
(2009) 07 PAT CK 0099
In the Patna High Court
Case No : CWJC No. 761 of 2003

Babujan Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48D

Citation : (2009) 4 PLJR 300

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Judgement

Dr. Ravi Ranjan, J.—Heard Mr. Sufiyan, learned counsel for the petitioners and Mr. Jagdish Prasad Bhagat, learned counsel for the respondent No. 6. State is represented by Mr. Anwar Karim, J.C. to S.C.-V. Earlier notices were issued upon respondent Nos. 5 to 8 indicating that this case is likely to be disposed of at the stage of admission itself. In response to the aforesaid notice only respondent No. 6 has appeared. Counter affidavit has been filed on behalf of respondent Nos. 5 to 8 but there is no Vakalatnama filed on behalf of respondent Nos. 5, 7 and 8.

2. Learned counsel for the respondent No. 6 submits that obviously a mistake has been committed inadvertently and the counter affidavit may be considered to have been filed only by the respondent No. 6. His submission is accepted. Let the counter affidavit be considered to have been filed on behalf of respondent No. 6 only.

3. Now, I proceed to dispose of this writ application.

4. The writ petitioners are aggrieved by the order dated 3.12.2002 passed by the Sub-Divisional Officer, Banmankhi, in revenue appeal No. 12/99-2000.

5. Short facts of the case are as follows:-

The petitioners filed a petition u/s 48D of the Bihar Tenancy Act, 1885 (hereinafter referred to as the "Act") for the declaration that they have acquired

the raiyati right being occupancy underraiyats of the land pertaining to Khata No. 54, Plot Nos. 813 and 702, total area being 1.65 Acres of Mawza-Ladugarh. The father of the petitioner No. 1, namely, Palat Rai was recorded Sikmidar of the aforesaid land and upon his death, due to the custom prevalent in the Banmankhi area, the petitioners have acquired occupancy rights and thus, the petition has been filed by him for declaration of the raiyati rights. The Anchal Adhikari, Banmankhi, found the petitioners entitled for acquiring acquisition of the Raiyati rights and ordered accordingly and, therefore, further ordered for payment of lump sum compensation amount to the opposite party as determined in his order contained in Annexure-3. Father of the respondent Nos. 5, 6, 7 and 8 namely, Thakur Sah, preferred appeal before the Sub-Divisional Officer, Banmankhi, stating therein that the original Raiyat namely, Gyan Chandra Sah, father of aforesaid Thakur Sah and grandson of private respondent having died in the year 1975 itself. The entire original proceedings suffers from vital error to the effect that notices have been issued upon a dead person and case has also been decided against dead person and the petitioners have been directed to pay compensation to a dead person. That apart, it has also been contended by them that the Anchal Adhikari concerned has not recorded any finding that the petitioners are Sikmidar (occupancy Raiyat) and without recording such finding, he has allowed his petition for acquisition of Raiyati rights. It was also raised on behalf of the appellant therein that Palat Rai though, is alive, has not joined the petitioner in filing such petition. Therefore, the entire proceeding filed before the Anchal Adhikari stands vitiated on account of non-joinder of necessary party. The appellate court having considered the rival submission, has come to the conclusion that without recording a finding that the petitioners have acquired occupancy right, the Anchal Adhikari has allowed the prayer of the petitioners and declared him to have acquired the raiyat: rights u/s 48D of the Act. Thus he allowed the appeal.

6. Learned counsel for the petitioners submits that though, it has been held by the appellate court that the original order is bad and appeal has been allowed but no positive finding has been recorded by the appellate court on the issue. He further submits that it is settled principle that in certain area where such custom is prevailing, the Sikmi rights are acquired by successor also. On this question also, which has been dealt with by the original authority, the appellate authority has not recorded positive finding.

7. Learned counsel for the respondent No. 6 submits that while passing an order and declaring that a person has acquired raiyati rights u/s 48D of the Act, the authorities must record a finding that the person is Sikmidar (occupancy Raiyat). His further submission is that it is not recorded in the original order as to whether the petitioners were coming in possession for last how many years and there is also no positive finding that either by possession for more than 12 years, or on account of succession, the petitioners have acquired or deemed to have acquired Sikmi rights.

8. Having considered the rival submissions, in my opinion both the original as well as appellate orders suffer from defects. The order passed by the Anchal Adhikari, Banmankhi, suffers from major illegality as the notices were issued against a dead person and order has also been passed against a dead person. Learned counsel for the petitioners fairly concedes that he is not in a position to controvert the fact stated by the respondent No. 6 in his counter affidavit that the recorded tenant Gyan Chandra Sah died in the year 1975 and notices have been issued as well as order have been passed against a dead person. Further, the Anchal Adhikari has not recorded any reason for coming to the conclusion that in Banmankhi area, such custom is prevalent that Sikmi rights can be acquired by succession also. A Bench of this Court in Md. Yunus & Anr. vs. Moinuddin and Ors. reported in 2002(4). PLJR 31 has held that it is now well known that sikmi right is not transferable unless a custom prevailing in the village is pleaded and proved. The person making such claim has to make out a case in support of such custom prevailing in the village or the locality. Further, it is also manifest from the order passed by the Anchal Adhikari that no positive finding has been recorded that the petitioners have acquired sikmi rights.

9. In the appellate order also on the point of acquiring Sikmi rights of successor, no positive finding has been recorded.

10. In view of the above, I set aside both, the order passed by the Anchal Adhikari as well as the appellate order passed by the S.D.O., Banmankhi as contained in Annexures-3 and 4. However, liberty is granted to the petitioners to file a fresh application if they desire so, before the Competent Authority concerned impleading the private respondents as party. If such application is filed within two months from today, then that shall be disposed of by such authority in accordance with law after hearing the parties. With the aforesaid observations and directions, this writ application stands disposed of.