

(1994) 07 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 650 of 1987

Deo Nandan Kishore

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-1994

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Rules, 1948 — Rule 5

Citation : (1994) 2 PLJR 631

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : T.S. Tatarvai and Kamala Prasad, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ application the Petitioner prays for quashing of the order dated 2.12.1986, passed by the Circle Officer, Goraul in Basgit Parcha case No. 16 of 1986-87 a true copy whereof has been annexed as annexure "B" to the writ application and further for issuance of a direction to the Respondents not to disturb the peaceful possession of the Petitioner over the land in question.

2. The dispute in the present case relates to 11 Decimals of land appertaining to khesra No. 1936, Khata No. 694 in village Sondho Basudeo within police station Goraul in the district of Vaishali. It appears that applications were filed by Respondent Nos. 3 and 4 before the Circle Officer, Goraul praying for issuance of Basgit parcha in respect of the said land under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as the "Act"). The Petitioner filed his objection inter alia contending that there was no relationship of tenancy between him and Respondent Nos. 3 and 4, which would attract the provisions of the Act and further that Respondent Nos. 3 and 4 had their own as well as ancestral residential houses and thus, the provisions of the Act will have no application and the said Respondents cannot claim permanent

tenancy in the holding in question. A true copy of the said objection has been annexed as annexure "2" to the writ application. Thereafter it appears that the Circle Officer held local inspection in presence of the Respondents 3 and 4 as also in presence of the Manager of the Petitioner, who is landlord, as it appears from the impugned order dated 2.12.86. Thereafter, the Circle-Officer passed the impugned order as contained in annexure "5" against which the present writ application has been admitted and notices were directed to be issued by order dated 23.7.87 and pending final hearing an interim order for maintenance of status quo was passed.

3. Although Respondent Nos. 3 and 4 have entered appearance through their learned Counsel in the present case, but no counter affidavit has been filed, nor the Counsel has appeared to oppose the application. The State of Bihar and Circle Officer, Goraul, who are Respondent, Nos. 1 and 2 have also not filed any counter affidavit nor any body has appeared on their behalf to oppose the application.

4. Mr. Tatarvai appearing for the Petitioner has contended that the Circle Officer has not at all considered the objections raised by the Petitioner and passed the impugned order without considering the same. Thus, it is fit to be quashed on this ground alone. Learned Counsel further submitted that the facts as stated in the writ application as well as in the objection petition (annexure 2) which have not been controverted by either of the parties, would show that there was no relationship of tenancy between the Petitioner and Respondent Nos. 3 and 4 and that Respondent Nos. 3 and 4 had their own as well as ancestral residential houses and land, which will exclude them from claiming to be a privileged persons under the definition of the privileged persons in the Act. He further contended that Rule 5 of the Bihar Privileged Persons Homestead Tenancy Rules, 1948 which requires for issuance of notice in Form F to all the interested parties intimating the date on which the enquiry is to be made and directing parties to produce all the evidence in their possession in support of or against the application have not been complied with, inasmuch as the Petitioner was never given any notice for inspection in conformity with the aforesaid provisions in form F and thus, according to the learned Counsel, the impugned order is fit to be quashed on this ground as well. The facts in this regard have been stated in paragraph 3 of the supplementary affidavit on behalf of the Petitioner, which have not been denied. Further, two contentions namely that there was no relationship of tenancy between the Petitioner and the Respondents 3 and 4 and that the Respondents 3 and 4 had their own as well as ancestral residential houses and land have been stated in paragraphs 11, 12 and 13 respectively and in various other paragraphs of the writ application. The said facts have also not been controverted.

5. From perusal of the objection as contained in annexure "2" I find that the aforementioned objections were taken on behalf of the Petitioner, but from perusal of the impugned order (annexure "5") I find that the said objections

have not been considered by the Circle Officer, nor he has recorded any finding in regard to the claim of the Respondents being a privileged person or in regard to the objections of the Petitioner regarding the fact that the said Respondents had their own as well as ancestral residential houses and lands.

6. Thus, in my opinion, the impugned order cannot be sustained and the same is accordingly quashed. In the result, the writ application is allowed, but there shall be no order as to costs.