

(1976) 09 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 1439 of 1976

Ganga Ram Bhagat

APPELLANT

Vs

Deputy Commissioner, Santhal Parganas and Another

RESPONDENT

Date of Decision : 24-09-1976

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 18, 19, 2(b), 2(f), 4
Constitution of India, 1950 — Article 226, 227

Citation : (1977) PLJR 246

Hon'ble Judges : K.B.N. Singh, C.J.; S. Ali Ahmad, J

Bench : Division Bench

Advocate : Baleshwar Prasad Gupta, for the Appellant; S.N. Jha, Standing Counsel No. 2 in C.W.J.C. Nos. 1439, 1443, 1444 and 1445/76, Shardanand Jha, Junior Counsel in C.W.J.C. No. 1439/76, Sudhakar Choudhary, J.C. in C.W.J.C. No. 1443/76, S.A. Narain, J.C. in C.W.J.C. No. 1444/76, B.P. Pandey, J.C. in C.W.J.C. No. 1445/76, S.B.N. Singh, Government Pleader No. 2, Uma Shankar Singh, Junior Counsel in C.W.J.C. No. 1508/76, Md. Khaleel, Government Pleader No. 3, B.N.P. Gupta, J.C. in C.W.J.C. No. 1509/76, S. Shamsul Hassan, Standing Counsel No. 1 and R.C. Sinha, J.C. in C.W.J.C. No. 1510/76, for the Respondent

Final Decision : Allowed

Judgement

K.B.N. Singh, C.J. and S. Ali Ahmad, J.—In all these seven applications under Articles 226 and 227 of the Constitution of India a common question of law arises and they have been heard together and are being disposed of by this common order. In all these writ applications the petitioners have prayed for quashing the orders of the Deputy Commissioner, Santhal Parganas, dated the 31st December, 1975, setting aside the orders of the Circle Officer, declaring the petitioners in the writ applications as privileged tenants and fixing or apportioning rent in their favour under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act"). A prayer has also been made to quash the notices issued in pursuance of the orders of the Deputy Commissioner, asking each of the petitioners to vacate the lands in dispute. The order of the

Deputy Commissioner and the notice issued in pursuance thereof are Annexures 2 and 3, respectively, in C.W.J.C. Nos. 1439/76, 1444/76 and 1445/76, and Annexures 3 and 4, respectively, in C.W.J. Nos 1443/76, 1508/76, 1509/76 and 1510/76. It may be stated here that the main order of the Deputy Commissioner has been passed in Miscellaneous Case No. 1 of 1975-76, which is under challenge in C.W.J.C. No. 1444 of 1976 and marked as Annexure "2". The orders of the Deputy Commissioner under challenge in other writ applications are based on Annexure "2" of C.W.J.C. No. 1444 of 1976.

2. In September 1965 the Circle Officer acting as the Collector under the Act held the petitioners in C.W.J.C. Nos. 1444, 1445 and 1510 of 1976 as privileged persons, namely, by order dated 1.9.65 in C.W.J.C. Nos. 1444 and 1510 of 1976 and by order dated 2.9.1965 in C.W.J.C. No. 1445 of 1976, and apportioned rent with respect to the land on which they have constructed houses. In all these three cases the Jamabandi tenants, on whose land they have built their houses, raised no objection. By order dated 14.9.68 the petitioner in C.W.J.C. No. 1439 of 1976 and by order dated 30.9.70 the petitioner in C.W.J.C. No. 1509 of 1976 were held to be privileged tenants. The jamabandi raiyats accepted the position that they allowed these petitioners to construct houses on their land. By orders incase no. 15 of 1965-66 and case no. 1 of 1969-70 the petitioners in C.W.J.C. Nos. 1443 and 1508 of 1976 were held to be privileged persons and Parchas as dated 8.2.1966 and 28.3.1970, respectively, were granted in their favour. Shortly put, between 1965 and 1970 all the petitioners in all these writ petitions were declared to be privileged, tenants, proportionate rent was fixed in their favour and Parchas granted accordingly. The petitioners in all the writ applications have averred that they have been paying rent regularly up to date to the State of Bihar since grant of Parchas in respect of the disputed land.

3. In 1975 the Deputy Commissioner, Santal Parganas, issued notices on the petitioners to show cause why the orders passed in their favour declaring them to be privileged persons be not cancelled on the ground that they were not privileged persons and the Parchas granted to them were invalid. The petitioners filed show cause challenging the maintainability of the proceeding on various grounds, one of the grounds being that the Parcha having been granted by the Circle Officer acting as a Collector under the Act, the Deputy Commissioner has no power under the Act or the Rules to act as an appellate authority or reviewing authority and to cancel it. It was also asserted that the landlords of the holding not having filed any application for cancellation of the order of the Circle Officer or for eviction of the petitioners from the homestead, where the petitioners are living and paying rent to the State of Bihar, the orders became final u/s 18 of the Act. The Deputy Commissioner by his order dated 31.12.75 overruling the objections of the petitioners set aside the orders of the Circle Officer acting as Collector under the Act declaring the petitioners as privileged tenants as already stated. Thereafter notices have been issued against the petitioners to vacate the land by a particular date mentioned in the notice. After these writ petitions were admitted, the operation of those orders and the notices has been stayed by this

Court.

4. A counter-affidavit has been filed on behalf of respondent no. 1 in C.W.J.C. No. 1444 of 1976 stating that the petitioner has got 1 bigha, 5 kathas and 16 dhurs of land in the name of his father Jadu Sah and his brothers Surya Narain Sah, petitioner in C.W.J.C. No. 1510 of 1976, and his nephew Om Prakash Sah, petitioner in C.W.J.C. No. 1509 of 1976, have also been granted Parchas. In the affidavit in reply to the counter-affidavit it has been denied that the petitioner has got 1 bigha, 5 kathas and 16 dhurs of land in the name of his father. It is stated in the counter-affidavit filed in C.W.J.C. No. 1509 of 1976 that petitioner Om Prakash Sah is a financially well to do person having a good residential building worth Rs. 6000/- and his father Surya Narain Sah is a Government servant drawing a salary of Rs. 315/-. It has been asserted that the Deputy Commissioner, Santal Parganas, by virtue of his inherent power of superintendence over the lower revenue courts of his district initiated a proceeding and issued notice upon the petitioner to show cause as to why the order of the Circle Officer granting Parcha in his favour illegally should not be set aside. The same facts have been reiterated in the counter-affidavit filed in C.W.J.C. No. 1510 of 1976 and it is also stated therein that Om Prakash Sah is a Mahajan and has got a medicine shop. In the counter-affidavit filed in C.W.J.C. No. 1508 of 1976 it is stated that petitioner Prem Sager Mandal has got 3 bighas, 3 kathas and 7 dhurs of land and has got a Kirana shop in which he has invested a capital of Rs. 1,000/-. He has let out his house on rent to Gopal Prasad, Compounder and the provisions of Section 30 of the Santal Parganas Tenancy Act have been ignored while granting Parcha to him. In the affidavit in reply the above statement have been wholly denied. In the counter-affidavit filed in C.W.J.C. No. 1445 of 1976 it is stated that the petitioner Ram Kalyan Ralls an Assistant teacher in the High School at Ramgarh and has got ancestral property in village Karbindha and he is also a Mahajan. In the affidavit in reply it has been admitted that the petitioner is an Assistant Teacher in the High School at Ramgarh and that he has got ancestral property but his share would be only 2 dhurs. It has been denied that the petitioner is a Mahajan. In the counter-affidavit filed in C.W.J.C. No. 1443 of 1976 it is stated that he has got 19 dhurs of Basburi land for construction of his house as also landed property in village Jamni and that he is a Mahajan and has got cloth shop in Ramgarh Market and his house is worth Rs. 35,000/-. In the affidavit in reply it has been admitted that the petitioner has got 19 dhurs of Basburi land but he has got nothing in share from the ancestral property. It has been denied that the petitioner is a Mahajan and that his house is worth Rs. 35,000/-. In the counter-affidavit filed in C.W.J.C. No. 1439 of 1976 it is stated that the father of the petitioner owned 4 bighas 10 kathas and 17 dhurs of agricultural land and the petitioner has got 19 dhurs of Basburi land has got a kutchha and tiled roof building which is valued not less than Rs. 15,000/-. In the affidavit in reply it has been denied that the petitioner's father owned 4 bighas, 10 kathas and 17 dhurs of land alone. In all the counter-affidavits averment is also made about the power of the Deputy

Commissioner to revise orders of the subordinate revenue authorities acting as Collector under the Act.

5. The main contention of learned counsel for the petitioners is that the Deputy Commissioner has no jurisdiction to revise the orders passed by the Circle Officer acting as a Collector under the Act holding the petitioners as privileged tenants and issuing Parchas in their favour either filing or apportioning rent as the Deputy Commissioner has no power to review or revise the orders of the Circle Officer acting as Collector under the Act.

6. Learned counsel appearing, on behalf of the State in these cases have, however, contended that the Deputy Commissioner being the head of the revenue administration in the district could revise the order passed by the Circle Officer acting as the Collector under the Act by virtue of Rule 3 of the Board's Miscellaneous Rules, 1958, and reliance in that regard has been placed on a Bench decision of this Court in case of (1) Bibi Khairunnisa V. State of Bihar (1965 B.L.J.R. 205).

7. In order to appreciate the contentions raised on behalf of both sides, it would be necessary to refer to some of the relevant provisions of the Act. Section 2(b) defines "Collector" to include "any officer appointed by the State Government to discharge all or any of the functions of a Collector under this Act". It is not in dispute before us that the Circle Officer, while passing orders in favour of the petitioners of these writ applications, was acting as the Collector under the Act. "Privileged person" has been defined as follows:

2(h)(i) "Privileged person" means a person--

- (1) Who is not a proprietor, tenure-holder, under tenure-holder or a mahajan, and
- (2) who, besides his homestead, holds no other land or holds any such land not exceeding one acre.

"Privileged tenant" has been defined to mean "a privileged person who holds homestead under another person and is, or but for a special contract would be, liable to pay rent for such homestead to such person." Section 2(f) defines "Mahajan" to mean "a person whose business is money lending," Section 4 of the Act which grants permanent tenancy to a privileged tenant and authorises the Collector to fix rent, in case of dispute, or where there is no valid contract for payment of rent or where rent is unfair or inequitable, reads as follows:

Subject to the payment of such rent as may be agreed upon between a privileged tenant and his landlord, of where there is no contract or no valid contract in respect of rent or where the rent contracted is alleged to be unfair or inequitable, such rent as may be fixed by the Collector under the provisions of Section 6, a privileged tenant shall have a permanent tenancy in the homestead held by him at any time continuously for a period of one year.

Section 5 authorises the Collector to restore back the privileged tenant

possession of the homestead or part thereof from which he has been ejected under the conditions mentioned therein. Section 6 authorises the Collector to determine fair and equitable rent. Section 7 lays down that rent determined by Collector u/s 6 will be rent fixed in perpetuity and shall not be liable to be altered. Section 8 of the Act provides, inter alia, that a privileged tenant shall be liable to be ejected on two grounds only and not otherwise, the grounds being misuse of the land rendering it unfit for the purpose of tenancy and non-payment of rent for two years. Ejection of the privileged tenant on those two grounds is also subject to four conditions as laid down in the proviso to Sub-section (1) of this section, one of which is that the privileged tenant is liable to be ejected only in pursuance of an order of ejection passed by the Collector as envisaged in that section. Other provisions of this section are not relevant and need not be mentioned. Section 18 gives finality to the order of the Collector and reads as follows:

18. Orders under this Act to be final--All orders passed by the Collector in any proceeding under this Act shall be final, and no suit shall lie in any Civil Court to vary or set aside any such order except on the ground of fraud or want of jurisdiction.

Section 19 gives overriding effect to the provisions of this Act.

8. On a reference to the aforesaid provisions of the Act, it is apparent that the order of the Collector declaring a person as a privileged tenant and determining rent in his favour is a final order and is not liable to be challenged in any Civil Court except on the ground of fraud or want of jurisdiction on the part of the Collector in passing the impugned order.

9. It will appear, on a reference to impugned orders passed by the Deputy Commissioner in these cases, that the learned Deputy Commissioner has not come to the conclusion that any one of the petitioners was either a proprietor, tenure-holder, under tenure-holder or a Mahajan, or, besides the homestead, held, any land exceeding 1 acre which would disentitle him to be declared to be a privileged person and consequently, a privileged tenant.

10. The question which the learned Deputy Commissioner posed was as follows:--

The main thing that has to be seen is whether it was the spirit of the Act to allow rights over home stead to persons who came in the category of O.P. i.e. who may be privileged tenant according to strict definition given in the Act, but who are otherwise unfit to be given any privilege as per the intention of the Legislature.

This question he has answered by stating that the definition of "Privileged person" was not intended to apply to "persons like the opposite party though well-to-do financially is neither a money lender nor proprietor or sub-tenure holder", and as such, the learned Deputy Commissioner was of the view that the petitioners can in no way be called privileged tenants. It may be mentioned that the Deputy Commissioner has not recorded any positive finding that at the

relevant time when the petitioners were held as privileged tenants between 1965 and 1970 they were well off persons which was necessary even if his interpretation of legislative intent were to be accepted. It is wholly unnecessary for us to go into this question as these writ petitions can be disposed of on the limited question of lack of jurisdiction on the part of the Deputy Commissioner to revise the order of the Circle Officer acting as the Collector under the Act.

11. In the instant cases, it is also not necessary to consider whether the learned Deputy Commissioner was right in his aforesaid view about legislative intent and further rider (Sic) put on definition of privileged persons in view of the fact that the orders passed by the Anchal Adhikari acting as Collector in favour of the petitioners being final, they were not liable to be reviewed or revised by the Deputy Commissioner who is also a "Collector" under the Act. Neither Rule 3 of the Board's Miscellaneous Rules framed by the Board of Revenue, on which reliance has been placed by learned counsel for the State nor the decision in the case of (1) Bibi Khairunnisa V. State of Bihar (1965 B.L.J.R. 205) is of any assistance to learned counsel for the respondents. As a matter of fact, the decision in Bibi Khairunnisa's case goes counter to the submission and supports the view we have taken. The Deputy Commissioner, although a superior officer, yet being a Collector under the Act could not review or revise the final order passed by the Anchal Adhikari, an officer subordinate to him, in view of the fact that the latter is also a "Collector" under the Act, Section 18 having given finality to such an order.

12. Rule 3 of the Board's Miscellaneous Rules may usefully be quoted here:

A higher authority has all the powers of any lower authority and, further, may, with or without appeal, modify or reverse any orders passed by the lower authority in a matter primarily within the competence of the lower authority, unless, by any law, the orders of the lower authority are final.

This rule says that an order will not be liable to be revised by a higher authority. If under any law, the order of the lower authority has been made final, which is exactly the position in the instant cases by virtue of Section 18 of the Act, as already discussed above. This rule came to be considered by the Bench deciding Bibi Khairunnisa's case (*supra*), and the Court reiterated the same view as follows:

Thus, on a scrutiny of Section 103-A (2) of The Bihar Tenancy Act and rules 1 and 2 made under that Act, along with Chapter III of the Bihar Survey and Settlement Manual, 1959, and Rule 3 of the Board's Miscellaneous Rules, 1958, the following conclusion emerges. The Collector has general powers of supervision and control over the work of a Deputy Collector done under the provisions of the Bihar Tenancy Act, except in respect of those functions which by law are declared to be final and also except where otherwise provided for by law.

13. It is thus manifest that the learned Deputy Commissioner had no power to review or revise the orders passed in favour of the petitioners by the Anchal

Adhikari acting as a "Collector" under the Act and the impugned orders of the Deputy Commissioner and the notices asking the petitioners to vacate the disputed lands must be quashed. In the result, all the writ applications are allowed. In the circumstances of the cases, there will be no order as to costs in any one of the cases.