
(2002) 08 JH CK 0003
In the Jharkhand High Court
Case No : CWJC No. 3824 of 1993 (R)

Gajadhar Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Rules, 1948 — Rule 5(5)

Citation : (2003) 1 JCR 651

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; R.S. Mazumdar, Government Advocate, for the Respondent

Judgement

Tapen Sen, J.—In this writ application the writ petitioners have, inter alia, prayed for quashing the "Basgit Parchas" issued by the respondent No. 5 (Circle Officer, Ganwa, P.O. & P.S.--Ganwa, District - Giridih) in favour of respondent Nos. 7 to 13 in exercise of powers conferred upon him under the provisions of Bihar Privilege Persons Homestead Tenancy Act, 1947 (hereinafter referred to, for the sake of brevity, as an Act). According to the petitioners, the respondent Nos. 7 to 13 are neither privileged persons nor privileged tenants within the meaning of the Act in relation to the Raiyati land belonging to the petitioners nor are they predecessors in Interest in any manner what so ever. The Basgit Parchas have been appended as Annexure-3 series in the writ petition. The petitioners have also prayed for restraining the respondent Nos. 1 to 6 from taking possession of the land in question or from disturbing the possession of the petitioners in relation to the aforementioned lands,

2. The Basgit Parchas issued in the instant case and which have been annexed as Annexure-3 series, will go to show that the same have been issued in Form G under the provisions of Rule 5(5) of the Privileged Persons Homestead Tenancy Rules, 1948. Sub-rule (5) authorises the Collector to prepare a record of homestead held by privileged tenants in Form G. In other words, the Act of

issuing Basgit Parchas amounts to creating permanent tenancy, in relation to privileged tenants.

3. In the instant case, the petitioners have very emphatically stated that the respondent Nos. 7 to 13 are not privileged tenants nor privileged persons nor does the relationship of landlord and tenant exist inter se between the petitioners and the respondent Nos. 7 to 13.

4. Before proceeding any further, it would be relevant to mention that notices upon respondent Nos. 7 to 13 were ordered to be issued by order, dated 10.12.1993. The A.D. in relation to 8 and 10 were received as would be apparent from office note dated 10.5.1994. Subsequently, the office put up note on 11.5.1994 stating that notices issued upon respondent Nos. 7 to 13 with A.D. had not been received and, therefore, query was made whether the notices upon respondents Nos. 7, 9, 12 and 13 be treated as valid service. So far as respondent No. 11 is concerned, the office pointed out that the notice upon him had returned unnerved. Accordingly, by order dated 12.5.1994, a Single Judge ordered that the notice issued on respondent Nos. 7, 9, 12 and 13 would be accepted as valid. So far as respondent No. 11 is concerned, an order was passed for issuance of fresh notice within two weeks failing which the application as against the said respondent No. 11 would stand rejected without further reference to a Bench. Since the petitioners did not take steps for service of notice on respondent No. 11, the writ petition, as per order dated 12.5.1994, stood dismissed for default as against the respondent No. 11. However, on 4.5.1995, a single Judge of this Court passed an order that the matter be put up after two weeks. On that day, the learned counsel appearing on behalf of the State prayed time to produce relevant documents to show as to whether the petitioners had been given notices before passing the impugned Order. It would be relevant to mention that till date, the private respondents i.e. respondent Nos. 7, 8, 9, 10, 12 and 13 have not appeared in this case although by an interim order dated 10.12.1993, a Division Bench of this Court had passed an order of status quo over the lands in dispute,

5. The petitioners have stated that Khata No. 2 of Village Amtaro in P.S. -Ganwa (now in the district of Giridih) was recorded in the name of ex-landlord Todal Narayan Singh in the last Survey Settlement Operation as his Bakast lands and all the lands in the "aforementioned Khata were in his actual physical possession and he remained in peaceful possession of the same enjoying all rights, title and interest. While in that capacity of enjoying peaceful possession, he died leaving behind his only son Krishna Prasad Singh who, in his turn, also left behind him, after his death, his two sons namely Tikait Girija Prasad Singh and Kuer Jiven Prasad Singh. After vesting of the estate under the Bihar Land Reforms Act, 1950, the aforementioned successors in interest of late Todal Narayan Singh became the recorded tenants of the State of Bihar and paid rent to the State as tenants of the lands in question. Subsequently, by an amicable partition inter se between the successors in interest, Plot No. 106 of Khata No. 2 along with some

other plots of land fell in the share of Tikait Girija Prasad Singh who, subsequently, came in physical possession over the same and was also recognized as the recorded tenant of the State of Bihar under the Land Reforms Act.

6. On 23rd June, 1969, having fallen in need of money, Girija Prasad Singh sold his 0.90 acres and 1.00 acres of land of Khata No. 2 (Plot No. 106) and Khata No. 17 (Plot No. 191) respectively in favour of Ishwar Singh (the father of the petitioner Nos. 1 and 2 and father-in-law and grand father-in-law respectively of petitioner Nos. 2 to 6). A photocopy of the registered Deed of Sale executed by Tikait Girija Prasad Singh, in favour of Ishwar Singh has been marked as Annexure-1 to the writ application.

7. The petitioners have also stated that the names of the Predecessor-in-interest of the petitioners namely Ishwar Prasad Singh have been entered in Register-II (Tenants Ledger) on 26.12.1973 by an order passed by the Circle Officer and rent was also accordingly fixed. The petitioners have further stated that they have been paying rent and have obtained rent receipts. In support of the aforementioned contention, the petitioners have brought on record the relevant extract of Register-II suit as Annexures-2 and 2/1 to the instant writ application.

8. The petitioners have further stated that in order to construct the "Indira Awas", the respondent Nos. 1 to 6 in connivance with respondent Nos. 7 to 13, started initiating steps with the sole purpose of disturbing the possession of the petitioners. The petitioners have stated that Section 144, Cr PC etc. were drawn against them in respect of Plot Nos. 106 and 191 but by order dated 8.9.1993, the Sub-Divisional Magistrate rescinded the aforementioned proceedings u/s 144, Cr PC. The petitioners being aggrieved, filed a Title Suit No. 172/93 in the Court of Munsif, Giridih wherein prayer, inter alia, was made for declaration of the raiyatt right over the lands in question and in the alternative, if in the meanwhile the petitioners were found to be dispossessed, then for recovery of possession. The aforementioned suit was filed in September, 1993 as the petitioners by that time had started apprehending that they might be dispossessed from the lands in question and the respondents might make construction for the purposes of implementing aforementioned Indira Awas Scheme.

9. The petitioners have further stated that in the aforementioned Title Suit, the respondents filed a written statement, wherein they stated that the respondent Nos. 7 to 13 were in possession of the disputed lands and that after completing all formalities, the Circle Officer (respondent No. 5) had granted Basgit Parchas to them under the Act. The details of the orders for which Basgit Parchas had been granted, have been mentioned in paras 20 to 22 of the writ application. The petitioners have also stated that having come to learn for the first time in the suit that Basgit Parchas have been issued, the petitioners withdrew the aforementioned suit on 4.12.1993 with liberty to file a fresh suit. After withdrawing the suit, the petitioners then filed the instant writ application on 8.12.1993.

10. From a perusal of the narration of the sequence of events which have taken place and which have been narrated by the writ petitioners in the instant case, it is clear that by reason of a registered Deed of Sale, the predecessor-in-interest of the petitioners, namely Ishwar Singh came in possession of the lands in question. Although, a counter affidavit has been filed in the instant case by the respondent Nos. 1 to 6, wherein it has been stated that the issuance of Basgit Parchas have been started after completing all mandatory provisions and also as per the provision of Bihar Privilege Persons Homestead Tenancy Act, yet they have not been able to dispute the fact that a registered Deed of Sale had been executed on 23.6.1969 between Girija Prasad Singh and Ishwar Singh (predecessor-in-interest of the writ petitioners) vide Annexure-1 to the writ application.

11. By natural fiction of law, therefore, and by reason of the provisions of the Transfer of Properties Act, it cannot be disputed, therefore, that the property, upon execution of the aforementioned sale deed and registration thereof passed into the possession of Ishwar Singh; the predecessor-in-interest of the Petitioners. If at all that land was to be settled by the respondent Nos. 1 to 6 in favour of the respondent Nos. 7 to 13, then the only course open to them was either to seek annulment of the aforementioned registered Deed of Sale through a regularly constituted Civil Suit or by acquisition of the lands in question in accordance with law under the provisions of Land Acquisition Act for the said "Indira Awas" Scheme. In the instant case, whether notice was given to the petitioners or not, therefore, does not become so significant. What really assumes importance is that a property which passed on to the predecessor-in-interest (Ishwar Singh) by execution of a registered Deed of Sale, portions thereof have been delivered unto the respondent Nos. 7 to 13 by creation of permanent tenancies through the issuances of Basgit Parchas. This could not have been done in the manner adopted by the respondents Nos. 1 to 6. The manner in which the permanent tenancies have been created in this case therefore, is not according to procedure and are, therefore, liable to be set aside and quashed. Last but not the least, it does not appear that proper opportunity of hearing was given to the petitioners, although in the Supplementary Counter Affidavit, it has been stated at paragraph 7 as follows :--

"That it is stated further that from the aforesaid facts, it can be understood that Basgeet Parchas were issued to the privileged tenant in a regular proceeding initiated in respect of the lands and due enquiry were also held in the proceeding and the petitioner's claim that they had no knowledge of the issuance of Basgeet Parchas to them is a mere lame excuses which cannot be accepted at the face of the record after such a long time i.e. to say Basgeet Parchas were issued in 1970-71 and 1975-76 and accordingly the lands from the petitioners, demand register were deducted and the petitioner's claim in 1993 that they had no knowledge of the same are manufactured and an after thought only for the purpose of this case. The nonavailability of the original case records after more than two decades cannot defeat the issuance of the Basgeet Parchas nor effect

the proceedings which proceeding was conducted in accordance with the provisions of law and Basgeet Parchas were issued to the Raiyats after due enquiry."

12. From a perusal of para 7 of the Supplementary Counter Affidavit, it appears that the respondents have asserted the claim of the writ petitioners that they had no knowledge is a misconceived statement in as much as the Parchas were issued in two batches one in 1970-71 and second in 1975-76 and therefore, such statement is only an after thought. The respondents, however, have not been able to counter the statement made by the petitioners at paragraph 23 that they came to learn about the issuance of the Basgit Parchas when the written statement was filed in the Title Suit.

13. In view of what has been stated above, the impugned actions and the Parchas are quashed and the matter is remanded to the concerned authority to ascertain the correct position and to pass a well reasoned speaking order after taking into consideration the observations made above and after giving opportunity of hearing to all the parties concerned.

14. Since this matter has been pending in this Court since 1993, the concerned authority is, therefore, expected to dispose off the matter with all expedition at his disposal but definitely not beyond a period of six months from the date of receipt of a copy of this order by the petitioners. The petitioners, in turn, are directed to serve a copy of this order upon the concerned authority within a period of two weeks from the date of receipt of the certified copy of this order. While passing the aforementioned order, the concerned authority shall also deal with the categorical assertions made by the writ petitioners to the effect that the respondent Nos. 7 to 13 do not come under the category of Privileged Persons or tenants and the lands in question are not Homestead Land and, therefore, the aforementioned Bihar Homestead Tenancy Rules, 1948 cannot be made applicable. The concerned authority shall also deal with the aspect as to whether after mutation of the land in question and entry of the names of the petitioners in Register-II, they became recognized as tenants of the State and, therefore, (sic) entitled to a notice.

15. With the aforementioned observations and directions, this writ petition stands disposed off.