
(2014) 10 PAT CK 0023
In the Patna High Court
Case No : CWJC No. 12726 of 2012

Deo Prasoon

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

Citation : (2014) 4 PLJR 715

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Mrigank Mauli and Nikhil Agrawal, Advocate for the Appellant;
Kundan Bahadur Singh, Advocate for the Respondent

Judgement

Hemant Kumar Srivastava, J.—Heard learned counsel for the petitioner as well as learned counsel appearing for the State. The issue involved in this writ petition can be decided on admission stage itself as the parties have already placed their pleadings before this Court.

2. Petitioner has prayed for issuance of writ of certiorari for quashing the order contained in letter No. 226 dated 3.7.2003 by which and whereunder Collector-cum-District Registrar, Munger directed the Sub-Registrars not to register the deeds executed in respect of Tauzi No. 1333 situated in Mauza-Bahadurpur Jiwat as the aforesaid Tauzi No. 1333 belongs to Kesar-e-Hind and also for directing the District Magistrate to delete the word "Sikkimi" from the jamabandi register of Bahadurpur Jiwat.

3. The case of the petitioner is that his father purchased six bighas two katthas lands situated at Mauza-Bahadurpur Jiwat through four registered sale deeds in the year 1961 from one Jago Mahto and others and since then petitioner and his family members have been coming in possession of the aforesaid lands. The mutation in Anchal Serista was also done and the petitioner and his family members have been paying rent in respect of the aforesaid lands. Further case of the petitioner is that the aforesaid lands were, subsequently, partitioned between

the family members of petitioner and the petitioner as well as his co-sharers came in possession according to their shares allotted to them in family partition.

4. Admittedly, in khatiyani, the owner of the aforesaid Tauzi No. 1333 has been shown as Kesar-e-Hind but case of the petitioner is that Tauzi No. 1333 was Petty Estate and as a matter of fact, the State settled Tauzi No. 1333 in favour of one Babu Deoniti Prasad Singh who was proprietor of the aforesaid Tauzi No. 1333. The above stated proprietor, namely, Babu Deoniti Prasad Singh, subsequently, settled the lands to different raiyats who came in possession of different plots. Further case of the petitioner is that after coming into force of Bihar Land Reforms Act, 1950, the settlees of Babu Deoniti Prasad Singh were recognized as raiyats and they acquired right of transfer the aforesaid lands. Further case of the petitioner is that one Jago Mahto and his family members were raiyats of the land in question and having exercised their right of transfer, they executed six registered sale deeds in favour of father of petitioner in the year 1961 and accordingly, father of the petitioner acquired right, title and possession of the lands in question having purchased the same from Jago Mahto and others but when the petitioner took an attempt to sell the lands in question, the officials of the registry office, Munger refused to get the sale deed registered on the ground that District Magistrate-cum-Registrar, Munger had directed them by issuance of an order not to register the deeds in respect of Tauzi No. 1333.

5. The stand of the State is that Tauzi No. 1333 has been recorded in the name of Kesar-e-Hind in C.S. Khatiyani and lands of Kesar-e-Hind was not transferable land and, therefore, even if any Zamindar (proprietor) transferred the aforesaid land, the said transfer was void in nature and, therefore, the District Magistrate-cum-Registrar, Munger rightly restrained the Sub-Registrars from registering the lands of Kesar-e-Hind.

6. Learned counsel appearing for the petitioner submits that Annexure-1 to the writ petition, the continuous khatiyani of Tauzi No. 1333, reveals that owner of Tauzi No. 1333 was Kesar-e-Hind but as a matter of fact, the Tauzi No. 1333 was settled by the State in favour of Zamindar Babu Deoniti Prasad Singh and the aforesaid Tauzi No. 1333 was recognized as Petty Estate. Learned counsel for the petitioner drew my attention towards Annexure-3 to this petition and submitted that the Khas Mahal lands of Tauzi No. 1333 have been divided in two categories. First category of lands relate to lease area and second category of lands relate to Petty Estate and two separate registers have been prepared in respect of the above stated lands. There were two methods for settlement of the aforesaid lands. One was through lease for thirty years and another was as Petty Estate. He further submitted that the lands which were directly settled to Zamindar with all powers were called as Petty Estate and as a matter of fact, the District Magistrate issued the impugned order only on the ground that there were no documents available in his office in respect of lands of Petty Estate and it was not possible for him to identify the lands of Petty Estate. He further submits that the State has, himself, admitted at Annexure-3 to this petition that in Tauzi No.

1333, there were lands of Petty Estate but there was no direction in respect of the aforesaid lands of Petty Estate. He also drew my attention towards Annexure-4 to the writ petition and submitted that in Annexure-4, the State again admitted this fact that the lands of Tauzi No. 1333 situated at Bahadurpur Jiwat was Petty Estate lands. Learned counsel for the petitioner also referred Annexure-13 to the writ petition and submitted that the District Magistrate, Munger, himself, admitted in his letter No. 124 dated 19.4.2008 that the lands of Tauzi No. 1333 is not the lands of khas mahal rather the lands of Tauzi No. 1333 are lands of Petty Estate. He further submitted that even if it assumed that the owner of the aforesaid land is State, then also, the registering authority has got no right to stop the registration of the lands in question because admittedly, the aforesaid lands of Petty Estate have been coming in possession of settlees since long and at the time of commencement of Bihar Land Reforms Act, 1950, the aforesaid lands were in possession of the settlees who became raiyat of the State in view of specific provision of Bihar Land Reforms Act, 1950. To fortify the above stated contention, he drew my attention towards Annexure-A of counter affidavit of respondent No. 2 and submitted that Clause 1 of letter No. 8/Khas Mahal Niti-14/97-9087-RA dated 21.7.1998 clearly says that prior to commencement of Constitution of India, the properties which were in domain of his Majesty and were recorded as Kesar-e-Hind, the nature of aforesaid properties shall be decided on the basis of possession and use and the properties which were in possession of Central Government at the time of commencement of Constitution of India, the said properties shall be deemed to be property of Central Government and remaining properties shall be deemed to be property of State Government. He also drew my attention towards Clause 3 of the aforesaid letter and submitted that even if the ex-landlord settled or transferred the lands of Kesar-e-Hind without having any right to do so, then also, the State has got only right to lodge suit before the competent court for cancellation of settlement as well as transfer. He further submitted that in Bihar Deed Writers Association and Others Vs. State of Bihar and Others, , Division Bench of this court has observed that if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it and it is not for registering authority to enquire and ascertain the title to its own satisfaction. The Division Bench further held that under the provisions of the Transfer of Property Act, if the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title but it is not of any concern to the registering authority.

7. On the other hand, learned counsel appearing for the State submits that admittedly, the disputed Tauzi No. 1333 was recorded as Kesar-e-Hind in C.S. Khatiyani. He further submits that in Register D of Tauzi No. 1333, the name of then Collector had been entered and, therefore, the aforesaid two documents clearly show that the aforesaid Tauzi No. 1333 was the lands of khas mahal and the same were in possession of the State but I am not at all convinced with the

aforesaid submissions because Annexure-3 and several other documents go to show that the State-Respondent admitted that there was Petty Estate in Tauzi No. 1333 and furthermore, documents available on the record show that Babu Deoniti Prasad Singh was proprietor of the aforesaid Petty Estate and prior to Bihar Land Reforms Act, 1950 he settled some lands of Tauzi No. 1333 in favour of several persons and out of those persons, one Jago Mahto and others executed sale deeds in favour of the petitioner. Therefore, it is apparent from the aforesaid facts that prior to commencement of Bihar Land Reforms Act, 1950, the vendors of the petitioner were in khas possession of the lands in question and after commencement of Bihar Land Reforms Act, 1950, they transferred the lands in question to the petitioner's father. Moreover, the registering authority has got only right to see as to whether before presentation of any document for registration, the formalities for registration of the aforesaid document has been fulfilled or not and the registering authority has got no right to enquire into the title of any person. Therefore, in my view, this writ petition has got merit and accordingly, this writ petition stands allowed. As a result thereof, the letter No. 226 dated 3.7.2003 issued by the Collector-cum-District Registrar, Munger is, hereby, quashed and the registering authorities are directed not to refuse the registration of deeds presented by the petitioner before them and register the same in accordance with the law and rules.