

(2007) 05 PAT CK 0057
In the Patna High Court
Case No : CWJC No. 7333/02

Dhajju Rajak

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

Citation : (2007) 4 PLJR 352

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Pushkar Narain Shahi and Ajay Kumar Sharma, for the Appellant; Anwar Karim for the State and M/s Shashishekhar Dwivedi and Ramashish, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. The petitioner being a landless person had made an application to the authority for settling 11 decimals of land, which he alleged was Gair mazarua Aam land. His application was sent by the competent authority for enquiry and having received the report settlement was ordered to be made in his favour and parcha was issued in his favour for the said 11 decimals of land. Husband of private-respondent No. 8 claimed that land to be raiyati land and filed a writ petition before this court being C.W.J.C. No. 7265/1989. During the pendency of the writ petition, he died and was substituted by his wife, the present respondent No. 8. This court allowed the writ petition by judgment and order dated 11.1.2000 holding that from revisional survey and khatian it appeared that that writ petitioner (respondent No. 8 herein) was recorded as landholder of the land, in question, which was settled to the present petitioner (respondent No. 5 therein) showing it to be vacant land. This was found to be impermissible and as such the order of settlement in favour of petitioner (respondent No. 5 therein) was set aside.

2. The matter was then taken up by L.P.A. Court being L.P.A. No. 155/2000. The said appeal was disposed of by judgment, order and direction dated 4.1.2001 by

a Division Bench. The Division Bench held that the order passed by the learned Single Judge does not require interference. Thus the order of learned Single Judge was affirmed but the order of the Division Bench did not stop there, it, however, noted that there was controversy with regard to the nature of land for which settlement had been made. The appellant (respondent No. 5 in the "first writ petition)" claimed yet to be Gair mazarua Aam and the writ petitioner therein claimed to be a raiyati. The Division Bench left the authority to consider the prayer of the appellant (respondent No. 5 therein) with regard to settlement of land taking into consideration the stands taken by the two parties as to their right and nature of land. This part of the judgment is a direction to the authority to reconsider the entire matter taking into consideration the stands of both the sides. Admittedly, at that point of time under the authority of settlement and parcha, the petitioner had been on that land and built his hut. There was no direction either by the writ court or L.P.A, court to summarily evict the present petitioner.

3. When the matter went back to the authorities, curiously, the authorities were made to read only the first part of the order of the L.P.A. Bench by which the writ court had set aside the settlement. The authorities absolutely ignored the later part of the direction that the authorities were bound to enquire into the matter as to the nature of the land. The effect of the direction of L.P.A. Bench was that the right of the first writ petitioner (respondent No. 8 herein) to get back the possession itself was put in question, inasmuch as this court directed the authorities to determine whether it was Gairmazarua land or raiyati land. If it was found to be Gairmazarua land then the present respondent No. 8 could not get its possession but if it was found to be raiyati land then the present writ petitioner could not continue. If it was Gairmazarua then in view of the order of writ court the settlement could not be said to be wrong or illegal but this did not suit the present writ petitioner.

4. Soon after the judgment of learned Single Judge of this Court respondent no, 8 approached the Anchal Adhikari. The proceedings whereof has been annexed in her counter affidavit as Annexure D. Obviously, at that time the order of L.P.A. Court was not available. What was impressed that the settlement should be cancelled and the petitioner evicted. Orders subsequently show that L.P.A order was placed but regreably only the first part was taken into which affirmed the order of Hon"ble learned Single Judge but not the other part which gives a direction to enquire into the matter. Subsequent order revealed that the authorities were persuaded to hold that the writ petitioner unauthorisedly or illegally encroached upon respondent No. 8's land and needed to be thrown out by force directing it was pursuant to settlement order made by the same authority and the parcha issued by the same authority that the petitioner had gone on land and built his house. The authority did not consider it relevant at all to conduct the enquiry, as directed by the L.P.A. Court, but in its anxiety to implement the judgment of the Hon"ble Single Judge issued direction to the petitioner to vacate failing which it would be forcefully vacated. This order,

Annexure 10, was the subject matter of challenge in this writ petition.

5. Petitioner was admittedly in possession at that time. While this order was being done, miscellaneous proceedings were initiated before the Collector for determining the nature of land. Reports were called for. Reports were received. One the reports pointed out that respondent No. 8 had, in fact, only 68 decimals of land but by a mistaken entry the same was increased to 79 decimals. This 11 decimals of land did not belong to respondent No. 8 and it is this 11 decimals, which is the bone of the contention between the two parties.

6. I may mention here that this record, as asserted by respondent No. 8, has been drawn up behind the back of respondent No. 8 and without notice to him. As this court expresses no view with regard to correctness or otherwise of the claim of the respective parties, which ought to have been decided by the authorities below, there is no necessity to give any finding in this regard. It appears no sooner this report was filed before the Collector, respondent No. 5 panicked. He immediately filed a petition before the Collector, apparently being his first appearance in the proceedings contending that the enquiry at the behest of the petitioner should not continue as the petitioner had filed the present writ petition in the High Court, which was pending. The Collector took in bait and held that the petitioner cannot pursue to forums for the same relief, closed the proceedings without any further enquiry. This is the second grievance of the petitioner.

7. The effect of two are that by one order petitioner was threatened to be forcefully evicted without any enquiry and by the second order the purported enquiry in compliance with the direction of the L.P.A. Court was successfully killed by respondent No. 8.

8. It has now been brought on record that the writ petition was pending and before interim order could be issued the petitioner with the help of the district authority was forcefully evicted and his hut was demolished. This is now major grievance of the petitioner.

9. To my mind the authority deemed to have gone completely berserk. No doubt, order of Hon''ble Single Judge was affirmed but it did not stop there. It ordered enquiry into the nature of land, for that enquiry would have lead to the finding to the rights of the parties. It is only after rights of parties were determined that question of evicting of petitioner would have arisen. This is what rule of law required but this what successfully the authority who are to uphold rule evaded to do.

10. In this view of the matter, I am left with no option but to quash Annexure 10 and direct that the petitioner be forthwith restored with the possession and further direct that in accordance with direction as contained in the judgment and order of L.P.A. Bench the authorities would be well advised to make a thorough enquiry in the matter after hearing both the parties and taking such evidences as may be required and then decide whether the land in dispute is Gairmazarua or

raiya land of respondent No. 8. Till such an enquiry is completed the petitioner shall not be disturbed. The writ petition is allowed with the aforesaid observation and direction.