

(1989) 03 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2329 of 1983

Bhola Ram Chaudhary and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 30
Constitution of India, 1950 — Article 14
Transfer of Property Act, 1882 — Section 10

Citation : AIR 1990 Patna 20 : (1989) PLJR 920

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Advocate : Harendra Prasad, for the Appellant; B.N. Yadav, Standing Counsel and C.B. Das, Jr. Counsel to Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India by thirteen petitioners. Out of them, petitioner No. 12 is said to be the Secretary of a Society known as Bhu Satwa Raksha Samiti, Sahebganj. It is not disputed that it is not a registered society. It is thus not known whether it is one man society or more than one man society. Be that as it may. The petitioners claim to be the residents of Sahebganj Municipality. The prayer of the petitioners is to restrain the respondents from disturbing or interfering with the possession of the petitioners whose names are entered as raiyats in Zamabandi Registers appertaining to Tauzi No. 599 within Sahebganj Municipality and to forbear from compelling such tenants to execute leases on payment of salami.

2. The petitioners have not stated the nature of their right which they claim and on the basis of which they claim that the Deputy Commissioner is not entitled to ejectment.

3. Learned counsel for the petitioners claimed that the residents of Sahebganj

Municipality are there on the basis of Pattas granted in 1899. Subsequently, pattas were granted in 1931 in which Clauses 4, 5, 6, 7, 8 and 14 are significant. They read as follows :--

"4. That this lease will be renewable at the option of the lessee on the expiry of the above period for a further period not exceeding (sic) years from the date of expiry of this lease.

5. That you, your heirs, or legal representatives and assignee will be ejected from the land after three months" notice in case you, your heirs, or legal" representatives and assignees are found to possess any land not covered by this lease or without renewing any lease previously granted.

6. That you, your heirs, legal representatives and assignees shall not by any means or in any way whatever transfer your holding or any part thereof without previously obtaining written permission of the Deputy Commissioner to do so and without paying such transfer fee that may from time to time be fixed by the Deputy Commissioner or Government.

7. That you, your heirs or legal representatives and assignees shall in no way diminish or in any way injure your holding, but may erect pucca houses on the land for dwelling purposes or golas, and also make garden, sink wells and exercise other acts of ownership not in contravention of the terms of this lease and the binding regulations that are or may hereafter be passed by me or my legal representatives and assignees.

8. That you, your heirs, legal representatives and assignees shall enjoy the fruit of all the trees on your holding, but shall not cut down, clip or in any way injure such trees without the permission of the Deputy Commissioner.

14. That in the event of the infringement of any of the above conditions, I, my legal representatives and assignees shall be at liberty to cancel the lease and evict you, your heirs legal representatives and" assignees ,at once."

The lease in similar terms was renewed in 1931. The lease was valid for 30 years.

4. Learned counsel for the petitioners urged the following three points in support of the petitioners:--

i. Consequent upon the enactment of Bihar Land Reforms Act and issuance of notification in terms of Section 3 thereof, the Khas Mahal, Zamindari, vested in State of Bihar. The Khas Mahal having vested, the stipulations in the pattas/ leases evaporated and, therefore, the Deputy Commissioner or the Revenue authority had no jurisdiction to call upon the patta holders or their successor to apply for fresh leases more so on paying salami.

ii. The conditions stipulated in paragraph 6 that the lessees were not entitled to transfer the holding or any part thereof without previous permission of the Deputy Commissioner was ultra vires Section 10 of the Transfer of Property Act.

iii. The lessees from the Khas Mahal cannot be treated on a footing different from other raiyats in the State of Bihar in regard to right of a lessee. Clause 6 of the lease was, therefore, discriminatory and constituted infringement of Article 14 of the Constitution.

5. The history of the town of Sahebganj has been set out in the counter-affidavit filed on behalf of the Deputy Commissioner, Sahebganj, respondent No. 2. In the beginning Sahebganj was known as Damin Bazar, a protected area in regard to administration, which fell within the special responsibility of the Government of this State. Sometimes in 1886, a Khas Mahal consisting of eight villages was created. The areas within those eight villages were excluded from general Revenue Law of the district. Within those eight villages, which came to be known as Sahebganj Khas Mahal, individual leases were granted as in other districts. Those eight "villages" were Sahebganj Kakrota, Chhota Batona, Sakrogar, Pokhariya, Rangamanti, Bisharithan, Chanan Jibra Bari and Kelabari. The leases granted in 1886 to individuals were to expire in 1930. The leases were renewed by grant of new pattas by the Deputy Commissioner. It is significant to note that the whole of the Sahebganj Municipality does not constitute Khas Mahal land. Part of it was outside the Khas Mahal in the sense that they were part of the Grant Estate. The leases were granted in 1931, on specific terms. Significant ones have been quoted above.

6. In 1983, a notice was issued to Basudeo Ravidas petitioner No. 13 in which it was stated that he had purchased land without the previous permission of the Deputy Commissioner, Santhal Parganas (Sahebganj was previously part of Santhal Parganas) and, therefore, he was in unauthorised occupation of land, and had been treated as trespasser by the revenue authority. He was, however, given the opportunity to obtain a lease by 22-2-1983, on his paying salami of rupees three thousand two hundred. This land was in village Sakrogar. It was stated at the Bar that such notices were issued to several other residents of the town. It has nowhere been asserted in this petition that Basudeo Ravidas has purchased the land of which he was in occupation from any person who had been granted patta. I shall, however, assume that he had purchased from such a person.

7. Question now arises what are the rights of the residents or lease holders residing within Sahebganj Khas Mahal. It goes without saying that every successor of a lease hold would be subject to the same restraints as his predecessor in interest in as much as the right of alienation would be restricted and subject to permission from Deputy Commissioner. This is irksome to the lease holders or their successor. I have failed to appreciate the stand of the petitioners. If the lease was granted subject to terms, I have failed to appreciate how they can contend that those terms do not bind them.

8. In order to get rid of restraint upon alienability, the submission is that those binding stipulations laid down by the Khas Mahal vanished on the enactment of Bihar Land Reforms Act. This submission is based on the assumption that Khas

Mahal Estates were Zamindari Estates i.e. intermediary in terms of the Bihar Land Reforms Act.

9. Let us, therefore, examine whether Khas Mahal was/is intermediary. What is, therefore, Khas Mahal? The word "Khas Mahal" is nothing but what is known in English as "Government Estate". That is defined in the Khas Mahal Manual as follows:--

"Meaning of "Government estates":-- The term "Government estates" is used to mean estates under the direct management of Government whether these are the property of Government or "are the estates of private individuals brought under direct management of Government. It may also mean any land, which is the property of Government and as such would include estates owned by Government which have been let in farm and leased for periods and also the waste lands but would not include lands belonging to other departments of Government, e.g., roadside lands, so long as they are not relinquished by the department concerned to the Collector for management. This Manual unless it so appears from the context deals with the principles, policy and procedure for Khas management of estates under the direct management of Government."

From the above there can be no difficulty in appreciating that Khas Mahal is nothing but Government itself. It is the Estate of the Government. Since it is Estate of the Government, it cannot be a Zamindari. Not being a Zamindari a Khas Mahal cannot vest in the State of Bihar. It has always been in the State of Bihar itself. A foreign body may vest or coalesce into another body but a body cannot coalesce in itself. That would be a contradiction in terms. It is, therefore, apparent that there can be no question of Khas Mahal vesting in the State of Bihar. The Bihar Land Reforms Act did not affect Khas Mahal in any manner. To say that a Khas Mahal vested in the State of Bihar would be an incongruity. Various Zamindaris vested in State of Bihar but not Khas Mahal. The stipulations in the leases granted by the Khas Mahal would, therefore, be operative at all times. In that view of the matter, there is no substance in this submission urged on behalf of the petitioner that the stipulations in regard to inalienability of lease holders (holdings) became non est on enactment of Act. The conditions would remain operative at all times. The first submission must, therefore, be rejected accordingly.

10. The second submission is that the stipulations in the leases were ultra vires or in contravention to Section 10 of the Transfer of Property Act. Section 10 of the Transfer of Property Act lays down that where properties are transferred subject to a condition of limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interests in the property, the condition of limitation is void. That is not the position in these leases. Clause 6 does not place a complete ban on transfer but it only lays down that the interest of all lease holders may be transferred but with the written permission of the Deputy Commissioner. In that view of the matter, I am not inclined to find any substance in the second submission as well.

11. The last submission that the limitation upon the alienability was discriminatory and violative of Article 14 of the Constitution, inasmuch as there is no such restriction of tenants/raiyats of other lands in the State of Bihar, in my view, is also without substance. Previously land in Bihar fell in two categories. The first category was of Zamindari lands which consisted of raiyats, tenure holders, etc. The other was Government estate. Khas Mahal was a Government estate in Sahebganj. Not only in Sahebganj but there were numerous Government estates all over the State. They were treated on a different footing as a class by themselves. When Government granted leases that was special favour from the Government. Equality before the law does not deny reasonable classification. Here there were two different clear classes. The first was Zamindari and the second was Government estate. The condition in regard to alienation was similar to general lease holders in general in all Government estates as at Sahebganj Khas Mahal. In that view of the matter, I fail to appreciate any distinction in regard to lease holders within Sahebganj Khas Mahal,

12. Lastly it was submitted that the petitioners or other residents within Sahebganj Khas Mahal have been in possession without any lease since 1931, at least and, therefore, they have been adversely in possession. Having prescribed an adverse title they cannot be compelled to execute lease. This submission also is fallacious. It is fallacious for the reason the petitioners have asserted title hostile to State of Bihar. Adverse possession is a well known concept. There must be assertion of a hostile title. Learned counsel for the petitioners was unable to state since when the hostile title was asserted. His inability was justified. That is a matter to be considered from case to case and from claim to claim. If there is no assertion of hostile title there can be no question of adverse possession.

13. The submission is fallacious for yet another reason. Even if the petitioners or residents like them have prescribed against the State of Bihar, they cannot become sovereign. They will remain under the State of Bihar, liable to pay rent. If the State of Bihar is prepared to grant them lease, they cannot claim interest of remaining upon land without payment of rent. The Deputy Commissioner is not denying them the right to remain on the land but he only wants the lease holders or their successors to execute lease deed. The petitioners cannot claim that they are not liable to execute any lease. If they do not execute any lease, they will be liable to be thrown out in a properly constituted proceeding. Then the matter remains in regard to payment of salami. That is an accepted mode of settlement. That has found recognition in Government Circular in regard to lease for restoration of property in urban and semi-urban areas. In this connection I will refer to Board's letter No. 831/49-29 dated 9th March, 1951, the relevant part of which is quoted below:--

"Lease for residential purposes in urban and semi-urban areas

(a) A certain portion which may be one-third of the available area settlement in an urban area should be set apart for settlement with people of high income

group. These settlements should be made by tender and a reserve salami should be fixed. There is no reason why Government should lose any revenue which can be derived from the salami of these lands and settlement should ordinarily be made on the basis of the highest tender.

(b) The rest of the area should be reserved for persons of lower income groups and the reasonable salami for these lands should be fixed after taking into consideration the prevailing price as land in the locality. The selection out of the applications should be made by a small committee with the Collector as the Chairman and the settlement should be subject to the approval of Government as at present.

(c) The usual rules regarding sanction of building plans should be enforced.

14. I have not the least hesitation in holding that a lessor is always entitled to charge salami from a lessee as consideration for grant of lease.

15. For all the reasons stated above, I find no merit in this application. It is dismissed accordingly. There shall, however, be no order as to costs.