
(2010) 09 PAT CK 0175

In the Patna High Court

Case No : CWJC No's. 9664, 2074 and 18107 of 2009

Devi Mahto and Ram Dhani Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4A
Bihar Tenancy Act, 1885 — Section 106

Citation : (2011) 1 PLJR 534

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—The Petitioner Devi Mahto is claiming that 4 acres and 65 decimals of lands were settled in his favour by the ex Zamindar who had submitted returns in the name of the Petitioner.

2. The case of the Petitioner Devi Mahto is that this 4 acres and 65 decimals of land was originally not a pokhar, but subsequently converted into a pokhar and remained in the possession of the Petitioner. During the revisional survey, the name of the State of Bihar was recorded, which was challenged by the Petitioner by filing an application u/s 106 of the Bihar Tenancy Act. The application u/s 106 of the Bihar Tenancy Act was decided in favour of the Petitioner.

3. In the meantime, the District Fisheries Officer settled the lands in favour of Respondent No. 7, Ram Dhani Mahto, the Petitioner of CWJC No. 2074 of 2009. The Circle Officer wrote a letter to the District Fisheries Officer not to settle the lands in favour of any person or any co-operative society. The records indicate that the name of the Petitioner was entered in the Jamabandi No. 104. The District Fisheries Officer requested the Officer-in-charge of Kadiriganj Police Station to restrain the Petitioner from fishing in the said pokhar. Ultimately, by order dated 1.8.2009, the jamabandi of the Petitioner was cancelled by the Land Reforms Deputy Collector which was challenged by filing CWJC No. 18107 of 2009.

4. The State has filed a counter affidavit stating that earlier Darogi Pasi and others had filed Title Suit Nos. 23 of 1965/ 29 of 1962 in the Court of the Munsif-III, Gaya which was dismissed as it was held that the suit is not maintainable. The stand of the State is that the said pokhar vested in the State at the time of the abolition of the Zamindari under the provisions of Section 4A of the Bihar Land Reforms Act and as such the Petitioner could not be the landholder of the pokhar in question. Besides which, the State has taken a stand that they were not parties in the suit u/s 106 of the Bihar Tenancy Act.

5. In reply to the contention of the State, Counsel for the Petitioner has submitted that no notice was ever issued to him and the order dated 21.8.2009 passed in Case No. 1 of 2005-06 is an ex-parte order. Counsel for the Petitioner also refutes the aforesaid stand taken by the State of Bihar, by asserting that the lands in question were not a pokhar at the time of vesting of the Zamindari, and as such the provisions of Section 4A of the Bihar Land Reforms Act would not be applicable in the present case.

6. The question which are to be decided in this case is as follows:

(a) Whether the lands in dispute were a pokhar from the very beginning?

(b) Whether the ex-Zamindar filed returns in favour of the Petitioner?

(c) The Deputy Collector Land Reforms has to examine the records of rights, Register-II and the Khatiyon prepared during the cadastral survey.

(d) The Deputy Collector Land Reforms will also look into the sairat register and examine how and when these lands came to be recorded in the sairat register, besides whatever other documents the Petitioner may produce in this matter.

7. The matters, are, therefore, remanded back to the Deputy Collector Land Reforms, Nawada who will issue notice to both the parties, the District Fisheries Officer or any other person who makes a claim over the lands in question and will decide the issues within a period of six months on appearance of the parties.

8. In the meantime, the lands may be settled by the District Fisheries Officer to the persons offering the highest bid after the approval of the Collector, Nawada. Considering that the question of title and possession is involved in this case, the amount collected through the bid may be deposited in the fixed deposit bank account to be paid to the party who eventually succeeds in this case.

9. Since the matter has been remanded for rehearing, the order dated 1.8.2009 is hereby quashed.

10. This writ application is disposed of with the aforesaid observations and directions.