

(1972) 05 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 345 of 1971

Bishwanath Mishra and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-1972

Acts Referred:

Bihar Private Forest Act, 1947 — Section 27

Citation : AIR 1972 Patna 508

Hon'ble Judges : U.N. Sinha, C.J; Akbar Hussain, J

Bench : Division Bench

Advocate : S.K. Mazumdar, for the Appellant; S.K. Jha, Govt. Pleader No. 1, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners have filed this application under Articles 226 and 227 of the Constitution of India, praying that the respondents be prevented from interfering with the possession of certain lands of the petitioners mentioned in the writ application. They have also prayed for a writ of certiorari for quashing an order passed on the 4th March, 1971 (Annexure 4) by the Commissioner of Chotanagpore Division. A counter-affidavit has been filed on behalf of the State of Bihar, supporting the stand taken by the respondents based on the order passed by the Commissioner mentioned above. As we propose to remand the case to the Commissioner under the powers conferred under Article 227 of the Constitution of India, we do not propose to give all the details which have been mentioned in the writ application and the counter-affidavit.

2. The facts sufficient for the present order of the Court are as follows. Petitioner No. 1 claimed 2.45 acres of land out of Plot No. 221 khata No. 43 of village Likuiya as his raiyati land by virtue of a Hukurnnama dated the 20th September, 1939, which had purported to settle this land to him by the Manager, Ramgarh Court of Wards Estate. Petitioner No. 2 claimed 2.92 acres of land in the same plot by virtue of a purchase made by him dated the 24th February, 1969, from

one Srimati Bihans Kueri, who was said to have been the raiyat of this land. According to the petitioners, they were in cultivating possession of the land as raiyats and were paying rent to the ex-landlord and they had paid rent to the State Government after vesting of the intermediary's interest under the Bihar Land Reforms Act.

According to petitioner No. 1, there was a mutation case No. 29/VII/1962-63, in which this petitioner had been found to be in cultivating possession of the disputed land and mutation of his name had been allowed by an order passed on the 10th November, 1962. According to petitioner No. 2, there was a case No. 1 of 1966-67, in which an Amin had been deputed to locate the land claimed by him in Plot No. 221 and, ultimately, this petitioner's possession was accepted. In such circumstances, the petitioners filed applications before the Forest Settlement Officer, Hazaribagh, for exclusion of the disputed land in Plot No. 221, and by order dated the 11th March, 1966 (Annexure 2) the petitioners' claims were rejected by the officer. An appeal was carried to the Court of Appeal, and by order passed on the 13th November, 1967 (Annexure 3) the Additional Collector, Hazaribagh, allowed the petitioners' appeal and set aside the Forest Settlement Officer's order. The lands claimed by the petitioners were ordered to be released.

Then, a revisional application was filed by the State of Bihar through the Divisional Forest Officer, East Division, before the Commissioner of the Division and by the impugned order (Annexure 4) the revisional application had succeeded. The learned Commissioner of the Division has referred to most of the documents on record including the Hukumnama, the sale deed and the rent receipts, but came to the conclusion that the supporting evidence of physical possession of the present petitioners was absent. According to the learned Counsel for the petitioners, the revisional court has not taken into consideration the fact that in Mutation Case No. 29/VII/1962-63 the possession of petitioner No. 1 had been accepted, with the result that this petitioner had been mutated with respect to 2.45 acres of land in 1962, claimed by him. Learned Counsel has drawn our attention to a statement occurring in the appellate order (Annexure 3), which stated that the Anchal Adhikari had also found that there was no objection to the mutation of the petitioners' name in 1962. The learned Counsel has also urged that the revisional order had made no reference to the case of petitioner No. 2 of 1966-67, mentioned earlier to which reference was made by the Additional Collector in his appellate order.

It is, therefore, contended that the revisional order is vitiated by errors apparent on the face of record and that the learned Commissioner of the Division should be asked to reconsider the case on all the materials on record. The contention of the learned Counsel for the respondents is more or less to the effect, that, the learned Commissioner had really considered all materials on record. On hearing the learned Counsel we are satisfied that this is a fit case where the learned Commissioner of the Division should be asked to reconsider the case on all the materials on record. The importance of the mutation case of petitioner No. 1 and

Case No. 1 of 1966-67 of petitioner No. 2 cannot altogether be ignored and, therefore, over and above other materials on record, these two matters must now be dealt with by the learned Commissioner in their proper perspective. We propose to note another argument urged by the learned Counsel for the petitioners, without deciding it at present. In paragraph 14 of the present writ application, in ground No. 1, the petitioners have taken a ground that the learned Commissioner had no jurisdiction to entertain the revisional application. In paragraph 19 of the writ application it has been mentioned that the petitioners had filed an application before the Commissioner requesting him not to hear the revision until the disposal of Civil Writ Jurisdiction Case No. 307 of 1969 by the High Court. We are informed by the learned Counsel for the State that Civil Writ Jurisdiction Case No. 307 of 1969 has been disposed of by this Court on 3rd May, 1971.

Therefore, if the petitioners raise the question of jurisdiction of the learned Commissioner again, the matter will have to be dealt with in accordance with law. Reference may be made to Section 28 (3) of the Bihar Private Forests Act, 1947, which states that the order passed on appeal shall, subject only to revision by the authority appointed by the State Government in that behalf, be final. The question as to whether the Commissioner of the Division had been really appointed as the revisional authority by the State Government will have to be taken into consideration also. Therefore, we set aside the order incorporated in Annexure 4 and remand the case to the learned Commissioner of the Chotanagpore Division for hearing the revisional application according to the directions contained in this judgment and in accordance with law.

3. The writ application is, therefore, allowed, but, in the circumstances, there will be no order for costs.