

(2019) 07 PAT CK 0333

In the Patna High Court

Case No : Letters Patent Appeal No. 2182 Of 2015 In Civil Writ Jurisdiction Case No. 11444 Of 2013

Jai Prakash Gupta

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Wild Life Protection Act, 1972 — Section 18, 18(1), 19, 20, 21, 22, 23, 24, 25

Citation : (2019) 07 PAT CK 0333

Hon'ble Judges : Jyoti Saran, J; Partha Sarthy, J

Bench : Division Bench

Advocate : Binod Bihari Singh, Anirban Kundu

Final Decision : Allowed

Judgement

Heard Mr. Binod Bihari Singh, learned counsel appearing for the appellant-writ petitioner and Mr. Anirban Kundu, S.C.24 for the State.

It is feeling aggrieved by a judgment and order dated 21.8.2015 of a learned Single Judge in C.W.J.C. No. 11444 of 2013 whereby the writ petition was dismissed that the petitioner is before this Court.

Having considered the pleadings in the writ petition, the order passed by the learned Single Judge thereon and the different orders that have been passed in this intra-court appeal, what we gather is that the issue has taken a different turn when in fact all that appellant-writ petitioner wanted to communicate is that until rights are determined by the statutory authority under the Wild Life Protection Act, 1972 (hereinafter referred to as 'the Act'), there can be no restraint on the right of the petitioner to deal with his raiyati land in question and in transferring his rights in favour of any other person simply because there is a notification of the State Government declaring the land in question along with other lands, as a 'Sanctuary' under Section 18 of 'the Act'.

For the sake of ready reference we would reproduce the relevant prayer of the

petitioner in the writ petition which runs under:

"(a) To issue an order/orders by way of appropriate writ/writs, declaring the notification No. S.O.781 published on 20.6.1989 in Bihar Gazzete by the Joint Secretary, Department of Invironment and Forest Department, State of Bihar under the order of Hon'ble Governor, Bihar by which an area of lands measuring about 6311.63 Hectre in the District of Begusarai (Bihar) had been constituted for "Kawar Jhhil bird Vihar Sanctuary" under Section 18(1) of Wild Life (Protection) Act, 1972, as lapsed its force.

(b) To issue an order/orders, writ/writs by setting aside the letter No.38 dated 5.1.2013 (Consequential to Notification No. S.O.781 dated 20.6.1989) issued by the Collector Begusarai, by which the District Sub Registrar and all the Sub Registrars of the District have been directed not to register the sale/purchase of the lands mentioned in the Notification published on 20.6.1989 in Bihar Gazzette?

(c) Any other relief/reliefs may be granted for which the petitioner is entitled to."

The learned Single Judge having noted the intent behind the notification of the State Government in its Department of Environment and Forest bearing S.O. No.781 dated 20.6.1989 whereby 6311.63 Hectares of land lying in different villages in the District of Begusarai including the village of Sripur Ekamba under Thana No.116 to which the present disputes relates which was notified as a Kawar Jhil Bird Vihar Sanctuary and considering the larger public interest involved including the tourism part thereof, found no merit in the prayer of the appellant- petitioner to interfere with the notification issued under Section 18(1) of 'the Act' to dismiss the writ petition taking note of the submission made by the State that the S.D.O. Majhaul having been delegated the power of a Collector under Section 18 of 'the Act', was in seision of the matter to dispose of the objection received under Section 24 of 'the Act' and that many of them had already been disposed of.

In appeal the coordinate bench bearing note of the issue as well as the laudable object behind the notification relating to development of Kawar Jhil Bird Vihar Sanctuary had issued several directions which led to constitution of a Committee under the Chairmanship of the Development Commissioner in so far as determination of raiyati rights is concerned.

When this matter came up for consideration on 08.05.2019 before this Court, the argument advanced by Mr. Singh was in reference to the statutory prescriptions underlying 'the Act' to submit that even if a passage of time would not allow the petitioner to question the notification issued under Section 18 of 'the Act' and which is well within the right of the State Government under 'the Act' for making such declaration nonetheless 'the Act' in its subsequent provisions, protects the right of the raiyats as well but which has been hijacked by the State respondent(s) who have not bothered to appreciate the prescriptions nor discharge their statutory obligation.

For the purpose Mr. Singh while admitting to the issuance of the notification dated 20.6.1989, a copy of which is placed on record through supplementary counter affidavit filed on behalf of the Collector, Begusarai admits that a declaration was made under Section 18 and which at Item No.7 notified several villages including Plot No.2032 of Khata No.1269 in village Sripur Ekamba, Thana No. 116 to which the dispute relates, as well. It is the submission of Mr. Singh that the obligation of the State does not end on mere declaration of a Sanctuary under Section 18 to put restriction on the rights of the raiyat of the lands so notified rather there is a scheme provided thereafter in Chapter 4 which finally culminates in Section 24 whereby raiyati rights can be acquired by a proper proceedings but until then, the right of a raiyat cannot be interfered with.

Mr. Singh invited the attention of this Court to a notification issued under Section 19, a copy of which is placed at Annexure-3 to the writ petition to submit that in exercise of power for determination of rights under Sections 19 to 25, that the Notification No.1649 dated 19.9.2008 was issued but it excluded the land situated in village Sripur Ekamba, under Thana No. 116 from the said exercise and a footnote present announced that separate notification would be published in respect of village Sripur Ekamba along with some other villages which finds mention at the foot of the Notification dated 19.09.2008. Mr. Singh making reference to the statement made in paragraph 11 of the writ petition submits that this intent never translated into action because no further notification was issued thereafter. It is argued that it is when an advisory was issued by the Collector, Begusarai as contained in his letter No. 38 dated 05.01.2013 whereby the Sub-Registrars were directed not to register any sale/purchase of the lands mentioned in notification dated 20.06.1989 effecting the right of the petitioner to deal with his land, that the writ petition was filed.

The short submission made by Mr. Singh is that in view of the legal position existing where the determination of right as envisaged under 'the Act' has not been done, no such restrictions can be made.

Having heard learned counsel for the parties we would make it clear that we certainly do not intend to interfere with the intent shown by the State to set up a Sanctuary as reflected in the Notification dated 20.06.1989. We also take notice of the developments that has taken place in the meanwhile towards the development of the Sanctuary. The State is absolutely free to act within the parameters of 'the Act' in so far as the upkeep, maintenance and protection of the Sanctuary is concerned.

The issue posed before us is not the power of the State to deal as such rather the issue is that even if there has been a declaration under Section 18 of 'the Act' on 20.06.1989 but if the Collector under 'the Act' has failed to determine the raiyati rights in so far as the petitioner is concerned, apart from others in terms of the provisions present in Sections 19 to 25, whether the rights of such raiyats can be curtailed. It is bearing note of this situation that this Court by order dated 19.06.2019, while allowing the Committee constituted under the Chairmanship of

the Development Commissioner to take a decision on the raiyati rights in so far as the petitioner is concerned observed thus:

"While questioning the declaration of the area in question as a Wild Life Sanctuary, the issue which Mr. Binod Bihari Singh, learned counsel appearing for the appellant-writ petitioner raises is that in absence of any determination of rights as mandated under section 19 of the Wild Life Protection Act, 1972 (hereinafter referred to as 'the Act') how the State including the Collector or the Principal Chief Conservator of Forest can restrict the conveyance of property rights as vested in the petitioner in another person.

It is the argument of Mr. Singh that even if a declaration and proclamation is made under 'the Act' to declare the area as a Wild Life Sanctuary in terms of the provisions of Section 21 of 'the Act', until a determination of the property rights is made under section 19 of 'the Act' and/or the State proceeds to acquire the land in question in terms of Section 24 of 'the Act', neither the right of the petitioner to deal with his land can be extinguished nor any transfer of the said land by the petitioner can be obstructed, as having been done in the case of the petitioner.

The pleadings on record would confirm that the matter has travelled a long distance and a committee was constituted under the Chairmanship of the Development Commissioner for consideration of this very issue of determination of raiyati rights as existing within the area coming under the proclamation.

While the State by filing counter affidavits in the writ petition as well as in the present appeal do admit that the process of resolution of this issue is going on, according to Mr. Singh, learned counsel appearing for the appellant, in absence of issuance of any notice in respect of the village Sripur Ekamba coming under Thana No.116, the statement made in the affidavit has no lawful support.

A number of affidavits have been filed in the present appeal and the last of which was filed by the Principal Chief Conservator of Forest, Bihar, Patna Mr. Devendra Kumar Shukla, who at paragraph 7 and on wards, proceeds to explain the steps taken for resolving the matter and at paragraph 10 informs that a final decision would be taken by the end of August, 2018. A period of almost a year is going to lapse but there is nothing on record which would satisfy this Court as to the decision taken.

Prima facie we are satisfied by the submission made by Mr. Singh that in absence of determination of rights by the Collector, Begusarai in purported exercise of powers vested in him under section 19 of 'the Act' and/or in absence of any proceeding initiated under section 24 of 'the Act' there cannot be any curtailment of the right of the petitioner to transact the land in question for a simple proclamation ipso-facto would not take the right of the raiyat vested in him and it is for this reason that the provisions of sections 19 and 24 have been provided in 'the Act' for enabling the State to take proper steps in the matter, if they intend to restrict the right of a raiyat.

In the circumstances noted and since sufficient time has passed, as a last indulgence, we direct the Development Commissioner who is stated to be the Chairman of the Committee constituted to resolve the matter, the Principal Chief Conservator of Forest who is deponent of the supplementary counter affidavit referred to above and the Collector, Begusarai to hold a meeting and file a joint counter affidavit on the status of the matter which should reach this Court by 1st of July, 2019.

It is made clear that in case these authorities fail to resolve the issue, this Court would proceed to dispose of the appeal bearing note of the affidavits on record.

List this matter 'For Orders-I' on 2nd of July, 2019.

It is made clear that no further indulgence shall be granted to the State when the matter next comes up on 2nd of July, 2019.

Let a copy of this order be handed over to Ms. Shally Kumari, learned Assisting Counsel to Standing Counsel No.24 for the needful."

It is after the order was passed by us that the Committee has gone into action and did what was most convenient and that is to reject the claim of the petitioner by order passed on 28.6.2019, a copy of which is placed through supplementary counter affidavit filed on behalf of the Development Commissioner, the Principal Chief Conservator of Forest and the District Magistrate, Begusarai on 01.07.2019. The order so passed is fit to be quashed at the threshold because it is passed without opportunity of hearing to the petitioner. It is long settled that adjudication of a right cannot be ex parte and without opportunity of hearing to the person concerned.

We thus quash that order dated 20.06.2019 passed by the Committee in so far as it concerns the petitioner placed on record vide Annexure- C to the supplementary counter affidavit referred to above.

The issue is what happens next and we say so because while Annexure-3 dated 19.09.2008 to the writ petition was issued by the statutory authority appreciating their obligation under 'the Act' to invite objections for a determination of the rights of the raiyat of the villages named therein but the said notification excluded the village of the petitioner i.e Sripur Ekamba from its operation because the respondents intended to issue a fresh notification in so far as these villages mentioned at the foot of the notification dated 19.9.2008 are concerned but which notifications never came into publication.

In such view of the matter where the concerned statutory authority i.e Collector under 'the Act' has failed to act in tune with the provisions present at Sections 19 to 25 of 'the Act' to determine the right of the petitioner and other similarly placed because a notification in continuation of the notification dated 19.09.2008 was ever issued by the statutory authority as specifically pleaded by the petitioner in paragraph 12 of the writ petition and not traversed by the respondents, the restraint cannot be extended unilaterally and de hors the

statutory provisions.

In our opinion, the action of the Committee to reject the claim of the petitioner is void and thus we, while modifying the order of the learned Single Judge to the extent it affects the raiyati rights of the appellant-writ petitioner, would direct the Collector under 'the Act' not to sleep over the matter and fail in his obligation as cast under 'the Act' for if the State in its Forest and Environment Department intends to give shape to the Sanctuary as reflected from the notification dated 20.06.1989, it has to be done lawfully and the Collector, Begusarai as well as other statutory authorities having initiated action in that regard through notification dated 19.09.2008 can not abandon the exercise midway through.

We thus direct the Collector, Begusarai either by himself or through the delegated authority to take the notification dated 20.06.1989 issued under Section 18 of 'the Act' to its conclusion by determination of the rights of the landholders after opportunity of representation to the petitioner as well as the raiyats of the villages who were kept out of the notification dated 19.09.2008 namely Sripur Ekamba Thana No. 116, Narayan Pipar, Thana No.117, Parora, Thana No. 119 and Manjhaul, Thana No. 191 and which exercise be completed within 3 months from the date of receipt/production of a copy of this order.

We modify the order of the learned Single Judge to the extent above.

The appeal is allowed with no order as to costs.