

(1972) 07 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2076 of 1970

Gobinda Mahto and Others

APPELLANT

Vs

The Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 24-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Patna 152

Hon'ble Judges : U.N. Sinha, C.J; K.B.N. Singh, J

Bench : Division Bench

Advocate : S.R. Ghosal, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners have filed this writ application, praying, that, the orders incorporated in Annexures 1 and 2, dated the 16th November, 1970 and 11th December, 1970, respectively, passed by the Sub-divisional Officer, Jamtara, may be set aside. By Annexure 1, the learned Subdivisional Officer had ordered that the writ petitioners should make available an equal area of similar lands to respondents Nos. 2 to 7 of this Court, who were the petitioners before the Sub-divisional Officer, within a period of 15 days from the date of the order, otherwise they would be ejected u/s 42 of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949. Annexure 2 states, that, as the petitioners before us have failed to offer lands of equal area, as ordered on the 16th November, 1970, they would be ejected from the disputed land.

2. The relevant facts are as follows. Respondents Nos. 2 to 7 applied before the Sub-divisional Officer, Jamtara, that, certain lands belonging to them had been encroached upon by the writ petitioners before us and praying, that, they may be evicted therefrom. The case of the writ petitioners before the Subdivisional Officer was, that, they were in possession of the disputed land by Khorfa settlement for many many years and had acquired title by adverse possession.

Annexure 1 was passed after a remand by the appellate court, by which an inquiry was to be made as to when a house or houses had been constructed. After remand, on a fresh consideration of the materials on record, the Subdivisional Officer came to the conclusion, that, the writ petitioners' case of Khorfa settlement was not acceptable. The Officer stated, that, the inquiry report also showed, that, except one house the other portions were not old. According to the learned Subdivisional Officer, the case of the petitioners before him to the effect that the other side had gradually encroached on the disputed land was correct. Therefore, purporting to act u/s 20 (5), after amendment, the order incorporated in Annexure 1 was passed, but as the writ petitioners had failed to offer land of equal area and value in exchange, as ordered by Annexure 1, the order in Annexure 2 had followed. We have heard learned counsel for the parties. It is contended on behalf of the writ petitioners, that, as they were in possession for thirty years, they had acquired right by adverse possession. But, in this summary proceeding, the Sub-divisional Officer has not accepted the writ petitioners' case of possession, as they tried to make out before him. On the contrary, as indicated above, he has come to the conclusion, that, the case of the petitioners before him was correct. In such circumstances, we do not think, that, we should interfere in our writ jurisdiction, specially when an opportunity had been given to the writ petitioners by the earlier order, dated the 16th November, 1970, to compensate the present opposite party No. 2 to 7. In view of non-compliance of the order incorporated in Annexure 1, the order in Annexure 2 was bound to follow. Therefore, this writ application fails and is dismissed, but without costs.

3. The order of stay stands vacated.