
(2008) 01 PAT CK 0136
In the Patna High Court
Case No : CWJC No. 11683 of 2004

Chandreshwar Singh @ Chandrash

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 18, 2(i), 21
Constitution of India, 1950 — Article 226

Citation : (2008) 4 PLJR 138

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. In this writ application, the writ petitioner has assailed the order dated 15.7.1998 passed by the Anchal Adhikari, Kahalgaon whereby and whereunder Parcha on behalf of Bihar Privileged Persons Homestead Tenancy Act (hereinafter referred to as "the Act") was granted in favour of respondents no. 4 and 5. The petitioner has also assailed the order dated 16.7.2004 passed by the Collector, Bhagalpur affirming the said order of Anchal Adhikari, Kahalgaon dated 15.7.1998 by dismissing the application filed by the petitioner u/s 21 of the Act.

2. Counsel for petitioner while assailing the correctness of the aforementioned impugned orders has submitted that Basgit Parcha issued in favour of respondents 4 and 5 was based on an order of Anchal Adhikari, Kahalgaon dated 15.7.1998 which was passed without notice and/or opportunity of hearing to him. In this context he has also referred to complete violation of provision of Rule 5 of the Bihar Privileged Persons Homestead Tenancy Rules, 1948 (hereinafter referred to as the "Rules") inasmuch as. the local enquiry was neither made by Anchal Adhikari, Kahalgaon himself nor by any responsible officer not below the rank of Circle Inspector or Welfare Inspector in terms of Rule 5(i) of the Rules and that even the mandatory provision of Rule 5(2)

requiring issuance of notice in Form-F to all the interested parties intimating the date on which enquiry shall be made and directed the parties to produce all evidence in their possession in support of or against application filed by respondent no. 4 was not followed. It was further submitted that as a matter of fact no enquiry or a report in terms of Rule 5(3) of the Rules had been submitted to the Anchal Adhikari who in fact without complying the provision of Rule 5(4) of the Rules had passed an order for issuance of Basgit Parcha in favour of both respondents 4 and 5 whereas the application for issuance of such Basgit Parcha was filed only by respondent no. 4.

3. Assailing further order of the Collector of the district dated 16.7.2004 Learned Counsel for the petitioner has submitted that the Collector of the district also did not choose to even refer to the plea raised by the petitioner in his application u/s 21 of the Act and in fact had passed a perfunctory order by affirming the order of Anchal Adhikari dated 15.7.1998, directing issuance of purcha in favour of respondents 4 and 5, even without adjudicating most vital issue like the complete breach of violation of Rules 5(1), (2), (3) and (4) of the Rules as also without taking into consideration that respondents 4 and 5 were in fact not fit to be declared as privileged persons defined u/s 2(i) of the Act.

4. In this case, a counter affidavit has been filed on behalf of respondent Anchal Adhikari wherein he has justified the order dated 15.7.1998 with regard to the issuance of Basgit Purcha in favour of respondents 4 and 5. In this context, it has also been mentioned in the counter affidavit by the Anchal Adhikari that such order of issuance of purcha in favour of respondents 4 and 5 dated 15.7.1998 was passed in course of holding revenue camp court and only when no objection was raised or received from any person with regard to the land in question, said order dated 15.7.1998 was passed in the camp court. Respondent-Anchal Adhikari in fact, has also relied on the report of Halka Karamchari dated 15.7.1998, Annexure-C to the counter affidavit to contend before this Court that there was sufficient material in the said report to satisfy Anchal Adhikari that respondents 4 and 5 were landless persons and were eligible for issuance of Purcha of the land in question originally belonged to the writ petitioner. The said Anchal Adhikari, Kahalgaon, in his counter affidavit has also made a vallient afford to justify the order of the Collector of Bhagalpur district dated 16.7.04.

5. It has to be however noted here that in the counter affidavit there is no clear answer to the allegation of the petitioner that, the enquiry in terms of Rule 5 of the Rules was not conducted in the manner prescribed and by competent authority namely, officer not below the rank of Circle Inspector.

6. A separate counter affidavit has also been filed on behalf of respondents 4 and 5 in which it has been stated that father of respondent no. 4 was a Chowkidar and the Government of Bihar had settled with him 23 decimal of land and it was he who had constructed a house on a portion of the aforesaid land measuring 11 decimal and was in its peaceful possession since 23.1.1946. The respondents 4 and 5 in order to support their claim have annexed rent receipt dated 23.1.1946,

Annexure-A to the counter affidavit. In the said counter affidavit respondents 4 and 5 have also sought to explain that the land which was settled with the father of the respondent no. 4 somehow was grabbed by the petitioner and Khata was opened wrongly in the name of the petitioner in course of survey operation in the year 1972. It has been stated that respondents 4 and 5 that after they came to know of such wrong entry made by Survey Authorities, they had initially made a proposal to the petitioner to sell the land in question and payment of Rs. 4,000/- was also made by them to the petitioner but the petitioner refused to convey the land through the registered sale deed and as such, respondent no. 4 had filed an application before the Anchal Adhikari, Kahalgaon for issuance of Basgit Purcha for 11 decimal of land on which it has been claimed that respondents 4 and 5 are residing for the last more than 30 years after constructing the house thereof. Respondents 4 and 5 have stated that after the application for Basgit Purcha was filed by respondent no. 4 the impugned order was passed by Anchal Adhikari in Basgit Purcha Case No. 2/98-99 on the basis of spot verification made by Halka Karamchari and Circle Inspector who had invited objection before submitting the report.

7. Counsel for the respondents 4 and 5 in the light of stand taken by them in their counter affidavit and also by deriving support from the counter affidavit of Anchal Adhikari has submitted that there is no flaw or error in the two impugned orders and as such this Court in exercise of power under Article 226 of the Constitution should not interfere specially when there is nothing on record to support the contention of the petitioner that respondents 4 and 5 were not privileged persons as defined in the Act. Explaining further, Learned Counsel for respondents 4 and 5 has submitted that even though the Enquiry Officer had not issued notice in Form-F-2 as prescribed in Rule 5(2) of the Rules, but then the said requirement was duly fulfilled by spot verification made jointly by Halka Karamchari and Circle Inspector and further even the requirement of hearing by Anchal Adhikari Collector under the Act was substantially met in course of hearing conducted by him in the revenue camp court. It was in fact forcefully submitted on behalf of Respondent No. 5 that if the petitioner did not choose to appear in the revenue camp court and/or file any objection to grant of Purcha in favour of respondents 4 and 5, he cannot succeed by alleging violation of Rule 5(4) of the Rules.

8. Counsel for the State also came out with almost a similar defence by supporting the stand taken by respondents 4 and 5 and his only additional submission was that the order passed by the Collector of the district in exercise of power u/s 21 of the Act cannot be faulted for want of consideration and reason inasmuch as he had found no irregularity in the order of Anchal Adhikari directing issuance of Purcha in favour of respondents 4 and 5 and that the statute, provision made u/s 21 of the Act did not require the Collector of the district to pass a reasoned order.

9. Having given my anxious consideration to the aforementioned submission as

also on perusal of the record of this case, I am of the view that the two impugned orders dated 15.7.1998 and 16.7.2004 passed by the Anchal Adhikari and the Collector of the district Bhagalpur cannot be sustained as in my considered opinion the mandatory provision of the Act and the Rules while granting Purga in favour of respondents 4 and 5 has not at all been followed as would appear from the discussions made hereinafter.

10. First and foremost requirement for grant of Purga in terms of Rule emanates from Rule 4 which lays down that on receipt of an application for grant of Purga the Collector under the Act shall start proceeding and deal with them in the manner provided for the land revenue case. In the present case, respondent has not produced the entire order sheet of Basgit Purga Case No. 2/98-99 which alone could have satisfied this Court that the requirement of Rule 4 and Rule 5 were followed. From Annexure-1 to the writ application, the application filed by respondent no. 4 for grant of Basgit Purga it appears that respondent no. 4 had filed an application that he was a landless poor person who was residing on a piece of land measuring 11 decimal in Khata No. 209, Khasra No. 406, Area 11 decimal in Mouza Bhoslar, Thana No. 379. In this application the name of the landholder, the petitioner, was not mentioned. It is thus absolutely clear to this Court that on the said application of Respondent (Annexure-1) no proceeding under the Act could have been drawn for grant of Purga against any person much less against the petitioner.

11. That apart, petitioner himself has annexed the enquiry report which goes to show that it was Halka Karamchari who alone had reported that the land belonged to the petitioner and that respondents 4 and 5 were residing on the said land with a house thereon for more than last 15 years. The Halka Karamchari in fact, had mentioned that respondents 4 and 5 were landless persons and as such, Purga could be issued in their favour by fixing rent of Rs. 20/- per acre and same could also be recovered from the respondents 4 and 5 from the date on their being in possession of the said land. The certified copy of the enquiry report contained in Annexure-2 therefore, itself goes to show that such a report of local inspection at best could be one of Halka Karamchari alone and not of the Circle Inspector. This Court has therefore, no hesitation in holding that Rule 5(1) of the Rules was not at all followed by the Anchal Adhikari, Collector under the Act. Rule 5(1) lays down the Collector under the Act shall either himself make local enquiry or such enquiry made by responsible Officer not below the rank of Circle Inspector or Welfare Inspector and satisfy himself as to the correctness or otherwise contents of the application filed for issuance of Purga. This aspect of the matter has been also decided by this Court in the case of Dhaneshwar Manjhi and Ors. vs. State of Bihar and Ors. reported in 1998(1) PLJR 54 wherein it has been held that such enquiry in terms of Rule 5(1) has to be conducted either by the Collector under the Act himself or by an Officer not below the rank of Circle Inspector. In fact, in Dhaneshwar Manjhi case, it has also been held that enquiry conducted by Halka Karamchari should not have been held to be conducted by Circle Inspector merely because the Circle Inspector had

also put his signature below the report of Halka Karamchari.

12. In the present case, there is yet another striking feature which goes to root of the matter inasmuch as from Annexure-2, it appears that after the Halka Karamchari had submitted a report, the Circle Inspector on 15.7.1998 had made an endorsement recommending Anchal Adhikari to issue a notice and in case no objection was received after service of notice, respondents 4 and 5 could be issued Basgit Parcha. Such recommendation of Circle Inspector needs to be quoted hereinbelow:-

13. From the aforementioned extracted portion which is part of a document (Annexure-2) with a heading enquiry report, it becomes absolutely clear that Circle Inspector himself had not conducted the local inspection as required under Rule 5(1) of the Rules and accordingly, consequential order of Anchal Adhikari, Kahalgaon directing for issuance of Parcha in favour of respondents 4 and 5 of the same date (15.7.1998) is unsustainable on account of complete breach of Rule 5(1) of the Rules.

14. As a matter of fact from the records, it also becomes clear that when Circle Inspector had submitted aforementioned recommendation to the Anchal Adhikari dated 15.7.98 the latter even without issuing any notice to the petitioner landholder had gone to pass the order on the same day i.e. 15.7.98 as is reflected in the impugned order which for sake of clarity is quoted herein below:-

15. It would thus be manifest that the Anchal Adhikari, in the impugned order had claimed that he made some query from the persons present in the camp and had sought objection from them but as no one present in the camp had raised any objection in grant of Parcha in favour of respondents 4 and 5, the same was to be issued in their name. From the aforementioned narration of event and the order of Anchal Adhikari, Kahalgaon on the face of record is based that the enquiry report of Halka Karamchari followed by so-called consent of people present in the camp led to issuance of Parcha in the name of Respondent Nos. 4 & 5. Such procedure adopted by the authorities of Kahalgaon Anchal Officer do not meet the requirement of Rule 5(4) of the Rules which in no uncertain terms lays down that the Collector under the Act shall after hearing the parties on all points arising out of application pass such order to him just and proper. This Court is of the view that the moment it becomes established from the record that the petitioner was not given notice either in course of local inspection by the authority holding such local enquiry and/or was also given no opportunity of hearing by the Anchal Adhikari, the mandatory provisions under Rule 5(2) read with Rule 5(4) were not at all followed. It has to be kept in mind that it was the petitioner whose land was sought to be given to respondents 4 and 5 by way of Basgit Parcha and if he was not afforded any opportunity at any stage as required under Rule 5, no amount of justification as sought to be made by respondents in their counter affidavit followed by the submission at the Bar can sustain the impugned order as same was passed in violation of principle of

natural justice, a concept which is self-engrained in terms of Rule 5(2) and Rule 5(4) of the Rules.

16. At this stage, if one peruses the requirement in Form-F before holding enquiry by the Enquiry Officer in respect of lands whose parcha is being sought by any person, it becomes clear that the Legislature in its wisdom had thought it most appropriate to at least give an opportunity to the landholder at the very inception of proceeding so initiated under Rule 4 to place his case with his evidence that the person seeking parcha is not entitled to grant for such Parcha. The petitioner was admittedly not issued any notice in Form-F nor was he given opportunity to produce his evidence in support of his claim and demonstrate that the claim made by respondent no. 4 in his application was fit to be rejected. In fact holding of such enquiry under Rule 5(2) with issuance of notice in Form-F itself has been held to be mandatory requirement by this Court in the case of *Rajeswar Prasad and Others vs. State of Bihar and others* reported in 1990 PLJR 35.

17. Annexure 2 alleged enquiry report also cannot be sustained because not only it was submitted by the Halka Karamchari not authorized to hold an enquiry and without issuance of notice in Form-F by the Enquiry Officer to the petitioner but also because in the said report there is no trace of any evidence recorded by him. On the basis of this perfunctory report submitted by Halka Karamchari no action could have been taken by the Anchal Adhikari, specially when Circle Inspector in his separate endorsement as quoted above has specially drawn attention of the Anchal Adhikari that the notice should be issued to the petitioner landholder to place his case and a decision should be taken only no objection was received from the petitioner. In view of the fact that such endorsement recommending issuance of notice by the Circle Inspector was made on 15.7.98 and Anchal Adhikari, Collector under the Act had passed order for issuance of Parcha on the very date 15.7.98, it becomes clear that the petitioner was also not afforded an opportunity of hearing by Anchal Adhikari, Collector under the Act as per mandatory requirement under Rule 5(4) of the Rules. This aspect of the matter has also been decided by the Division Bench of this Court in the case of *Bhagrashan Rai vs. State of Bihar* reported in 1979 BLJR 136 wherein it has been held that rule of natural justice and fair play requires before passing the impugned order directing issuance of Basgit Pacha notice and hearing to the landholder in terms of Rule 5(4) of the Rules is a mandatory requirement and its non-observance would render the impugned Parcha illegal and without jurisdiction.

18. At this stage this Court must also observe that the respondent-Anchal Adhikari, Kahalgaon who has filed counter affidavit on behalf of respondents 1 to 3 has made an effort to mislead this Court by producing incomplete and also incorrect copy of the enquiry report of Halka Karamchari and Circle Inspector vide Annexure-C to the counter affidavit filed by him. Annexure-C will go to show that the same is typed copy of the alleged report of Halka Karamchari and

Circle Inspector and though the entire report has been written by Halka Karamchhari there is endorsement on the left hand side at page 2 of the copy of the report by Anchal Nirakchak (Circle Inspector) in the dated 15.7.98. However, on its comparison from the certified copy of such enquiry report which is Annexure-2 to the main writ application it becomes clear that the Anchal Adhikari who has sworn counter affidavit has in fact made an attempt to mislead this Court by omitting the endorsement made by Circle Inspector on 15.7.98 which has already been quoted by me in the earlier part of this judgment. this Court accordingly would like to warn Sri Ravindra Nath Prasad Singh the Circle Officer, Kahalgaon who had sworn counter affidavit in this case on 28.11.2006 to be more careful in future in swearing and filing affidavit in any court including any document by way of its annexure. A lenient view against the deponent Sri Singh who in fact has committed purgery by filing a false document has been taken by this Court only because the typed copy of the enquiry report produced by Sri Ravindra Nath Prasad Singh, C.O., Kahalgaon in the counter affidavit does not improve the case of respondent nos. 4 & 5 as the inspection report will still remain one of Halka Karamchhari with endorsement of Circle Inspector which has been held to be not in conformity with the requirement Rule 5(1)(2) of the Rules in Dhaneshwar Manjhi case (supra).

19. this Court in fact is also amazed the manner in which the Collector of the district has dealt the whole matter and has chosen to pass his order dated 16.7.04 in purported exercise of his power u/s 21 of the Act. Section 21 of the Act which was introduced by the legislature by bringing amendment in the Act, which came into force originally in the year 1947, for a sanguine purpose and inasmuch as the order passed by the Collector under the Act which was final in terms of Section 18 as stood prior to the amendment brought by the Act, 1989 was made subject to the order of the Collector of the district in terms of Section 21 of the Act. The Collector of the district was by inserting a new provision was vested with supervisory power as would be apparent from very wording thereof which reads as follows:-

Power of the Collector of the District to call for and examine records,.... Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or authority; the Collector of the district may on his own motion or on the application of any party, or on reference being made by any subordinate authority call for and examine record of any case decided or proceeding taken by the Collector under the Act for satisfying himself as to the regularity of the proceeding or to the correctness, legality or propriety of an order passed by the Collector under the Act in the case of proceeding and may after, allowing the parties concerned opportunity of being heard, direct that the case or the proceeding be reopened and disposed of afresh in accordance with the provisions of this Act.

20. From the wordings of Section 21 of the Act, it would thus appear that the Collector of the district has been given power to call for and examine record of

any case which has been decided by the Collector under the Act for satisfying himself to the regularity of the proceeding or to the correctness legality or propriety of an order passed by the Collector under the Act and a duty has been cast upon him that he can also direct that the case or the proceeding so decided by the Collector under the Act can be re-open and disposed of afresh in accordance with the provisions of the Act in case he is satisfied that the same was not disposed of strictly in terms of the Act.

21. In the present case, the petitioner in his application u/s 21 (Annexure-4 to this writ application) in paragraph 3 thereof had specially pleaded that the Circle Officer, the Collector under the Act without issuance of any notice as provided under Rule 5 of the Rules had passed the order dated 15.7.98 for issuance of Basgit parcha in favour of respondents 4 and 5. Such a strong plea could not have been disposed of in a manner which has been done by the Collector of the district who unfortunately has disposed of such application u/s 21 of the Act by recording the following order:-

22. In the opinion of this Court such an order passed by the Collector of the district of Bhagalpur reflects his complete ignorance of the provisions of the statute namely the Act and the Rules as also complete non-application of mind while exercising power in respect of a quasi-judicial proceeding. There is no doubt that the proceeding under the Act is quasi-judicial proceeding as has been held by Division Bench of this Court in the case of *Latif Mian Ors. Vs. The State of Bihar Ors.*, . In the said Division Bench case after analyzing the entire provisions of the Act and Rule had summarised its conclusion in paragraph 8 in the following terms:-

The Act and the rule lay down the procedure to be followed and necessary action to be a Parcha can be issued on a proceeding to a quasi-judicial proceeding.

23. The requirement of recording reasons in a quasi-judicial proceeding is no longer res integra in view of large number of decision given by the Apex Court and this Court and I would only like to bring notice to the authority exercising power u/s 21 of the Act for their future guidance. The Apex Court in case of the *Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India & Ors.* has laid down law in respect of requirement of passing reasoned order in quasi-judicial order in the following manner:-

Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceeding and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the Learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial

order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *N.M. Desai vs. Testeels Ltd.*, C.A. No. 245 of 1970 decided on 17.12.1975 (SC). But unfortunately, the Assistant Collector did not choose to give any reason in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate also as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

24. This being the position in law with regard to the requirement of reasons, the order recorded by the Collector of the district dated 16.7.04 relevant portion whereof has already been quoted in the preceding paragraph must be held to be bad inasmuch as the aforesaid requirement of law of passing a reasoned order in a quasi-judicial proceeding is not at all fulfilled in the impugned order of the Collector of the district dated 16.7.04 as such order is one word order that there is no " " (Irregularity) in the order of the Anchal Adhikari issuing Parcha in favour of respondents 4 and 5. In that view the matter, the impugned order passed by the Collector in purported exercise of power u/s 21 also cannot be sustained.

25. In the light of the discussion in the foregoing paragraphs both the Impugned order dated 15.7.98 passed by Anchal Adhikari (Annexure-3) and the order dated 16.7.04 passed by the Collector (Annexure-5) are held to be bad and illegal and are accordingly, quashed.

26. In that View of the matter, this Court therefore, remits the matter back to the Anchal Adhikari, Kahalgaon. The Anchal Adhikari is directed to examine as to whether the application filed by respondent no. 4 as contained in Annexure-1 is in order and in case he is satisfied that a proceeding has to be drawn on such an application of respondents no. 4 he would thereafter dispose it of strictly in

accordance with the provision made under Rule 4 and Rule 5 of the Rules and also in the light of the aforesaid directions/observations. In the result, this application is allowed with the aforementioned observations/directions. However, there will be no order as to costs.