 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No's. 4812, 4849, 5032 and 5034 of 1982

Awadh Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1990) 1 BLJR 516 : (1990) 2 PLJR 323

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

Bench : Single Bench

Final Decision : Allowed

Judgement

K.B. Sinha, J.—All these writ applications are founded on almost same Bet of the facts and the points of law, involved for determination, are common. They were heard together with consent of the parties and are disposed of by this common judgment.

2. For the sake of brevity, the facts of C.W.J.C. No. 4812 of 1982 and the statements made in the affidavit under reply are placed herebelow. Besides this, additional facts, disclosed in other petitions and affidavits filed in reply, will be noticed at the appropriate stage.

3. All the petitioners, alongwith some others, jointly filed an application on 1.6.1973 before respondent No. 2. the Deputy Collector, Land Reforms, Patna, (hereinafter referred to as "the D.C.L.R.") u/s 48E of the Bihar Tenancy Act (hereinafter referred to as "the B.T. Act"), claiming right of under-raiyats (Bataidars) against respondent No. 4 and making complaint of threatened unlawful ejectment from the lands under dispute. On the basis of said application, Case No. 9 of 1973-74 was registered in the court of respondent No. 2, the D.C.L.R. The dispute was with respect to 7.66 acres of land of plot No. 516, appertaining to Khata No. 6, plots No. 521, 529, 530, 537, 512, 519, 520 and 533, appertaining to Khata No. 7, situated in village Saichak and plat No. 90,

appertaining to Khata No. 340, situated in village Nathopur within Phulwari Anchal in the district of Patna. The petitioners had laid claim over different parts of the said plots and it was stated that they were in possession as under-raiyats (Bataidars) since long. Upon receipt of the said application, a Board was constituted as provided under Sub-sections (3) and (4) of Section 48-B of the B.T. Act. The Board submitted its report in favour of the petitioners, which was accepted by respondent No. 2, the D.C.L.R., on 29.11.1973. The ratyat, respondent No. 4, filed an appeal before the Collector, Patna, which was dismissed on 7.2.1977. Thereafter, respondent No. 4 filed C.W.J.C. No. 550 of 1978 in this Court, in which parties were heard and the application was allowed on 7.3.1980. While quashing the order under challenge in that writ application, this Court directed the D.C.L.R. to initiate fresh proceedings in the name of the petitioners separately. According to the direction of this Court, the D.C.L.R. started fresh proceedings separately in the name of the petitioners. As regards this petition (C.W.J.C. No 4812/82), Case No. 4 of 1980-81 was registered by respondent No. 2. Again a Board was constituted with respondent No. 3, the Anchaladhikari, Phulwarisharif, Patna, as its Chairman. Respondent No. 4 nominated a Panch of his own choice. The petitioners also nominated their Panches. The Board did not succeed in bringing about an amicable settlement of the dispute and, thus, it made enquiry into the matter and submitted its report on 12.1.1982 in favour of the petitioners. A copy of the report has been filed as Annexure-1 of the petition.

On receipt of the recommendation of the Board notices were issued to the parties by the D.C.L.R. Respondent No. 4 filed objection against the recommendation of the Board, stating, inter alia, that no endeavour was made by the Board for an amicable settlement of the dispute and the enquiry was concluded within only one day. One of the points, raised on behalf of respondent No. 4, was that he was possessed of only 7.33/1/2 acres of unirrigated lands and, thus, the provision of Section 48-E of the B.T. Act was not attracted to his case. He filed affidavits of several persons before respondent No. 2.

4. While the matter was pending before the D.C.L.R., respondents No. 5 to 9 appeared before him and on their prayer, they were added as parties to the proceeding. They claimed that they had purchased about 3 acres and 80 decimals of land from respondent No. 4 before initiation of the proceeding u/s 48-E of the B.T. Act by a registered sale-deed on 15.3.1973 and once then they had been in cultivating possession of the same. It appears that after hearing the parties, respondent No. 2 did not agree with the recommendation of the Board and held that the petitioners could not be declared as under-raiyats (Bataidars) u/s 48-E of the B.T. Act. The said order was passed on 6.9.1982, which is under challenge in this case. A copy of the said order has been filed as Annexure-2.

5. Respondents No. 5 to 9 have filed counter-affidavit denying the claim of the petitioners. It is stated that they purchased parts of plots No. 516 and 537 of village Saichak and also part of plot No. 90 of village-Nathopur, along with other

plots by a registered sale-deed, dated 15.3.1973 from respondent No. 4. They claim to be in possession of the land since the date of purchase. According to them, there is an orchard over plot No. 90 and so there was no occasion for cultivating the said plot by any one. No counter-affidavit has been filed on their Behalf in C.W.J.C. Nos. 4899 and 5032 of 1982. However, a counter-affidavit has been filed on their behalf in C.W.J.C. No. 5034 of 1982. Besides that facts stated in the counter-affidavit filed in C.W.J.C. No. 4812 of 1982, it is also stated therein that the Board was illegally constituted and recommendation made by it was contrary to the existing facts. It is further stated that a proceeding u/s 145 of the Code of Criminal Procedure (herein after referred to as "the Code") was initiated with regard to plots No. 538 and 539, in which some of the writ petitioners were also made parties. In the said proceeding, respondents No. 5 to 9 were declared to be in possession of the plots mentioned above. The writ petitioners filed revision against the said order of the Executive Magistrate before this Court, which was dismissed on 21.11.1980.

6. A separate counter-affidavit has been filed on behalf of respondent No. 4, stating that the claim of Bataidari has been made by the writ petitioners, alongwith others over 10 acres and 60/3/4 decimals of land. The area, claimed by each of the writ petitioners, has also mentioned therein. While denying the claim of Bataidari of the writ petitioners, it is stated that this respondent sold 3.80 acres of land to respondents No. 5 to 9 by a registered sale-deed, dated 15.3.1973 and since then the vendees came in cultivating possession of the same. It is stated that a proceeding u/s 145 of the Code was fought between some of the vendees and the writ petitioners. A copy of the final order passed in the said proceeding has been filed as Annexure-A to this counter-affidavit. It is also stated that a revision was filed by some of the writ petitioners against the said order in this Court, which was numbered as Criminal Revision No. 848 of 1978. It was dismissed on 21.11.1980. A copy of the said order has been filed as Annexure-B to this counter-affidavit.

7. Learned Counsel for the petitioner (C.W.J.C. No. 4812/82) contended that the order, as contained in Annexure-2 was bad in law it was not passed in accordance with the provisions of Sub-section (8) of Section 48-E of the B.T. Act. It was urged that before giving notice to the parties for making an enquiry, respondent No. 2, the D.C.L.R., ought to have recorded reasons for his disagreement with the recommendation made by the Board.

Learned Counsel appearing on behalf of the petitioners in other writ applications adopted the argument advanced in C.W.J.C. No. 4812 of 1982.

8. Learned Counsel appearing on behalf of respondents No. 5 to 9, contended that it was not necessary for respondent No. 2 to assign reasons for his disagreement at the initial stage of the proceeding. Learned Counsel for respondent No. 4 adopted the argument advanced on behalf of respondents No. 5 to 9.

9. In order to appreciate the rival contentions of the parties, it is necessary to look to Sub-section (8) of Sections 48-E of the B.T. Act, which provides that in case of disagreement with the report of the findings of the Board, the Collector shall, after recording his reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, make such enquiry, if any, as he thinks necessary. Sub-section (9) of Section 48-E of the B.T. Act provides that the order of the Collector under Sub-sections (6), (7) or (8) shall be in writing and shall state the grounds on which it is made and specify the period which shall not exceed six months from the date of the order within which his order shall be carried out. According to Sub-section (7), where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make an enquiry into the same, receive such evidence as it considers, necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings.

10. On a plain reading of Sub-sections (7) and (9) of Section 48-E of the B.T. Act, it is manifest that even in case of agreement with the recommendation of the Board, the Collector has to state the grounds in writing. So, the said provision enjoins a legal duty upon the Collector to record his reasons even if he finds himself in disagreement with report of the Board. The expression "and" used in Sub-section (8) of Section 48-E of the B.T. Act clearly suggests that in case of disagreement, the Collector has to record his reasons for such disagreement and also to give reasonable opportunity of hearing to the parties and then pass final order after holding an enquiry. Therefore, in my view, it cannot be held that any obligation has been imposed by Sub-section (8) upon the Collector first to record his reasons for disagreement with the findings of the Board and then to proceed with the enquiry. The same point fell for consideration before a Bench of this Court in *Mahanth Ram v. State of Bihar* 1979 BBCJ 32 and it has been held that recording of reasons for disagreement is not a condition precedent to embark on the enquiry before passing final order under Sub-section (8) of Section 48-E of the B.T. Act. Thus, it is not possible to accept this argument.

11. The other contention, raised on behalf of the petitioners, was that respondent No. 2 passed the impugned order in a mechanical way without application of judicial mind. The D.C.L.R. only noted the arguments advanced on behalf of the parties and enumerated the documents produced by them, but did not record any finding of his own.

12. Learned Counsel for respondents No. 5 to 9 contended that in exercise of the writ jurisdiction, this Court could not go into the merit of the case and appreciate the evidence produced on behalf of the parties as a court of appeal. On the other hand, it was argued on behalf of the petitioners that the law had not conferred unbridled power on the quasi-judicial authority to pass order, which could not be supported by reasoning. It was submitted that respondent No. 2 ought to have

given an outline of the basis of reasoning, by which he arrive at the decision.

13. The rival contentions of the parties raise two fold question for consideration. The first question is as to what should be the approach of the quasi-judicial authority to decide a dispute between the parties? The second question is as to what is the scope of this Court in a writ jurisdiction to interfere with an order passed by such an authority? As regards the first question, the necessary elements of judicial approach would be to give an opportunity to the parties concerned to place their cases and weigh evidence, if any, and consider all the facts and circumstances having bearing on the merit of the controversy. An elaborate discussion on this issue will be more or less academic in this case. I cannot do better than to quote the observation made by the Supreme Court in the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , which reads thus:

Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party again si whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuing that end he must record the ultimate mental process leading from the dispute to its solution...and is not the result of caprice, whim or facncy or reached on ground of policy or expediency.

14. So far as the second question is concerned, true it is that the Court, issuing a writ of certiorari, primarily acts in exercise of supervisory power and not as a court of appeal. But it is difficult to accept this broad proposition, the consequences of which may strip the power of this Court from interfering with the findings of the inferior court or Tribunal even if they are absolutely erroneous. A writ of certiorari can be issued if it is found that a finding of facts is based on no evidence or inadmissible evidence. It is well-settled that a writ of certiorari can be issued to correct an error of law, which is manifest on the face of the record.

15. As mentioned above, according to learned Counsel for me petitioners, respondent No. 2 did not state the reasons of his disagreement with the report and finding of the Board as required under Sub-section (9) of Section 48-E of the Act. It was argued that the said respondent was greatly influenced by the provision of Section 48-C of the Act and the order passed u/s 145 of the Code, which were absolutely irrelevant for the purpose of adjudication of this case.

16. Learned Counsel for respondents No. 5 to 9 strenuously argued that the Collector had fully applied his mind and recorded findings on all the relevant points. He placed the entire order (Annexure-2) passed by respondent No. 2 in

support of this contention.

17. In view of the contention raised on behalf of the parties, I consider it necessary to closely examine the order (Annexure-2). In the concluding paragraph of the impugned order, respondent No. 2 noticed the argument of respondent No 4 that he sold 3.80 across of land by registered sale-deed in the year 1973 to respondents No. 5 to 9. Thereafter, he was left with only 7 acres and 331/2 decimals of unirrigated land. It is also mentioned therein that in case the said assertion of respondent No. 4 was accepted, then the writ petitioners could not be declared as Bataidars over the land of respondent No. 4. It is not clear which provision of the B.T. Act was made the basis of the said finding.

18. According to learned Counsel for the petitioners, the said finding was recorded keeping in view the provision of Section 48-C of the B.T. Act and the D.C.L.R. wrongly applied the said provision of law to the fact of this case without understanding its implication. Learned Counsel for the respondents could not show any other provision, under which the said finding could have been given. However, it was argued that respondent No. 2 only incidentally referred to the said legal provision.

19. It will be appropriate to look to relevant part of Section 48-C of the B.T. Act, which reads as follows:

Acquisition of right of occupancy by uader-raiyats:

Every person who, for a period of twelve years, whether wholly or partly before or after...provided....

(i) ...

(a) five acres of land irrigated by flow irrigation work lift irrigation work or tube-well owned, constructed maintained improved or controlled by the Central or the State Government or by a body corporate constituted under any law or by tube-well owned or maintained by the landlord or;

(b) ten acres of other land; or

(ii) ...

20. According to this provision, an under-raiyat gets a right of occupancy in the land which he has held for the prescribed period, subject to the restrictions laid down under Clauses (a) and (b) of Sub-sections (i) and (ii) of the proviso to Section 48-C of the B.T. Act. If the land, held by the landlord under his cultivation, does not exceed five acres of irrigated land or ten acres of other land or in certain other circumstances as mentioned in the proviso to Section 48-C of the B.T. Act, an under-raiyat does not get a right of occupancy irrespective of the period, for which he holds the land in that capacity.

21. As provided u/s 48-E of the B.T. Act, an application on behalf of an under-raiyat is maintainable if he is threatened with unlawful ejection from his

tenancy or any portion thereof by his landlord. A Bataidar (under-raiyat) has been conferred a legal right u/s 48-E of the B.T. Act irrespective of the fact whether he has acquired a right of occupancy or not. This view is amply supported by a decision of this Court in Upendra Mandal v. State of Bihar 1989 PLJR 333 relied on behalf of the petitioners. It has been held in that case that Section 48-C of the B.T. Act is absolutely irrelevant for judging the maintainability of the application filed u/s 48-E of the Act. So, there is no manner of doubt that respondent No. 2 has wrongly applied the said provision of law for rejecting the claim of the writ petitioners.

21-A. Thus, the D.C.L.R. has made a patent error in interpreting the statutory provision laid down u/s 48-C of the Act and so this Court is not deprived of the power to interfere with such an order in its writ jurisdiction.

22. A glance at the order (Annexure-2) would reveal that respondent No. 2, having noticed the argument put forward on behalf of the parties and the evidence produced on their behalf, has observed that in the affidavits filed by respondent No. 4, the deponents supported his (respondent No. 4) cases of cultivating possession over the land in dispute. It is also stated that photostat copy of Mutation Case No. 299 of 1973 was filed on behalf of respondents No. 5 to 9. They also filed the report submitted by the local Karamchari in relation to the said mutation proceeding. Respondent No. 2 also took into consideration the order passed u/s 145 of the Code as well as the order passed by the revisional court. According to the D.C.L.R (Respondent No. 2), respondents No. 5 to 9 were in possession of the land purchased by them.

23. Undisputedly, respondent No. 2 also took into consideration the order passed u/s 145 of the Code and observed that in the said proceeding, the possession of respondents No. 5 to 9 was declared over the land in dispute. On own showing of the said respondents, as mentioned in their counter-affidavit filed in C.W.J.C. No. 5034 of 1982, the proceeding u/s 145 of the Code was decided in their favour in relation to plots No. 538 and 539. It is not mentioned in their counter-affidavit that any of the disputed plots was also subject-matter of proceeding u/s 145 of the Code, in which respondents No. 5 to 9 figured as parties on the one hand and the writ petitioner on the other.

24. On perusal of Annexure-B, the order passed by this Court in Criminal Revision No. 848 of 1978 arising out of the said proceeding, it would appear that the jurisdiction of the Magistrate to initiate the proceeding was challenged in view of the provision of Sub-section (13) of Section 48-E of the B.T. Act, which provides that no civil or criminal court shall have any jurisdiction over the subject-matter of a dispute after a proceeding is initiated under Sub-section (1) of Section 48-E of the B.T. Act by the Collector. The said criminal revision was dismissed on the ground that there was no Bataidari dispute with regard to the lands, which were subject-matter of proceeding u/s 145 of the Code. In spite of the said categorical finding of this Court, respondent No. 2 has held that in the proceeding u/s 145 of the Code, respondents No. 5 to 9 were declared to be in

possession of the disputed land. It is, therefore, obvious that the findings given by the D.C.L.R. are absolutely incorrect, based on mis-representation of fact and misreading of Annexures-A and B. Though it may be difficult to fathom with precisising to what extent the order u/s 145 of the Code (Annexure-A) and the revisional order (Annexure-B) had influenced the mind of the D.C.L.R., but, undoubtedly, the said provision had weighed with him while passing the impugned order. Thus, it is an error apparent on the face of the records, which can easily be noticed without aid of any argument.

25. In view of the foregoing discussions, all these writ applications are allowed and the orders, as contained in Annexure-2 in each of the petitions, are hereby quashed. The cases are remitted to respondent No. 2, the Deputy Collector, Land Reforms, Patna, for passing fresh orders in accordance with law after hearing the parties. In the circumstances, there shall be no order as to costs.