
(1957) 08 PAT CK 0010
In the Patna High Court
Case No : Misc. Judicial case No. 397 of 1956

Bhola Mian

APPELLANT

Vs

Sri. S.M. Islam and Others

RESPONDENT

Date of Decision : 14-08-1957

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 3, 3A, 4

Citation : AIR 1958 Patna 48 : (1957) 5 BLJR 689

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Beldeva Sahai, Ras Behari Singh, Uday Sinha and Braj Kishore Prasad, for the Appellant; Govt. Advocate and L.S. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the petitioner, Bhola Mian, has taken by a registered lease, dated the 10th November, 1951, the right of holding bazar on plots Nos. 689 and 690, which were orchard or bakasht land of the proprietors of the zamindari. The lease was for a period of seven years ending with December, 1957, but by virtue of a notification u/s 3-A of the Bihar Land Reforms Act the zamindari vested in the State Government in January, 1956.

The petitioner alleges that on the 2nd of April, 1956, the Sub-divisional Officer, opposite party No. 1, ordered that the settlement made with the petitioner by the ex-landlords free of rent could not be recognized and that the right of holding the hat on the disputed plots had vested in the State Government by virtue of the notification made u/s 3-A of the Bihar Land Reforms Act. By a subsequent order dated the 2nd of April, 1956, the Collector of Bhagalpur directed that steps should be taken for settlement of the hat and the orchard. Against these orders, the petitioner has sought a writ in the High Court under Article 226 of the Constitution for calling up and quashing these orders.

2. The argument addressed on behalf of the petitioner is that the settlement

made with the petitioner On the 10th November, 1951, fell within the purview of Section 4 (h) of the Bihar Land Reforms Act, and unless suitable proceeding was taken by the Collector for annulling the settlement the State Government is not entitled to take possession of the property or to hold bazar thereon. The opposite view point was presented by the learned Government Advocate on behalf of the respondents.

It was submitted that the settlement made with the petitioner was for a period of seven years for non-agricultural purpose, that is, for holding a hat, and there is no raiyati right or tenure right created in favour of the petitioner and, therefore, the transaction was an "incumbrance" within the meaning of Section 4 (a) of the Bihar Land Reforms Act, and as soon as a notification was issued by the State Government u/s 3-A the zamindari interest vested in the State Government and the settlement was automatically cancelled and the right of the petitioner to hold the hat in the dispute plots was abrogated.

It is necessary at this stage to reproduce the relevant portions of the registered lease dated the 10th November, 1951. The amount of consideration was Rs. 4000/- and the lease was executed for, a period of seven years. The specification of property is as follows :--

"Specification of property :-- Ten annas zamindari proprietary interest in the Kalambag land, constituting khas kamat, within Jagir Hulas Rai Subedar, bearing tauji No. 3460, situate in mauza Joalapur, as per specification given below, thana Pirpainty. Paragana and Sub-Registry office Colgong, district Bhagalpur, khewat No. 23, khata No. 352, khesra No. 692, measuring 1 acre -- 56 decimals, having 8 annas share in the said fruits, thana No. 144.

North South East West Gopalisahu, Darbari Sahu Ritan Raghu and others. Dhanuk. Sahu.

2. Ten annas zamindari proprietary interest in the Kalambag land, constituting khas kamat, within Jagir Mir Salamat, situate in mauza Joala pur, as per specification given below, thana Pir painty, paragana and Sub-registry office Coigcng, district Bhagalpur, bearing khata No. 366, khesra Nos. 690 and 689, khewat No. 14, thana No. 144, tauzi No. 4606, having eight annas share in the said fruits.

Khesra A.D. North. South. East West

No. 689 0.60. Darbari Sahu and others. Suraj Narain Shukul. Raghu Sahu. Lachhmi Prasad Potdar and others.

690. 2.66.

3.26. Gopali Sahu. Raghu Sahu. Gopali Sahu & others. Kali Prasad Sahu Potdar."

There is also a clause in this document that the petitioner would not pay any rent to the landlords for any portion of the said period of settlement. There is a further clause stating that the petitioner would construct sheds and walls etc.

and hold a hat on the disputed plots without payment of rent for the period of seven years.

3. The argument of the Government Advocate is based upon Section 4 (a) of Bihar Act 30 of 1950, which reads as follows :--

""4. Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under Sub-section (1) of Section 3, or Sub-section (1) or (2) of Section 3-A, the following consequences shall ensue, namely,

(a) Subject to the subsequent provisions of this Chapter, such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars and ferries and all other sa-irati interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mine and minerals, comprised in such estate or tenure (other than the interests of raiyats or under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act."

As regards the meaning of the word "incumbrance" the Government Advocate made reference to Section 2 (t) of the Act which enacts that all words and expressions used in the Act would have the same meaning as in the Bihar Tenancy Act in their application to the area to which the Bihar Tenancy Act applied. Turning to the Bihar Tenancy Act we find that Section 161 states what is the meaning of the term "incumbrance" with reference to a tenancy.

The section states that the term "incumbrance" used with reference to a tenancy, means any Hen, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein. The meaning of the term "incumbrance" has also been the subject-matter of consideration in a Full Bench decision of the Calcutta High Court in Kartick Chandra Mallik and Another Vs. Rani Harsha Mukhi Dasi, Executrix to estate of Raja Manindra Chandra Sinha, . At page 355 of the report the Full Bench has observed that in a general sense the word "incumbrance" would include any burden on property, any right or interest created by the owner in limitation of his own, and that was the sense in which the term was used, for example, in Section 161 of the Bengal Tenancy Act. The Pull Bench proceeds to say :--

"As another example, we may refer to Section 3 of the Putni Taluks Regulation where Clause (2), after declaring that patni talukdars may let out the lands of their taluks in any manner they may deem most conducive to their interest, goes on to provide that no such engagements shall operate to the prejudice of the

right of the zamindar to hold the superior tenure answerable for any arrear of his rent, in the estate in which he granted it and free of all incumbrance resulting from the act of his tenant.

In ether words, the act of sub-letting is regarded as creating an incumbrance. Yet another example may be found in Section 11 of the same Regulation. This is the general meaning of the term. But, as implied in *Turner Morrison and Co. Ltd. v. Manmohan Chowdhury* 58 Ind App 440 : AIR 1931 PC 3141 the term as used in Section 37 is exclusive of whatever is an under-tenure within the meaning of the section. The taluk in question in that case was such an under-teuure.

If, however, the patni interest in question in the present case is not an "under-tenure" within the meaning of the section (as the appellants in the first branch of their argument contend that it is not), there is no ground left for excluding it from the scope of the term encumbrance. 58 Ind App 440 : AIR 1931 314 (Privy Council) affords no authority for the proposition that even where a subordinate interest is not an under-tenure within the meaning of Section 37 but is merely in the nature of an under-tenure, it can not be classed as an encumbrance,"

4. In our opinion, the argument addressed by the learned Government Advocate is correct and it must be held that the settlement made with the petitioner by the outgoing landlord on the 29th November, 1951, is an incumbrance within the meaning of Section 4 (a) of the Bihar Land Re-forms Act.

5 On behalf of the petitioner Mr. Baldeva Sahay based his argument upon Section 4 (h) of Bihar Act 30 of 1950, which reads as follows :--

"4. (h) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, made at any time after the first day of January, 1946, and if he is satisfied that such transfer was made with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard and with the previous sanction of the State Government, annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable."

It is true that the expression "transfer including the settlement or lease of any land comprised in such estate or tenure" occurs in Section 4 (h), but the true interpretation of Section 4 (h) can only be reached in the contest of Section 4 (a). It is an accepted principle of construction that all parts of a section must be construed together and the interpretation given must be harmonious and consistent. Reading the language of Section 4 (h) in the context of Section 4 (a) of the Act we are convinced that Section 4 (h) applies only to such transfers which are not incumbrances within the meaning of Section 4 (a).

In other words, if a transfer by the ex-proprietor falls within the expression "incumbrance" within the meaning of Section 4 (a), then that transfer is abrogated as soon as the notification u/s 3 or Section 3-A issues and the estate vests in the State Government. It is obvious that Section 4(h) can not apply to such a transfer which is an incumbrance within the meaning of section 4(a). The true interpretation of Section 4(h), therefore, is that it applies to the case of a transfer by the ex-proprietors which is not an incumbrance within the meaning of Section 4(a).

For instance, Section 4(h) would apply to a case of settlement or lease of agricultural land with the ex-proprietor, which is tantamount to creation of a raiyati interest or creation of a tenure interest, such a transfer would not be an incumbrance within the meaning of Section 4 (a), and the provisions of Section 4(h) would apply to that case. We think that this is the correct interpretation to be placed on Section 4 (h). It follows therefore, that the settlement dated the 29th November, 1951, on which the petitioner relies in this case, is an incumbrance within the meaning of Section 4 (a), and the settlement was automatically cancelled upon the issue of the notification u/s 3-A in the year 1956.

6. On behalf of the petitioner reference was made to the decision of the Supreme Court in *Firm Chhotabhai Jethabai Patel and Co. and Others Vs. The State of Madhya Pradesh*, . That was a case arising from Madhya Pradesh and it was held by the Supreme Court in that case that contracts and agreements which purported to grant the petitioners the right to collect and carry away tendu leaves were in essence and effect licenses granted to the petitioners to gather and carry away the produce in the shape of tendu leaves, and it was also held that the rights of the petitioners as licensees were not incumbrances within the meaning of Section 3, Sub- Clause (1) of the Madhya Pradesh Act I of 1951.

We do not think that the ratio of this case has any application to the present case because the language of the material sections of the Madhya Pradesh Act is different from that of the Bihar Act. For example, Section 3 of the Madhya Pradesh Act provided that On and from a date to be specified by a notification by the State Government, all proprietary rights in an estate or mahal vesting in a proprietor shall pass from him to and vest in the State.

The consequences of the vesting are given in Section 4 of the Madhya Pradesh Act, and it is provided that the vesting will take place notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force. Clause (a) speaks of all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor. Clause (b) is to this effect:--

"all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not, determine;"

The right or privilege referred to is the right or privilege of the proprietor or any person having interest in the proprietary right through the proprietor. Clause (c) is quite clear on the subject; it runs thus :--

"all rents and cesses in respect of any holding in the property so vesting for any period after the date of vesting and which, but for the vesting, would be payable to the proprietor, shall vest in and be payable to the State Government. ..."

The words "after the date of vesting" are important. Sub-section (3) of Section 4 says :--

"Nothing contained in Sub-section (1) shall operate as a bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting by virtue of his proprietary rights and any such sum shall be recoverable by him by any process of law which but for this Act would be available to him."

If the outgoing proprietor is entitled to recover any sums as "quid pro quo" for what he has parted with under the transfer, it can only be on the basis that the transfer is a good and valid transaction unaffected by the Act. Section 6 is very material, and it is in these terms :--

"1. Except as provided in Sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March, 1950, shall, as from the date of vesting, be void.

2. Where on the application of the transferor or the transferee, the Deputy Commissioner is satisfied that any transfer of property referred to in Sub-section (1) was made by a proprietor in good faith and in the ordinary course of village management, he may declare that the transfer shall not be void after the date of vesting."

There is no definition of the expression "incumbrance" in the Madhya Pradesh Act and on this point the judgment of the Supreme Court merely states that the respondent State could not invoke in its aid Section 3, Sub-clause (1) of the Act, because the rights of the petitioners either as buyers or lessees or licensees are not incumbrances as ordinarily understood, and that the last part of Clause (a) of Section 4 (1) indicated that mortgage debts and charges on the proprietary right were meant as incumbrances. It is obvious that the scheme of the Bihar Land Reforms Act is totally different and the decision of the Supreme Court has no bearing on the decision of the present case.

7. For these reasons we hold that the petitioner has made out no case for grant of a writ against the respondents under Article 226 of the Constitution. We accordingly dismiss the application with costs. Hearing fee Rs. 50/-.

8. We also direct that the amount of Rs. 1000/- which has been deposited by the petitioner in the court of the Collector of Bhagalpur by virtue of the order of this Court dated the 11th May, 1956, may be withdrawn by the respondents. The

reason is that the petitioner was holding the bazar on the disputed land even after the date of vesting of the estate in the State Government and the respondents are, therefore, entitled to withdraw this amount of deposit.