
(2013) 06 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 15643 of 2004

Basudeo Yadav and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h), 40, 40(1)

Citation : (2013) 3 PLJR 298

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Tuhin Shankar, for the Appellant; Nagendra Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The present writ petition has been preferred for the following reliefs:-- 1. To issue a writ of certiorari for quashing an order dated 27.5.2004 passed in Case No. 6 of 1998-99 by District Magistrate, Jamui, whereunder he has set aside an order passed by Additional District Magistrate, Jamui dated 16.1.1998 passed in Misc. Case No. 4 of 1997-98.

2. To issue a writ in the nature of mandamus or any other appropriate writ/writs, order/orders, direction/directions for commanding the respondent for declaring that the Jamabandi No. 74 created in favour of the petitioners vide No. 10/82-83 with respect to the land in question by the Circle Officer, Chakai and supported by A.D.M.'s Court cannot be disturbed by the respondent No. 2, in exercise of appellate power in the absence of any finding of possession in favour of the respondent Nos. 5 to 7.

3. For any other appropriate reliefs for which petitioners may be found entitled at the time of hearing.

The petitioners' case is that the Circle Officer, Chakai in the district of Jamui (hereinafter referred to as "Circle Officer") had created Jamabandi in the name of

petitioners appertaining to Khata No. 24, Khasra No. 187, measuring 4 acres & 42 decimals, which was Gairmazarua Malik land. As per petitioners, the land in question was recorded as Gairmazarua Malik and ex-landlord had created Hukumnama in favour of father of petitioners and on the basis of said Hukumnama, the Circle Officer created Jamabandi in favour of petitioners, as Jamabandi No. 74, vide Case No. 10 of 1982-83 and thereafter receipts were issued in favour of petitioners. It has been claimed that petitioners were paying rent to the Government and were in peaceful possession over the land in question and they were cultivating the same. However, subsequently the private respondents i.e. respondent Nos. 5 to 7 filed a case before the Additional Collector, Jamui (hereinafter referred to as "Addl. Collector") for cancellation of said Jamabandi, which was rejected vide Misc. Case No. 4 of 1997-98. It has further been pleaded that the learned Addl. Collector, while proceeding with the miscellaneous case, had visited at the spot and conducted inquiry. In the said inquiry, the Addl. Collector found that the land in question was in possession, which was being cultivated by the petitioners and finally, by order dated 16.1.1998, dismissed the Misc. Case No. 4 of 1997-98. Subsequently, the private respondents preferred an appeal before the Collector, Jamui (hereinafter referred to as "Collector"), which was registered as Case No. 6 of 1998-99. and finally, the Collector allowed the appeal. The order of learned Collector dated 27.5.2004 in Case No. 6 of 1998-99 has been assailed by petitioners in the present writ petition. 2. In this case, a counter affidavit on behalf of respondent Nos. 2 to 4 and counter affidavit as well as supplementary counter affidavit on behalf of respondent Nos. 5 to 7 have been filed. Petitioners have also filed rejoinder to the counter affidavit of the private respondents i.e. respondent Nos. 5 to 7.

3. Sri Tuhin Shankar, learned counsel for petitioners, while assailing the impugned order, has argued that order impugned is fit to be set aside primarily on the ground that the learned Collector was not having any jurisdiction to cancel the Jamabandi, which was created by the Circle Officer, vide Jamabandi Case No. 10 of 1982-63 and Jamabandi No. 74 was created in favour of petitioners. It was argued that since Jamabandi was created by the Circle Officer, the Circle Officer was only competent to cancel the same. In any event, the Collector was not having any jurisdiction to cancel the Jamabandi. In support of his above averment, Sri Tuhin Shankar has heavily relied on a Division Bench judgment of this Court, reported in Khiru Gope and Others Vs. Land Reforms Deputy Collector, Jamui and Others, . Learned counsel for petitioners has specifically referred to paragraph No. 15 of Khiru Gope's case (supra), which is quoted herein under:--

15. A question similar to the one posed above has fallen for decision by this Court in the case of Harihar Singh vs. Addl. Collector [1978 BBCJ (HC) 323]. A Bench of this Court noticed the contents of Letter No. 5-LR/RC-1073/693-LR. dated the 8th October, 1969, from the Secretary to the Government of Bihar in the Department of Revenue to all the Collectors, and another letter dated the 25th April, 1959, bearing No. 3354/IR FB-744/1959, to all the Divisional Commissioners, and held that till 1969, new Jamabandis, on the basis of Sada

Hukumnamas and rent receipts granted by the ex-intermediaries, were not only being opened by the approval of the Anchal Adhikari, but were being opened by the Karamcharis themselves, and, as such, it was within the competence of the Anchal Adhikaries to open new Jamabandis in favour of the petitioners. Further, it was noticed that the Additional Collector, who had cancelled the Jamabandi, had issued a notice merely directing to produce rent receipts and other papers issued by the ex-intermediaries, and held that by issuing such a notice the learned Additional Collector was not entitled, after hearing the petitioners to cancel the Jamabandi created in their favour. The said case also related to a claim of possession by virtue of a Sada Hukumnama in respect of Gairmazarua Malik land. Harihar Singh's case is a direct authority for the proposition that there is no authority given to the Collector under the Bihar Land Reforms Act to cancel a Jamabandi made in favour of a settlee from the ex-intermediary as also for the proposition that the Anchal Adhikari and the Karamchari were competent to make necessary entries in the tenants' register and open Jamabandi and fix rent in relation to such a settled land in favour of the settlee.

4. Sri Tuhin Shankar, learned counsel for petitioners has further argued that in any event the learned Collector, for cancellation of Jamabandi, was required to adhere to provision contained in Section 4(h) of the Bihar Land Reforms Act, 1950 (hereinafter referred to as "Land Reforms Act"). It was argued that ex-landlord of the land in question had issued Hukumnama in favour of father of petitioners and on the strength of said Hukumnama, Jamabandi was created, vide Case No. 10 of 1982-83. He further submits that even learned Addl. Collector, during the course of hearing of Misc. Case No. 4 of 1997-98, had himself conducted an inquiry at the spot. In the said inquiry, the witnesses had categorically stated that land in question was being cultivated and in peaceful possession of petitioners. Learned counsel for petitioners has referred to Annexure-"2/A" to the writ petition, which is a typed copy of local inspection report. He further submits that rent receipts were also issued in respect of land in question. In sum and substance, it has been argued that Jamabandi was created in favour of petitioners on the basis of Hukumnama issued by the ex-intermediary and after Jamabandi, the petitioners are in physical possession and cultivating the land in question. The learned Collector was not authorized to cancel the Jamabandi. It has been emphasized that in any event since Jamabandi in the present case was created by the Circle Officer, the learned Collector was not having any authority to cancel the same. Learned counsel for petitioners has placed reliance on an order dated 12.8.1997 passed in C.W.J.C. No. 7559 of 2006 (sic--1996?) (Prasad Yadav vs. State of Bihar & Ors.). The petitioners have brought on record a photocopy of said order, vide Annexure-"4" to the writ petition. On aforesaid ground, it has been argued to quash the order passed by the learned Collector.

5. Learned A.C. to Government Pleader No. 3, who has appeared on behalf of respondent Nos. 1 to 4 and Sri Nagendra Dubey, learned counsel for respondent Nos. 5 to 7 have vehemently opposed the prayer of petitioners. In counter

affidavit filed on behalf of respondent-State i.e. respondent Nos. 1 to 4, it has been pleaded that land in question is Gairmazarua Malik land, for which, no return was filed by the ex-intermediary in the name of any person at the time of vesting of Estate and after vesting of Estate, land in question became the property of Government of Bihar. The respondent-State has also taken a stand that in the year 1982-83, an attempt was made to grab the Government land, through forged and fabricated documents. The learned Collector before finally passing order in the appeal has got an inquiry conducted, through the Circle Officer and the Circle Officer, vide his letter No. 330 dated 2.12.2003 has categorically reported that total area of Khata No. 24 is 57.01 acres recorded as Gairmazarua land, which is still parti, on which Bandh (Dam) also exists. In the case prior to report dated 2.12.2003, the Circle Officer had also submitted a report, vide letter No. 298 dated 7.10.1997, which was submitted to the Addl. Collector. Both reports have been brought on record as Annexure-"A" & MB". The respondent-State has also brought on record a report of Circle Officer, vide Annexure-"C" to its counter affidavit.

6. The respondent Nos. 5 to 7, in its counter affidavit and supplementary counter affidavit, have justified the cancellation order i.e. order impugned. The respondent Nos. 5 to 7, through its supplementary counter affidavit, has brought on record a Government instruction, issued vide letter No. 198 dated 25.5.90 by the Commissioner, Revenue & Land Reforms Department, Govt. of Bihar and addressed to all the Divisional Commissioners, District Magistrates and Settlement Officers.

7. Sri Nagendra Dubey, learned counsel for private respondents has argued that the Government of Bihar has issued instruction, vide Annexure-"1" to the supplementary counter affidavit, with a view to cancel all forged and fictitious Jamabandis, which were created on the basis of fictitious Hukumnama in respect of Government land. It has further been argued that since the private respondents were cultivating the land in question, immediately after noticing the fact regarding creation of Jamabandi, the private respondents have filed miscellaneous case before the Addl. Collector, vide Misc. Case No. 4 of 1997-98, however; the learned Addl. Collector did not cancel the Jamabandi and thereafter, the private respondents preferred an appeal before the Collector, vide Case No. 6 of 1998-99. The learned Collector has rightly passed an order for cancellation of Jamabandi, which was created in favour of petitioners. Sri Dubey has submitted that land in question is Gairmazarua Malik land, for which, no return was filed by ex-landlord in the name of any person at the time of vesting of estate and in absence of any such return in the name of petitioners, merely on the basis of issuance of rent receipt in favour of petitioners, it may not be considered as if petitioners have got occupancy right over the land in question. Moreover, it was argued that the private respondents are cultivating the land in question. Learned counsel for private respondents submits that in absence of submission of any return by ex-intermediary in favour of petitioners only on the basis of rent receipt, the petitioners may not be recognised as tenants of the

State Government under the provisions of Land Reforms Act and as such, so-called Jamabandi was a fraudulent one, which has rightly been cancelled by the learned Collector by the impugned order. In support of his above argument, Sri Dubey, learned counsel for private respondents has referred to a Single Bench judgment of this Court, reported in Nagina Devi and Others Vs. The State of Bihar, .

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is admitted position that ex-intermediary had never filed return in the name of any person at the time of vesting of estate. Petitioners had got Jamabandi created, which was created in the month of Vaisakh, 1953. There is no explanation as to what was the reason for approaching the Circle Officer in the year 1982-83 for creation of Jamabandi, whereas, as per petitioners' case Hukumnama was of the year 1953. It is further evident from Annexure-"1 series" to the writ petition that rent receipts were issued only up to the year 1983. This fact has been reiterated in Annexure-"C" to the counter affidavit of respondent Nos. 2 to 4 at running page 56. The report of Circle Officer, Chakai further makes it clear that petitioners were not in possession over the land in question or cultivating the land. Of course, the Addl. Collector, in its order dated 16.1.1998, had mentioned that he himself had visited the spot and found that petitioners were in peaceful possession over the land in question, which they got through Hukumnama.

9. After going through the impugned order, the Court is of the opinion that the learned Collector has passed a reasoned and sound order on 27.5.2004 in Case No. 6 of 1998-99. So far as Khiru Gope's case (supra) is concerned, on which heavy reliance was placed by learned counsel for petitioners, the Court is of the opinion that the said judgment does not help the petitioners. In the said case, there were three petitioners. In respect of petitioner No. 3, no return was filed by ex-intermediary and as such, the order of the Land Reforms Deputy Collector (for short "L.R.D.C"), which was under-challenged, was approved by the Division Bench of this Court and it was held that the learned L.R.D.C. was empowered to take action u/s 40(1) of the Bihar Land Reforms Act, 1950. In respect of petitioner Nos. 1 & 2, besides Hukumnama, ex-intermediary had filed return showing them as Raiyats. The land in dispute in the said case was also Gairmazarua Malik land. Similarly, on the basis of order passed by this Court on 12.8.1997 in C.W.J.C. No. 7995 of 1996 (sic--7559?) [Prasadi Yadav vs. State of Bihar] (Annexure-"4" to the writ petition) the petitioners may not get any help. In the said case also, at the time of vesting of Zamindari, father's name of petitioner was shown in respect of the lands in the return filed by the landlord and on that basis, Jamabandis were created. However, in the present case, the ex-landlord/intermediary had never filed any return showing name of father of the petitioners.

10. So far as the argument advanced by Sri Tuhin Shankar, learned counsel for petitioners that only under the provision of Section 4(h) of the Bihar Land

Reforms Act, 1950, the learned Collector was competent to cancel the Jamabandi appears to be insignificant. This question has already been answered by the Division Bench of this Court in Khiru Gope's case (supra). Since the Collector is empowered u/s 40 of the Land Reforms Act, which has been noticed in Khiru Gope's case (supra), the Court is in complete agreement with the submission of Mr. Nagendra Dubey, learned counsel for private respondents that the present case is squarely covered by Nagina Devi's case (supra). It would be appropriate to quote paragraph No. 5 of judgment of Nagina Devi's case (supra), which is as follows:--

5. The question of law formulated for this appeal was to the effect (by order dated 27.5.88) whether the courts below erred in holding that the settlement made in favour of the plaintiff had been annulled without taking recourse to the proceeding u/s 4(h) of the Bihar Land Reforms Act. Now the question is whether the suit lands were settled with the plaintiff by the State of Bihar after abolition of Zamindari as enjoined by the Land Reforms Act. In this connection, no return was produced in the courts below in order to show that the lands were settled to the alleged settlee who was in cultivating possession of the gair majrui malik lands at the time of vesting. No order of Revenue Authority was filed in order to show that the State Government had recognised the alleged settlee (plaintiff-appellants) as tenant being in possession of the gair majrui malik lands. So, simply because the Karamchari issued rent receipts in favour of the plaintiff-appellants that will not indicate that the plaintiff-appellants were recognised as tenants by the State Government under the provisions of the Land Reforms Act. The defendant-respondent had taken a plea that the plaintiffs had got their names entered in the demand register fraudulently with the help of the Halka Karamchari. Since no order passed in any proceeding under the Land Reforms Act was produced in the courts below by the plaintiff-appellants, the allegation of the defendant-respondents shall very much stick. In such a circumstance, the defendant-respondent was free to seek annulment of the fraudulent entry in favour of the plaintiff-appellants. So, the orders passed by L.R.D.C. and the Additional Collector are all legal and valid.

11. In the present case, there was no return to show that lands were settled in favour of father of petitioners by the ex-landlord, which was also Gairmajrui Malik land.

12. After going through the entire materials available on record and hearing learned counsel for the parties, the Court is of the considered view that the learned Collector has rightly cancelled the so-called Jamabandi, created in favour of the petitioners, by the impugned order. The order dated 27.5.2004 passed by the learned Collector, Jamui in Case No. 6 of 1998-99 requires no interference. The writ petition stands dismissed.