
(2002) 10 PAT CK 0091
In the Patna High Court
Case No : C.W.J.C. No. 4283 of 1997

Bhola Sah and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Citation : (2002) 10 PAT CK 0091

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition arises from a mutation proceeding which seems to have taken a very curious and chequered course. In fact under the guise of a simple proceeding for mutation, the parties are fighting for control and possession over certain land. In course of the proceeding one side seems to be committing a series of follies of which the other side tries to take advantage.

2. Petitioner No. 1, Bhola Sah is the father of Petitioners 2 to 5 and he is the own brother of Jagdish Sah who was originally impleaded as Respondent No. 4. Jagdish Sah died during the pendency of this writ petition and he was substituted by his heirs and legal representatives. Petitioner Bhola Sah and the deceased Respondent No. 4, Jagdish Sah had a third brother, namely, Bauku Sah who died issueless. According to the Petitioners, he had executed a sale deed of the lands held by him in favour of Petitioners 2 to 5 and that sale deed formed the basis of the Petitioners' claim over the disputed land. They made an application for mutation in respect of the lands of Bauku Sah on the basis of the sale deed said to have been executed by him in their favour. The petition was registered as Mutation Case No. 111B of 1989-90 before the Anchal Adhikari. Banmankhi and by order, dated 12.9.1989 the Anchal Adhikari allowed their request for entering their names in the revenue records in respect of the disputed land.

3. According to the contesting Respondents, the order was obtained by fraudulent and collusive means. It is submitted that the suffix "B" in the number of the proceeding was itself indicative that there was something out of place. It is stated on behalf of the Respondents that the petition for mutation was originally

filed in respect of certain other lands but later on the disputed lands were also introduced in the proceeding and in the final order the disputed lands were also mentioned as a result of fraud and interpolation.

4. Without commenting upon the allegations made by the Respondents with regard to collusive and fraudulent nature of the order, dated 12.9.1989, this much is undeniable that in Mutation Case No. 111B of 1989-90 only a general notice was issued. Jagdish Sah or the other heirs and legal representatives of Bauku Sah were not made party to the proceeding and no notice was issued to them.

5. The mutation order, dated 12.9.1989 passed in favour the Petitioners was not taken in appeal by the contesting Respondents. Instead, they filed two title suits, being Title Suit Nos. 404 and 406 of 1990 in the Court of the Munsif, Purnea. One of the suits was for declaring the sale deed said to have been executed by Bauku Sah in favour of Petitioners 2 to 5 as fraudulent and inoperative and the other suit was for partition of the lands left behind by Bauku Sah.

6. The two suits were allowed to be dismissed for default on 4.8.1992. According to the Respondents, the suits were compromised between Jagdish Sah and Bhola Sah but once again Bhola Sah deceitfully did not file the compromise petition in the Court as a result, of which the suits got dismissed for default.

7. By that as it may, Respondents then filed Misc. Case Nos. 70 and 71 of 1992 for restoration of the two suits. The Misc. cases were dismissed by order, dated 28.5.1993 passed by the Munsif, Purnea. They then filed Misc. Appeals No. 14 and 15 of 1993 for setting the orders passed by the Munsif and for restoration of the suits.

8. At this stage, against the order of mutation, dated 12.9.1989 passed by the Anphal Adhikari, they also filed Appeal No. 15 of 1993-94 before the Dy. Collector Land Reforms, Sadar, Purnea.

9. After some time, however, the Respondents took it into their head to bring the matter to the High Court and to that end they suddenly withdrew both the Misc. appeals filed for the restoration of the suits and the mutation appeal pending before the Dy. Collector Land Reforms, Sadar, Purnea on the same day, i.e. 23.11.1993.

10. Having thus practically cut off his hands Jagdish Sah filed C.W.J.C. No. 12826 of 1993 challenging the order of mutation passed in favour of the Petitioners. That writ petition was permitted to be withdrawn with certain observations by order, dated 17.1.1995. It is a brief order which is reproduced below in its entirety:

In view of the law laid down by this Court in Dattatray Nath Pandey Vs. The State of Bihar and Others and also in view of Clause 10 of the circular incorporated in the Mutation Manual, learned Counsel seeks permission to withdraw this application to enable the Petitioners to file a Second Revision before the

Commissioner of the Division. The permission is accorded.

This application is permitted to be withdrawn as prayed for with the liberty to the Petitioners as aforesaid. If such an application is filed the learned Commissioner will hear the same after condoning the delay in filing the same in view of the fact that the Petitioners were prosecuting their remedy before this Court in the instant writ petition and will dispose of the same on its own merit in accordance with after giving an opportunity to the parties of being heard.

11. On the basis of the aforesaid order, Jagdish Sah filed the "second revision" before the Commissioner, Koshi Division who by his order, dated 29.1.1996 in Mutation Revision No. 35 of 1994-95 remitted the matter to the Subdivisional Officer. The matter remitted to the Subdivisional Officer was finally heard by the Dy. Collector Land Reforms who further relegated it before the Anchal Adhikari with a direction to reinvestigate the matter and to pass a fresh order after hearing both the sides.

12. At this stage, the Petitioners brought this matter to this Court once again in this writ petition raising a number of objections with regard to the course taken by the proceeding following the orders passed by this Court, the Commissioner and the Dy. Collector Land Reforms.

13. Mr. Kumar Uday Singh, counsel appearing for the Petitioners started with the previous order of the High Court passed in C.W.J.C. No. 12826 of 1993 filed by Jagdish Sah. Learned Counsel submitted that the order was passed on the very first occasion the case came up for admission, even without issuing any notice to Bhola Sah and his sons who were the Respondents in that writ petition. He further submitted that at that stage it was not pointed out to this Court that the provision of "second revision" was under the earlier Manual of Mutation but the instant proceeding was held under the provisions of the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 and in that Act there was no provision for a second revision". Learned Counsel further submitted that there was no question of any "second revision" or even a "first revision" because Jagdish Sah had withdrawn his appeal filed before the Dy. Collector Land Reforms against the mutation order passed by the Anchal Adhikari. Mr. Singh submitted that had these facts brought to the notice of the Court, it would not have permitted withdrawal of the writ petition, leaving it open to Jagdish Sah to avail of the remedy of the so called second revision.

14. Coming then to the order passed by the Commissioner, Mr. Singh submitted that that order too was passed ex-parte and without giving any notice to Bhola Sah and his sons, the present Petitioners. He further submitted that though the Dy. Collector Land Reforms had passed his order after hearing both the sides, the case had gone to him on the basis of the orders passed by the High Court and the commissioner which were clearly untenable and hence, the order of the Dy. Collector Land Reforms was equally vitiated.

15. The submissions made by Mr. Singh, specially with regard to the previous

order passed by this Court and the order of the Commissioner cannot be said to be without substance. But in the facts and circumstances of the case, I am unable to accept the submission for the simple reason that in case the order of the Dy. Collector Land Reforms is set aside and the Anchal Adhikari is restrained from holding a proper investigation of the matter and passing a fresh order on the issue of mutation, it would lead to the revival and restoration of the earlier order of mutation, dated 12.9.1989 which appears to this Court to be quite invalid and illegal.

16. As noted above, it is alleged on behalf of the Respondents that the order of mutation in favour of the Petitioners on 12.9.1989 was obtained by collusion and fraud. The allegation cannot be brushed aside as entirely fanciful but even if the allegations of fraud and collusion are not to be taken into account, the order cannot be sustained for the simple reason that it was passed in a proceeding in which Jagdish Sah was not a party and no notice was issued to him or to any other heirs or legal representatives of the deceased Bauku Sah.

17. In such situation if the proceeding is cut short on the technical pleas raised on behalf of the Petitioner, then not only that order will become operative but the other side would be rendered completely remediless because in its folly it also withdrew the suits earlier filed with regard to the disputed land. To my mind, therefore, equity, fair play and justice demands that atleast the issue of mutation is decided fairly after a proper investigation of all the relevant facts and after giving both the sides an opportunity of hearing in the matter.

18. In these facts and circumstances, I am satisfied that the order passed by the Dy. Collector Land Reforms (Annexure 12) does not warrant any interference by this Court. This writ petition is dismissed but with no order as to costs.