

(1991) 09 PAT CK 0066

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1163 of 1986 (R)

Illiazer Munda

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-09-1991

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(1), 5(1)(iii)
Bihar Land Reforms Act, 1950 — Section 37, 6
Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 PLJR 488

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : P.N. Sahu, for the Appellant; Jawahar Prasad and Anoop Kumar Mehta, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 20.5.1985 passed by the respondent no. 2 as contained in Annexure 4 to the writ application. The petitioner has subsequently filed an application for amendment of the writ application, whereby he had also questioned the notification issued u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") which is contained in Annexure 6 to the writ application.

The fact of the matter lies in a very narrow compass.

2. Allegedly, the plots in question being plot nos. 336, 441 and 668 (wrongly mentioned in the writ application in place of plot no. 662) belonged to one Maninath Singh and was recorded in his name.

3. Allegedly the said Maninath Singh granted raiyati settlement in favour of the predecessor in interest of the petitioner on 9.7.1917. According to the petitioner,

his father and after his death he had been continuing in possession of the said plots.

4. Allegedly, a proceeding was initiated under provisions of the said Act against Maharaja Chintamani Saran Nath Sahdeo (the respondent no. 3) A draft publication was made in the said land ceiling proceeding being Land Ceiling Case No. 408 of 1973-74, wherein, the petitioner as also the respondent nos. 4 and 5 filed objections.

5. The respondent no. 2, by reason of the impugned order as contained in Annexure 4 to the writ application, upon considering the objections filed by the parties held that the land in question belongs to the respondent no. 5. The respondent no. 2 found that the landholder purchased the tenure in question in the year 1941 and in terms of the provisions of Section 6 of the Bihar Land Reforms Act, 1950 he became the statutory tenant under the State of Bihar inasmuch as the lands in question are Manjhia in nature (privileged land of the landlord).

6. The respondent no. 2 further found that the landholder (respondent no. 3) executed a deed of sale in the year 1963 in favour of the respondent no. 4 who in turn executed various deeds of sale in the year 1982 including one in favour of the respondent no. 5.

7. The respondent no. 2 by reason of his impugned order held that the respondent no. 4 himself is a landholder and as such a separate proceeding should be initiated as against him also.

8. Mr. P.N. Sahu, the Learned Counsel appearing on behalf of the petitioner raised a short question in support of this application. The Learned Counsel submitted that as the petitioner has been claiming the lands in question by reason of a deed of settlement executed in favour of his father by the recorded tenant as far back as in the year 1917, the said lands do not come within the purview of the provisions of the said Act.

9. Mr. A.K. Mehta, J.C. to G.P. and Mr. Jawahar Prasad, the Learned Counsel appearing on behalf of the respondent no. 5 on the other hand, submitted that in this case a complicated question of title arises for consideration. According to the Learned Counsels such a complicated question of title cannot be determined in a writ application.

10. It was further pointed out by Mr. Prasad that in view of the fact that the lands in question were Marusia in nature, the petitioner, assuming that the surrender and settlement were genuine could not have acquired a right of occupancy in relation to the said land. The Learned Counsel further pointed out that as in terms of Section 6 of the Bihar Land Reforms Act, 1950, the respondent no. 3 became a statutory tenant under the State of Bihar and as he got his name mutated and had been paying rent to the State of Bihar, the question of the petitioner's having any existing right, title and interest in relation thereto in

respect of the aforementioned plots does not arise. The Learned Counsel further submitted that although some rent receipts have been produced on behalf of the petitioner, the rent receipts granted in favour of the respondent no. 3 being on the basis of fixation of fair rent in terms of the provisions of the Bihar Land Reforms Act, the rent receipts filed on behalf of the petitioner should be relied upon.

11. There cannot be any doubt that if a transfer is to be annulled by the Collector under the said Act, a proceeding u/s 5(1) (iii) thereof must be initiated.

12. In a given case, a claim of any third party may also have to be adjudicated by the Collector in exercise of his power conferred upon him u/s 37 of the said Act, if such a matter cannot be adjudicated upon by him in terms of any other provisions thereof.

13. However, in this case, as noticed hereinbefore, the respondent no, 2 passed the impugned order after giving an opportunity of hearing to both the petitioner and also the respondent nos. 4 and 5 and prima facie, he was satisfied that the claim of the respondent nos. 4 and 5 was genuine.

14. this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India cannot go into a disputed question of title.

15. The petitioner, in this writ application, has questioned the finding of the respondent no. 2 whereby he purported to have held that resumption of the lands made by the respondent no. 3, execution of a deed of sale by him in favour of the respondent no. 4 and consequently the deeds of sale executed by the respondent no. 4 in favour of various persons including the respondent no. 5 were genuine. In my opinion, the question as to whether by reason of the purported deed of settlement executed in the year 1917 in favour of the predecessor in interest of the petitioner by the then recorded tenant, any interest in the land was created or not vis-a-vis right, title and interest framed by the respondent no. 3 in relation thereto and consequently by the respondent nos. 4 and 5 cannot be decided in this writ application.

16. The remedy of the petitioner, if any, in my opinion, is to file a civil suit for declaration of his title where the disputed question of title by and between the petitioner on the one hand and the respondent nos. 3 and 4 on the other, can be adjudicated upon such a decision of the civil court, which goes without saying, would be binding upon the revenue authority. In this view of the matter, this application is dismissed subject to the observations made hereinbefore. However, in the facts and circumstances of this case, there will be no order as to costs.