
(2019) 01 JH CK 0118
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5671 Of 2008

Jugal Kishore Shekhar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-01-2019

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h), 5, 6, 7
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 JH CK 0118

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : A. K. Sahani, Ashish Kr. Thakur, Amit Kr. Verma, Bhanu Priya

Final Decision : Partly Allowed

Judgement

1. Heard Mr. A. K. Sahani, counsel appearing on behalf of the petitioner.
2. Heard Mr. Ashish Kr. Thakur, counsel appearing on behalf of the Resp.-State.
3. Heard Mr. Amit Kr. Verma, counsel appearing on behalf of intervener in I.A. No. 11091 of 2018.
4. Heard Ms. Bhanu Priya, counsel appearing on behalf of intervener in I.A. No. 1702 of 2013.
5. This writ petition has been filed for the following reliefs:-

"For grant of an appropriate writ in the nature of Certiorari or an order or direction for quashing the order dated 14/10/2008 passed by the respondent no. 2 in Misc. Case No. 90 of 2006 (Annexure- 11) whereby and whereunder while declaring the longstanding Jamabandi created in favour of the petitioner in 1962-63 being illegal, the same has been cancelled taking resort to the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950 and for any other appropriate writ or order or direction as this Hon'ble Court may deem fit and proper."

6. Counsel for the petitioner submits that the property involved in this case belongs to the petitioner and this property was included, in turn, in Form 'K' submitted by the petitioner and his brothers under Sections 5, 6 & 7 of the Bihar Land Reforms Act, 1950. The property is appertaining to Plot No. 2 and 107 under Khata No. 98. He submits that their name was also entered in register II and Jamabandi was also created vide Case No. 219 of 1962-63 pursuant to order dated 10.12.1963 passed by the then Anchal Adhikari, Chandankiyari and the petitioner has also paid rent till 2007.

7. Counsel for the petitioner further submits that for the purposes of construction of road on this property for Bharat Coking Coal Limited, there was a recommendation for acquisition of land and accordingly the petitioner and his brothers made application for payment of compensation and vide order dated 28.11.1996, the Land Reform Deputy Collector, Chas recommended for acquisition of land and for payment of compensation and the matter was forwarded to the Additional Collector, Bokaro for necessary action. The Additional Collector, Bokaro also forwarded with favourable recommendation vide order dated 10.09.1997, but in spite of such recommendation neither any compensation was paid nor any employment was provided. Accordingly, the petitioner filed a writ petition being W.P. (C) No. 1308 of 2002 and vide order dated 12.03.2004 this Hon'ble Court disposed of the writ petition with a direction upon the petitioner to file an application before the respondent authority within a period of three weeks. The respondent authority was directed to verify the facts and relevant records and to pass an appropriate order in accordance with law. Consequently, the petitioner approached the respondent no. 2 and Misc. Case. No. 90 of 2006 was instituted.

8. Counsel for the petitioner further submits that the proceeding being Misc. Case No. 90 of 2006 was instituted pursuant to the order passed by this Hon'ble Court and was not a proceeding in connection with the provisions of Section 4(h) of Bihar Land Reforms Act, 1950. He also submits that the matter related to grant of Raiyati Manyata to the petitioner so that adequate compensation/employment could be provided to the petitioner.

9. Counsel for the petitioner further submits that by the impugned order the authority has held that the petitioner is not entitled for grant of compensation and has further cancelled the Jamabandi running in the name of the petitioner by exercising power under Section 4(h) of the Bihar Land Reforms Act, 1950. He submits that the order cancelling the Jamabandi by exercising power under Section 4(h) of the Bihar Land Reforms Act is wholly illegal in as much as no proceeding was ever initiated for cancellation of Jamabandi under the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950.

10. Counsel for the petitioner submits that the authority has made certain observations in connection with running Jamabandi No. 219 of 1962-63. He further indicated that the Jamabandi number is 219 of 1962-63 but in the operative portion of impugned order dated 14.10.2008, the Jamabandi number

has been erroneously mentioned as Jamabandi No. 260 which appears to be a typographical error.

11. Counsel for the petitioner further submits that long running Jamabandi cannot be cancelled and for this he relies on a judgment by this Court reported in 2008 (3) JLJR 273 (Dineshwar Prasad v. State of Jharkhand) and submits that it has been held that a long running Jamabandi cannot be cancelled unless there is any order from Competent Court. He has also relied upon another judgment reported in 2018 (1) JBCJ 584 (State of Jharkhand v. Chancla Devi) and submits that more than thirty years old entries and documents cannot be upset by or cannot be brushed aside on the basis of report of Halka Karmachari. He has also relied upon judgment reported in 2013 (1) JCR 571 (Jhr) (Mahabir Mahto & Ors. Vs. State of Jharkhand & Ors.) to submit that the remedy in connection with right, title and interest over the property lies by filing a civil suit and long running Jamabandi cannot be cancelled in the manner it has been done in the instant case.

12. However, during the course of argument upon a query from the Court, the counsel submits that the order dated 10.12.1963 claimed to have been passed in Case No. 219 of 1962-63 by which Jamabandi was created by the then Anchal Adhikari, Chandankiyari is not available with the petitioner.

13. Counsel appearing on behalf of the respondents-State submits that it has been recorded in the impugned order that in register II although Case No. 219 of 1962-63 has been mentioned, but the same does not contain signature of any competent authority and accordingly the Jamabandi claimed by the petitioner has been disbelieved by the authority in the impugned order. He also submits that in the operative portion of the impugned order, although Jamabandi No. 260 has been mentioned, but the same ought to be holding No. 260 which is corresponding to Jamabandi Case No. 219 of 1962-63.

14. He further submits that the impugned order is apparently in two parts. One relating to claim of the petitioner to have compensation and the other relating to cancellation of Jamabandi by exercising power under Section 4(h) of Bihar Land Reforms Act, 1950. During the course of argument he could not satisfy the Court on the point as to whether any proceeding under Section 4(h) of Bihar Land Reforms Act, 1950 was ever initiated against the petitioner. The counsel submits that even if this portion of the order is set aside then also the petitioner cannot have compensation in view of the speaking order, which has been passed by the authority and if the petitioner claims right title and interest over the property, the petitioner will have to file a civil suit for declaration of such right, title and interest.

15. The Counsel has also pointed out that the rent receipt in the instant case was issued for the first time in the year 1995-96, although the petitioner is claiming Jamabandi pursuant to order passed in Jamabandi Case No. 219 of 1962-63. There is no explanation as to why no rent receipt was not issued prior to

1995-96.

16. After hearing both the parties and after considering the materials on record, this Court finds that the impugned order has been passed pursuant to an order passed by this Court in W.P. (C) No. 1308 of 2002. The specific case of the petitioner was that the property involved in this case belongs to the petitioner and in spite of all recommendations made in favour, the petitioner was neither granted compensation nor any employment by Bharat Coking Coal Limited for whose benefit, the land was to be acquired vide order dated 12.03.2004, the petitioner was given a liberty to file an application before the respondent no. 2 who was to pass a speaking order in connection with claim of the petitioner for grant of compensation. Accordingly, this Court finds that the impugned order cannot be said to be a proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950. There is no dispute that in the instant case no proceeding under the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950 was initiated. From the perusal of the impugned order it appears that the authority has passed order for cancellation of Jamabandi by referring to Section 4(h) of the Bihar Land Reforms Act, 1950.

17. This Court further finds that the impugned order is in two parts. One is relating to cancellation of Jamabandi by exercising of power under Section 4(h) of the Bihar Land Reforms Act, 1950 and the other is denial claim of the petitioner relating to compensation for the property as the title, right and interest of the petitioner is disputed in the impugned order.

18. As no proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950 was ever initiated, therefore, the impugned order only to the extent it relates to cancellation of Jamabandi under Section 4(h) of the Bihar Land Reforms Act, 1950 is hereby set aside. However, this order will not prevent the respondents from initiating any proceeding under the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950, if permissible under law. So far as the other part of the order is concerned, regarding grant of compensation/employment to the petitioner, this Court finds that the entries made in the record of right has been disbelieved and certain allegations of interpolation and collusion with the authorities have been levelled in the impugned order. Accordingly, this Court is not inclined to interfere with the remaining portion of the impugned order. There are disputed questions of fact regarding title, right and interest over the property are involved, which cannot be adjudicated under Article 226 of the Constitution of India and such dispute can only be resolved through a competent court of civil jurisdiction. The petitioner or any person aggrieved, may approach the Civil Court for declaration of right, title and interest over the property which shall be decided without being influenced by observations made in the impugned order.

19. In view of the aforesaid findings this writ petition is partly allowed.

20. So far as the interlocutory application for intervention are concerned, since it has been observed above that it will be open for the aggrieved person to get

right, title and interest declared through a competent court of civil jurisdiction, no useful purpose will be served by allowing the interveners to intervene in this writ petition. Accordingly, these I.A. No. 11091 of 2018 and I.A. No. 1702 of 2013 are hereby dismissed,

21. Interim orders, if any, stands vacated.