
(2013) 08 PAT CK 0091

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.10698 of 2003

Gholtu Mandal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2013) 4 BLJud 186

Hon'ble Judges : Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Mr. N. Hoda, with Mr. Md. Qumrul Hoda, Advocates, for the Petitioners; Mr. Anwar Karin, AC to SC-10, for the Respondent Nos. 1 to 4; Mr. Baidyanath Prasad, with Mr. Suresh Prasad Barnawal, Advocates, for the Respondent Nos. 5 and 6

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J. (Oral)—Heard the parties.

2. The petitioners are aggrieved by the order dated 28.02.2003 (Annexure-6) passed in Misc. Case No. 495 of 1994-95 by the respondent District Collector, Katihar, whereby he has refused to decide the petition filed on behalf of the petitioners under Section 21 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short "the Act") patently on a wrong premise that he has no jurisdiction to entertain such petition.

3. Learned counsel for the petitioners submits that though respondent no. 5 and 6 had filed their claims in the year 1984-85 and in the year 1992-93 respectively before the respondent Anchal Adhikari, Kadwa under the provisions of the Act for the purpose of granting them Basgit parcha with respect to the lands under dispute, but their claims were finally allowed by an order dated 29.06.1993 (Annexure-3), yet respondent District Collector has mechanically rejected the petition filed on their behalf under Section 21 of the Act assailing the final order passed by the respondent Anchal Adhikari.

4. If the respondent no. 5 and 6, claiming to be privileged tenants of the landholder/ raiyat Sk. Sahibuddin, filed a petition under the provisions of the Act for grant of Basgit parcha with respect to the lands under dispute and if the final order was passed by the respondent Anchal Adhikari, Kadwa on 29.06.1993 (Annexure-3), then certainly respondent District Collector, Katihar was vested with the powers under Section 21 of the Act to call for the records of those Basgit Parcha cases and examine the regularity of the proceeding and/or the correctness, legality or propriety of the orders passed in favour of respondent no. 5 and 6 by the respondent Anchal Adhikari as Section 21 of the Act was brought on statute book by the Amending Act 11 of 1989, w.e.f. 25.09.1989. However, if final order was passed prior to 25.09.1989 by the respondent Anchal Adhikari, Kadwa in favour of the claimants, then certainly the respondent District Collector had no jurisdiction to entertain a petition under Section 21 of the Act against such orders. But no such specific findings have been recorded by the respondent District Collector after calling for and examining the relevant records of both the Basgit Parcha cases.

5. For the reasons recorded above, the impugned order dated 28.02.2003 (Annexure-6) passed in Misc. Case No. 495 of 1994- 95 by the respondent District Collector, Katihar, is hereby set aside and the matter is remitted back to the respondent District Collector with a direction to call for the records from the Anchal Adhikari, Kadwa, and decide the claim of the parties afresh strictly in accordance with law after giving an opportunity of hearing to all concerned.

6. In the result, the writ petition stands allowed to the extent indicated above.