

(2013) 03 PAT CK 0015
In the Patna High Court
Case No : CWJC No. 17393 of 2012

Bhima Nand Jha and Another		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h)
Income Tax Act, 1922 — Section 22, 23

Citation : (2013) 2 PLJR 986

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Rajiv Ranjan Kr. Pandey and Arun Kumar, for the Appellant; Rajesh Kumar, Ashutosh Singh and Nagendra Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The present writ petition has been filed with a prayer to quash an order dated 15.6.2012, passed by the Deputy Collector Land Reforms, Madhubani, (hereinafter referred to as "D.C.L.R.") in Case No. 155 of 2011-12. It has been alleged that land of the petitioners measuring 2 bighas 6 khatas 4 1/4 dhurs appertaining to khata no. 258 (old), khasra no. 785 (old), has been acquired u/s 4(h) of Bihar Land Reforms Act, 1950.

2. On 7.3.2013 after hearing Sri Arun Kumar, who was assisted by Sri Rajiv Ranjan Kumar Pandey, learned counsel for the petitioners and Sri Ashutosh Singh, learned A.C. to Government Pleader No. 8, order was reserved.

3. It has been pleaded that in a proceeding i.e. Case No. 155 of 2011-12, neither the petitioners were impleaded as party nor there was any justification for reopening of the case by the same authority, whereas, fact remains that long back in the year 1956 by an order dated 20.8.1956 passed in Case No. 49 of 1955-56, the matter was set at rest by the order of the then Deputy Collector, Incharge, Land Reforms, Madhubani, which was approved by the then Additional Collector, Darbhanga. It has been contended that father of petitioner no. 1 had

got settlement long back in the year 1943 from the outgoing landlord in respect of land measuring 2 bighas, 6 khatas, 4 1/4 dhurs out of total area of 3 bighas 10 khatas 7 dhurs appertaining to old khata no. 258 and old khasra no. 785, which was a pond. However, rest of 1 bigha, 4 khatas, 2 3/4 dhurs was settled by the brother of the outgoing landlord to one Smt. Yasodhara Nayak in the year 1953, whose heirs were made opposite party in Case No. 155 of 2011-12, which was initiated on a petition filed by ex-mukhiya. It has also been pleaded that in the year 1956 a proceeding u/s 4(h) of Bihar Land Reforms Act was initiated in respect of an area of 2 bighas, 6 khatas, 4 1/4 dhurs out of total area of 3 bighas, 10 khatas and / dhurs of plot no. 785, khata no. 258, which was alleged to be recorded as G. Khas tank. In the said proceeding it was held that settlement made in 1350 Fs. (1943) was not within the purview of Section 4(h) of the Bihar Land Reforms Act, 1950 and case was dropped so far as area of 2 bigha 6 khatas, 4 1/4 dhurs are concerned. However, the learned D.C.L.R. in its impugned order dated 15.6.2012 has directed for keeping the said pond of old khata no, 258, khasra no. 785 having total area of 3 bighas 10 khatas and 6 dhurs in the records of "Shairat". According to learned counsel for the petitioners the order passed by the D.C.L.R., contained in Annexure-1, is liable to be set aside both on the grounds that order was passed behind back of the petitioners and also on the ground that same dispute was already settled long back in the year 1956. It has been argued that the D.C.L.R. was not authorized to review or recall an order which was passed by his predecessor long back in the year 1956.

4. In this case a counter affidavit has been filed on behalf of respondent/ State. Sri Ashutosh Singh, learned A.C. to Government Pleader No. 8 has raised preliminary objection on the ground of maintainability of the writ petition. It was submitted that since the order impugned was passed by the D.C.L.R. under the provisions of Bihar Land Dispute Resolution Act, 2009-10. the petitioners should have preferred an appeal. There is statutory provision of appeal, and as such, the writ petition is fit to be rejected. However, learned State Counsel was not in a position to satisfy the court as to whether the D.C.L.R. was justified in passing an order contrary to the order passed by the then D.C.L.R., whereby, the dispute in question was already set at rest long back in the year 1956. Even in the counter affidavit no specific contradiction has been raised by the State Counsel in respect of the order passed by the then D.C.L.R., which was approved by the then Additional Collector, Darbhanga, in the year 1956 itself. In paragraph no. 7 of the writ petition it has specifically been pleaded that a proceeding initiated u/s 4(h) of the Bihar Land Reforms Act was itself dropped on 20.8.1956 so far as land of petitioners is concerned. The petitioners have brought on record photocopy of order dated 20.8.1956 passed in Case No. 49 of 1955-56 which was approved by the then Additional Collector also. In reply to paragraph no. 7 of the writ petition simply a stand has been taken in paragraph no. 11 of the counter affidavit that statement made in paragraph no. 7 of the writ petition is distorted version of fact. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of order dated 20.8.1956 passed in

Case No. 49 of 1955-56 (Annexure-2 to the writ petition) it is evident that a proceeding u/s 4(h) of the Bihar Land Reforms Act in respect of plot no. 785 under khata no. 258 of Village-Bhagawatipur Nahar, Madhubani, was initiated for an area of 2 bighas, 6 khatas, 4 1/4 dhurs out of total area of 3 bighas 10 khatas 7 dhurs of the said plot. The said plot no. 785 measuring 3 bighas, 10 khatas, 7 dhurs was leased out by ex-landlord in favour of wife of Gita Nand Jha (father of petitioner no. 1) for a term of 10 years. Subsequently, through Hukumnama" the ex-landlord settled his share of 2 bighas, 6 khatas, 4 1/4 dhurs with Shri Gita Nand Jha on 1st Magh 1350 Fs. (1943) and remaining portion measuring 1 bighas 4 khatas 2 3/4 dhurs, however, was subsequently settled by another landlord to one Smt. Yasodhara Nayak in the year 1360 Fs. (1953). Those facts were noticed by the then Deputy Collect or, Incharge, Land Reforms, Madhubani, in his order dated 20.8.1956 in Case No. 49 of 1955-56, and thereafter, he concluded that since the settlement in respect of 2 bighas, 6 khatas, 4 1/4 dhurs was done in the year 1943, it was not within the purview of Section 4(h) of the Bihar Land Reforms Act, and as such, the case was dropped up to that extent. However, the then Deputy Collector, Incharge, Land Reforms, Madhubani, in respect of 1 bigha, 4 khatas, 2 3/4 dhurs which was settled in the year 1953 to Smt. Yasodhara Nayak had observed that a proceeding u/s 4(h) can be started separately. The said order appears to be approved by the then Additional Collector, Darbhanga. The court is of the opinion that once the dispute in respect of portion of the petitioners was already set at rest long back in the year 1956. the D.C.L.R. was not having any authority to adjudicate on the same issue, that too, without affording any opportunity to the petitioners. The order impugned is without jurisdiction as well as against the principle of natural justice. Accordingly, the objection raised by learned State counsel regarding alternative remedy has got no application in the fact and circumstances of this case, and as such, the order impugned which includes even 2 bighas, 6 khatas, 4 1/4 dhurs is hereby set aside and the portion of the petitioners" share shall be treated as excluded from the order impugned. Accordingly, up to the extent as indicated above the order dated 15.6.2012 passed in Case No. 155 of 2011-12 by the D.C.L.R., Madhubani, is hereby set aside and the writ petition stands allowed.