

**(1999) 11 PAT CK 0033**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 5095 of 1987**

Gopal Pandit and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 19-11-1999

**Acts Referred:**

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 10, 11, 12, 13, 14

**Citation :** (2000) 3 PLJR 324

**Hon'ble Judges :** S.K. Katriar, J

**Bench :** Single Bench

**Advocate :** N.K. Agrawal and D.N. Tiwary, for the Appellant; Madhuri Lata, Ram Chandra Jha and Ranjan Kumar Singh for the Respondent Nos. 3 and 4, for the Respondent

**Final Decision :** Allowed

## Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 2.10.1986 passed by the Anchal Adhikari, Madhepura, in Misc. Case No. 1 of 1986, under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act"), whereby he has held that Respondent Nos. 3 and 4 are privileged persons and privileged tenants within the meaning of the Act, and have accordingly directed for issuance of Parchas in their names.

2. At the very outset I must deal with the objection of Respondent Nos. 3 and 4 to the effect that the writ petition ought to be dismissed on the ground of multiplicity of causes of action. The writ petition raises two causes of action. When this matter had come up before this Court on the earlier occasion, the original Petitioner herein had rightly preferred two different writ petitions. This writ petition could have been dismissed on this ground itself. It deals with questions of facts, division of plots and allotments thereof. It was, therefore, all the more imperative that separate writ petitions, as on the earlier occasion, ought to have preferred. However, I have chosen to take a lenient view in the matter and decided to adjudicate the matter on merits, inter alia, for the reason

that this writ petition has remained pending in this Court since 1987.

3. In so far as narration to facts is concerned, I will go by the number of earlier writ petitions so that there is no confusion of facts. This matter had earlier been concluded by the Anchal Adhikari Madhepura, by his order dated 21.1.1984, which was challenged in this Court by preferring CWJC No. 607 of 1986. The same was allowed by this Court by judgment dated 3.7.1986 (Annexure-1), whereby the aforesaid order dated 21.1.1984 had been set aside, and had remitted the matter back to the Anchal Adhikari for a fresh judgment in accordance with law, and in view of the directions made therein. The same relates to Plot No. 7418 (Part), appertaining to Khata No. 688. Respondent No. 3 herein (Shibbu Pandit) claimed to be a privileged tenant in relation to the Petitioners herein (the landlord), had claimed homestead rights over an area of 10 Dhurs of land of the said Plot No. 7418 (Part), because he and his ancestors had their homestead thereupon for a long time.

3.1. So far Respondent No. 4 herein (Ganesh Pandit) is concerned, his writ petition was allowed by judgment dated 3.7.1986 (Annexure-2) passed in CWJC No. 608 of 1986, and the matter was remitted back for fresh consideration. The same relates to Plot No. 7418 (Part).

4. The case of the original Petitioner herein (the landlord) before the Anchal Adhikari is that he is himself in the position of a privileged tenant and, therefore, in the event of such competing claims, the benefit of the Act would not be available to Respondent Nos. 3 and 4. His further case is that Respondent No. 3 herein (Shibbu Pandit) has his own homestead upon Plot No. 7375, and is also in possession of land bearing Plot No. 7415 where he does the job of making earthen utensils for sale. According to the Petitioners, just the same is the position with respect to Respondent No. 4 (Ganesh Pandit). He has his homestead on Plot No. 7376, and is also in possession of land being Plot No. 7416 where he does the job of making earthen utensils for sale. Pursuant to the aforesaid judgments dated 3.7.1986 of this Court (Annexure-1 and 2), the matter went back on remand to the Anchal Adhikari who had disposed of the matter by the impugned order (Annexure 6), whereby he has upheld the claim of Respondent Nos. 3 and 4. Hence this writ petition.

5. While assailing the validity of the impugned order (Annexure-6), learned Counsel for the Petitioners submitted that the original Petitioner (the landlord), as well as Respondent No. 3 (Shibbu Pandit) and Respondent No. 4 (Ganesh Pandit), are all privileged persons and privileged tenants within the meaning of Section 2(i) and 2(j) of the Act. In view of such competing claims, the benefit of the Act is not available to Respondent Nos. 3 and 4. He has relied upon a Division Bench judgment of this Court reported in 1979 BBCJ 245 Nagina Sah v. Rajpati Devi. Respondent Nos. 3 and 4 own and possess more properties than the Petitioner. In order to substantiate this statement, he had placed before the Anchal Adhikari information slip issued by the office of the Anchal Adhikari, Madhepura, a copy of which is marked Annexure 5 to the writ petition. It is

manifest from the impugned order that the Petitioner had set up a clear case in his behalf before the authority, namely, he is himself in a similar position as that of Respondent Nos. 3 and 4, and had placed materials before the authority in support of his case. In his submission, the same has been duly noticed in the impugned order but misconstrued by him. He has further submitted that in order to substantiate a claim under the Act, the privileged tenant will have to discharge a two-fold onus, namely, that he is privileged tenant, and that the other side is a landlord. In his submission, the onus has not adequately been discharged by Respondent Nos. 3 and 4 in the present case. In so far his own onus is concerned, in his submission, he has adequately discharged it by placing the document marked Annexure-5 before the authority.

6. Learned Counsel for the Respondent Nos. 3 and 4 has in opposition taken me through the scheme of the Act, and has submitted that the aims and objects and the scheme of the Act, does not warrant examination of such competing claims. In his submission, once the person claiming to be a privileged tenant is able to establish his claim, then the status of the person alleged to be landlord becomes wholly irrelevant. He has further submitted that the question whether or not the Petitioner herein is also in the status of a privileged tenant was not the subject matter of adjudication before the Authority. In such circumstances, in his submission, the authorities did not have the occasion or the opportunity to place adequate materials before the Authority. He has relied on a Division Bench judgment of this Court reported in Ragho Singh and Others Vs. State of Bihar and Others, .

7. Having considered the rival submissions, I am of the view that this writ petition has to be allowed. Learned Counsel for the Petitioners is right in his submission that once it is found that the person alleged to be a landlord is really in the same position as the person who claims to be the privileged tenant, then the benefit of the Act is not available to the privileged tenant. This issue is no longer *res integra*. Counsel for the Petitioner has rightly relied on the aforesaid Division Bench judgment of this Court in the case of Nagina Sah v. Rajpati Devi (*supra*). Discussing the entire scheme, aims and objects of the Act, their Lordships have made the following observations in paragraph 11 of the judgment, the relevant portion of which is set out hereinbelow for the facility of quick reference:

The object behind the Act was to secure permanent tenancy for a privileged tenant in the "homestead" which he was either holding on lease or using with the express or implied consent of the landlord for residential purposes. It was not the intention behind the Act that a person having already raiyati right in one homestead would be allowed to have permanent right in another homestead tenancy. The idea was to secure permanent tenancy in the homestead where such a person has no raiyati right in any homestead. Under the mandatory provisions of the Act, a privileged person having other homestead will have a permanent tenancy in the homestead held by him at any time continuously for a

period of one year (Section 4). u/s 6 of the Act, Collector has been given power after enquiry to determine fair and equitable rent. Section 8 limits the ground on which a privileged tenant can be ejected from the tenancy. Section 9 places restrictions on the right of a privileged tenant to alienate the homestead except as provided in Sections 10 to 17. The order passed by the Collector under the Act declaring the right of a privileged tenant in the homestead held by him has been made final and is not subject to any appeal or revision u/s 18. Such being the restrictive provisions of the Act, it could not have been the intention of the legislature that a raiyat having already a "Basgit" piece of land or homestead could be allowed to acquire another homestead even if he is not residing on structures on that homestead held by him to disappear or to fall down. The idea behind the Act is to secure for him a piece of land for his residential purposes. If he has already a piece of land or homestead then there is no meaning in further securing for him permanent tenancy in some land on which he might actually be living. In the present case, Respondent No. 1 cannot take any advantage of the provisions of Act as she has already a homestead and is not without a homestead land.

In fact, this judgment has been noticed by the Anchal Adhikari in the impugned order, but has disagreed with the submission of the landlord before him.

8. Coming to the facts of the present case, it is manifest from the records that Respondent No. 3 (Shibbu Pandit) has his own homestead upon Plot No. 7375, and is engaged in the job of making earthen utensils for sale of Plot No. 7415. Just the same is the position with respect to Respondent No. 4 (Ganesh Pandit), who has his homestead on Plot No. 7376, and makes earthen utensils on Plot No. 7416. This position is manifest from the document marked Annexure 5 which gives the properties owned and possessed by Respondent Nos. 3 and 4 having been issued by the Anchal Adhikari, Madhepura, himself. The same was placed before him and has been discussed in the impugned order. I am unable to agree with the contention of the learned Counsel for Respondent Nos. 3 and 4 that the question whether or not the original Petitioner himself is in the position of a privileged tenant was not the subject matter of adjudication before the Anchal Adhikari. This question, and according to Respondent Nos. 3 and 4 the allegedly dominant question before the Anchal Adhikari, are intermixed and one cannot be separated from the other. I, therefore, hold and conclude that this was very much part of the adjudication before the authority.

9. In such circumstances, this writ petition succeeds. The impugned order dated 2.10.1986, passed by the Anchal Adhikari, Madhepura, in Misc. Case No. 1 of 1986 (Annexure-5), is hereby set aside. Accordingly, Respondent Nos. 3 and 4 become trespassers, and can be evicted by force.