

(1999) 05 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. 1756 of 1989

Dip Narain Giri and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 4
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (1999) 2 PLJR 649

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Tarakant Jha and Anil Kumar Upadhayay, for the Appellant; K.P. Yadav, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—This writ petition was initially filed for quashing the impugned notices issued by Respondent Nos. 3 and 4, as contained in Annexures 1, 2 and 3 series. But during the pendency of this case by the order of the Deputy Collector, Land Reforms, dated 25.2.1989, as contained in Annexure 8 to the supplementary affidavit settlement of the lands in dispute was cancelled, therefore, a prayer has also been made to quash that order.

2. Since the case has a chequered (sic) therefore, before advertng to the questions raised for determination, it would be apt to have a brief survey of some of the facts. The lands bearing khata No. 344 appertaining to plot numbers 5171, 5172, 5176, 5179 and 5181 originally belonged to Kunda estate, the ex landlord. The nature of the land as recorded in the records of right was gairmazarua malik. The case of the Petitioners is that in the year 1922, the ex landlord settled these lands in the name of late Rameshwar Giri and Dwarika Giri, who were ancestors of the Petitioners. The ex landlord realised rent by granting parcha until the vesting of the estate. Thereafter, in the Zamindari return, the

names of the settlees were also shown and accordingly, the State of Bihar opened jamabandi in their names and granted rent receipts regularly. Several litigations and proceedings under Sections 144 and 145 of the Code of Criminal Procedure, demand cases including different title suits bearing Nos. 2, 3 and 27 of the year 1954 and last one, bearing T.S. 28 of 1978, filed for some of the plots in the suit land, were decided on different occasions from time to time and the case of the Petitioners regarding settlement by the ex landlord and their continuous possession etc. were affirmed. Even the State Government also in the written statement filed through the Collector, Aurangabad in T.S. 28 of 1978 had accepted that the plots involved in the said suit were settled by the ex landlord in favour of Rameshwar Giri and Dwarika Giri and accordingly, the suit was decreed by the judgment and decree contained in Annexure 6.

3. It has been alleged that in spite of the aforesaid litigations, a proceeding for cancellation of the settlement was initiated against the Petitioners u/s 4(h) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) bearing case Nos. 27 of 1976-77, 29 of 1976-77, 30 of 1975-76, 31 of 1976-77 and 50 of 1977-78. But ultimately, having appreciated the actual state of affairs, the DCLR, dropped the proceedings by his order dated 28.1.1978 holding that jamabandi of the disputed land would continue in the name of the writ Petitioners since the settlement in question was made by the ex landlord prior to 1.1.1946.

4. The grievance of the Petitioners is that in spite of final order of the DCLR, the Anchaladhikari including Respondent No. 4 issued impugned notices, contained in Annexures 1, 2 and 3 series for cancellation of the settlement u/s 4(h) of the Act. It is further alleged that when the validity of the aforesaid notices were still under consideration before this Court, the DCLR proceeded malafide and by the order dated 25.2.1989 (Annexure-8) cancelled the previous jamabandi u/s 4(h) of the Act excluding the plot numbers with respect to which a decree was passed in T.S. 28 of 1978.

5. Learned Counsel for the Petitioners contended that having regard to the long line of litigations and acceptance on behalf of the State in the counter affidavit filed in T.S. 28 of 1978, about the above mentioned settlement of the land by the ex landlord in favour of the, ancestors of the Petitioners, it would not be open for the Respondents authorities to take any step for cancellation of the previous jamabandi. He next contended that from a bare reference to the provisions, of Section 4(h) of the Act, it would appear that the Collector will have no jurisdiction to initiate a proceeding for cancellation of the settlement which had taken place prior to 1.1.1946. In support of his contention learned Counsel also placed reliance to the case of Baiju Panda v. The Commissioner, Bhagalpur, Division Bhagalpur and Ors. 1988 BBCJ 615 and yet another decision in the case of Sri Ram Prasad Singh and Ors. v. The State of Bihar and Ors. (1990) 1 PUR 165.

6. In my view, having regard to the facts of this case and the proposition as laid

down in the above mentioned cases, there cannot be any manner of doubt that settlement of land in dispute as made by the ex landlord in the year 1922 and the jamabandi created in their name by the State of Bihar, after vesting of Zamindari, cannot be cancelled by the impugned proceeding u/s 4(h) of the Act. This aspect of the matter was also appreciated by the DCLR while rejecting the proceeding u/s 4(h) of the Act vide his order dated 28.1.1976 and in case Nos. 27 of 1976-77, 29 of 1976-77, 30 of 1976-77 and 50 of 1977-78, as contained in Annexure 5. Because he had noticed that apart from the continuous possession of the Petitioners and various orders passed in different litigations in their favour, since the settlement in question was prior to 1.1.1946 i.e. before the appointed day, no proceeding u/s 4(h) of the Act was maintainable. It would appear that this is not the case of the State nor there is any finding of the DCLR that the settlement in question was made by the ex landlord after 1.1.1946 nor there is any denial that after vesting of the Zamindari, the authorities had opened jamabandi in the name of the Petitioners and granted rent receipts. Therefore, there cannot be any option but to hold that the impugned orders of the authorities are without jurisdiction and therefore, illegal.

7. Yet the aforesaid views can also be supported from a different angle. Because undisputedly, the findings recorded by the DCLR in the previous cases vide his order contained in Annexure 5 was not challenged in any appeal or revision. Therefore, the said order became final and binding. Similarly, there is no denial that with respect to some of the lands under dispute in T.S. 28 of 1978, the State Government in its written statement through Collector, Aurangabad, had accepted that these lands were settled by the ex landlord in favour of the ancestors of the Petitioners. Therefore, having accepted the source of settlement in favour of the Petitioners through the ex landlord, it would not be open to challenge the said settlement with respect to the remaining lands. Because to that extent the findings recorded by the civil court would also operate as res judicata against the State. Even this time also, the DCLR has dropped the proceeding with respect to the lands which were the subject matter of the title suit accepting that such lands were settled in favour of the Petitioners by the ex landlord in the year 1922.

8. Although a counter affidavit has been filed on behalf of the State but there is no denial that after vesting of the estate, jamabandi was created in the name of the Petitioners, nor there is any denial that at the time of vesting the ex landlord had submitted return in their name. This also has not been denied that previously the DCLR with respect to these very lands, had dropped the proceedings u/s 4(h) of the Act holding that the settlement in question was made prior to 1.1.1946. That apart no averment has been made to controvert that in the written statement in T.S. 28 of 1978, the State had accepted the settlement in question in the name of the Petitioners. Learned Counsel for the State, however, made an unsuccessful attempt to justify the impugned action that in case of illegal settlements, steps can be taken at any stage for cancellation u/s 4(h) of the Act. In my view, in the background of the facts stated above, the

impugned action of the authorities has to be declared uncalled for and unauthorised.

9. Therefore, taking into consideration the facts and circumstances of this case, I have no option but to hold that the impugned orders are wholly illegal and hence cannot sustain.

10. In the result, therefore, this writ application is allowed and the impugned notices contained in Annexures 1, 2 and 3 and the order of the DCLR passed u/s 4(h) of the Act dated 25.2.1989, contained in Annexure 8 are quashed. But in the facts and circumstances of this case, there shall be no order as to costs.