

(2016) 11 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19651 of 2015

Jugal Sao

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-11-2016

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 20

Citation : (2017) 1 BBCJ 309

Hon'ble Judges : Mr. Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Mr. Hemendra Prasad Singh, Sr. Advocate and Mr. Bhanu Pratap Singh, Advocate, for the Petitioners; Mr. Anant Prasad Singh, SC-15 and Mr. Sanjay Kumar, AC to SC-15, for the Respondent Nos. 1 to 6; Mr. Jagannath Singh, Advocate, for the Respondent No. 7

Final Decision : Allowed

Judgement

Mr. Birendra Prasad Verma, J.— Heard the parties.

2. The matters in issue are the orders passed by the authorities concerned under the provisions of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short "Act, 1947") with respect to a small parcel of land bearing plot no.315 appertaining to khata no.181 area 5 decimals situate at village-Mohammadpur Tola Hichhan Bigha, P.S.-Daud Nagar, District-Aurangabad (hereinafter to be referred to as the "lands in question").

3. The learned senior counsel appearing on behalf of the petitioners submits that originally the petitioners filed their petition under the provisions of the Act, 1947 for grant of homestead parcha to them with respect to the lands in question, which gave rise to Homestead Parcha Case No.12 of 2000-01 and it was finally allowed by the respondent Circle Officer, Daud Nagar by his order dated 11.08.2001 (Annexure-2), and the claim of the petitioners for grant of homestead parcha was accepted only with respect to two decimals of lands. Consequently, the homestead parcha dated 11.08.2001, as contained in

Annexure-3, was issued in favour of the petitioners. It is contended that subsequently the petitioners raised their claim for further area of the lands in question, which was allowed by the subsequent order dated 02.12.2005 (Annexure-4) and the petitioners were granted another homestead parcha for further two decimals of land of the plot in question under the provisions of the Act, 1947. The consequential homestead parcha dated 07.12.2005 (Annexure-5) was also issued in favour of the petitioners. Therefore, according to him, the petitioners have been granted 4 decimals of lands of plot no.315 by issuing two homestead parchas, as contained in Annexure-3 and 5. It is next contended by the learned senior counsel that the private respondent no.7, being aggrieved by the subsequent order dated 02.12.2005 (Annexure-4) filed Revision Case No.41 of 2006 before the District Collector, Aurangabad under Section 21 of the Act, 1947, which was finally disposed of by an order dated 30.10.2006 (Annexure-6) and the matter was remitted back to the Circle Officer, Daud Nagar for passing a fresh order.

4. It is the case of the petitioners that on remand being made by the District Collector, Aurangabad fresh order was passed by the Circle Officer, Daud Nagar on 04.01.2007 (Annexure-7) and again claim of the petitioners for entire 4 decimals of lands was allowed. Thereafter, the private respondent no.7 again approached the District Collector, Aurangabad under Section 21 of the Act, 1947, which gave rise to B.P.P.H.T. Case No.59 of 2007, and it was finally allowed by an order dated 29.12.2014 (Annexure-9) and thereby the subsequent homestead parcha issued in favour of the petitioners with respect to two decimals of land was set aside. The petitioners, being aggrieved by the aforesaid order, approached the learned Bihar Land Tribunal, Patna in B.L.T. Case No.163 of 2015, but that has been dismissed by the impugned order dated 05.10.2015 (Annexure-10) and the order passed by the District Collector, Aurangabad has been affirmed.

5. It is submitted by the learned senior counsel that the petitioners are privileged persons and therefore their claim was allowed by two different orders by the Circle Officer, Daud Nagar; firstly, for two decimals of lands and again for remaining two decimals of land of the same plot no.315. It is contended that the private respondent no.7 has no legal right over the lands in question; therefore, petition filed on his behalf before the District Collector, Aurangabad was not maintainable. Hence, it is pleaded that the impugned order dated 29.12.2014 passed in B.P.P.H.T. Case No.59 of 2007 by the District Collector, Aurangabad, as contained in Annexure-9, as also the impugned order dated 05.10.2015 passed in B.L.T. Case No.163 of 2015 by the learned Bihar Land Tribunal, Patna, as contained in Annexure-10, are not sustainable in law.

6. The learned State counsel appearing on behalf of the respondent nos.1 to 6 and the learned counsel appearing on behalf of the respondent no.7, who has entered appearance suo motu, have contested the matter. According to them, the petition filed on behalf of the petitioners for issuance of homestead parcha

for the lands in question under the provisions of the Act, 1947 itself was not maintainable, as in the orders passed by the respondent Circle Officer, Daud Nagar it has nowhere been recorded that the petitioners are the privileged persons and the privileged tenants of the landlord. It is next contended by them that, admittedly, the lands in question have been recorded as Gair Mazarua Malik in the revenue records. Therefore, in the petitions filed by the petitioners, nobody was shown to be the landlord and no notice was issued to the landlord. It is further contended that in absence of any finding recorded by the Circle Officer, Daud Nagar that the petitioners are the privileged persons and they are the privileged tenants of the landlord, the claim raised on their behalf under the provisions of the Act, 1947 was not at all maintainable. It is pleaded by them that, in the aforesaid factual background, the order dated 29.12.2014 passed in B.P.P.H.T. Case No.59 of 2007 by the District Collector, Aurangabad, as contained in Annexure-9, as also the order dated 05.10.2015 passed in B.L.T. Case No.163 of 2015 by the learned Bihar Land Tribunal, Patna, as contained in Annexure-10, cannot be legally faulted and the writ petition is fit to be dismissed.

7. Before reverting to the rival submissions made by the learned counsel appearing on behalf of the parties with respect to the lands in question as also the orders passed by the authorities concerned, it would be appropriate to reproduce Section 2(i) and 2(j) of the Act, 1947, which read as follows:-

"2(i) "privileged persons" means a person -

(a) who is not a proprietor, tenure-holder, under tenure-holder or Mahajan; and

(b) who, besides his homestead, holds no other land or holds any such land not exceeding one acre;

but does not include any person who has come into possession of the homestead land in contravention of the provisions of Section 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act XIV of 1949) or Section 46 of the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908) or Section 49-C of the Bihar Tenancy Act, 1885 (Act VIII of 1885.)"]

2(j) "privileged tenant" means a privileged person who holds homestead under another person and is or but for a special contract would be, liable to pay rent for such homestead to such person"

8. The Act, 1947 was enacted as a special law for making better provisions on certain subjects relating to the law of landlord and tenant in respect of homestead held by certain classes of persons in rural areas of State of Bihar. In fact, it is a self-contained code. Section 8(1) of the Act, 1947 enumerates grounds on which a privileged tenant may be ejected from the holding/homestead. Section 8(5) of the Act, 1947 provides that, if a privileged tenant has been ejected by his landlord or any other person from his homestead or any part thereof, otherwise than in accordance with the provision contained in Section 8(1), then such privileged tenant may apply to the Collector for

restoration of his possession over his homestead land. Section 8(6) of the Act, 1947 provides that the Collector may either on receipt of an application from the privileged tenant or on his own motion, after making such enquiry as he deems fit, pass an order for putting back the privileged tenant in possession of his homestead land or part thereof from which he has been so ejected. Section 8(7) of the Act, 1947 visualizes a situation where if a privileged tenant is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord, the Collector may, either of his own motion or on an application made by the privileged tenant, initiate a proceeding for preventing the landlord from ejecting the privileged tenant from his tenancy.

9. On close examination of the whole scheme of the Act, 1947, it is apparent that it is a benevolent piece of legislation for protecting the interest of the privileged tenants vis-a-vis the landlords with respect to homestead lands in the rural areas of State of Bihar. The term "privileged tenant" has been defined under Section 2(j) of the Act, 1947 which has been reproduced above. On close scrutiny of Section 2(i) and 2(j) of the Act, 1947, it is apparent that a "privileged tenant" has necessarily to be a "privileged person", who holds homestead under another person and he is liable to pay rent for such homestead to such person i.e. the landlord. The "privileged person" is such person, who is not a proprietor, tenure-holder, under tenure-holder or Mahajan, and who besides his homestead does not hold any such land exceeding one acre.

10. In exercise of the powers conferred under Section 20 of the Act, 1947, The Bihar Privileged Persons Homestead Tenancy Rules, 1948 (in short "Rules, 1948") was framed. In case of any application filed by a privileged tenant before the Collector under the Act, 1947, the procedures for holding enquiry and for recording evidence during such enquiry has been provided under the Rule 5 of the Rules, 1948. It also provides that the Collector shall pass an order only after giving an opportunity of hearing to all the parties and after passing the final order the Collector is required to issue parcha in the prescribed Form "G" to the eligible privileged tenant.

11. Now, coming to the present case, it is not in dispute that the lands in question have been recorded as Gair Mazarua Malik Land in the revenue records. The respondent no.7 does not claim to be the landlord of the lands in question. There does not appear to be relationship of landlord and tenant between the petitioners and the respondent no.7. On close scrutiny of the different orders passed by the Circle Officer, Daud Nagar, as contained in Annexure-2, 4 and 7, it is apparent that the requirement of the Act, 1947 and the Rules, 1948, as indicated above, were not followed. It was not ascertained as to who is the landlord under whom the petitioners claim to be the privileged tenant. If the lands in question have been vested in the State of Bihar, then certainly, in view of the provisions contained in Section 3(a)(ii) of the Act, 1947, the claim of the petitioners for grant of homestead parcha under the provisions of the Act, 1947 was/is not at all maintainable. The Circle Officer, Daud Nagar has also not

recorded any finding in his orders that the petitioners are the privileged tenants of a particular landlord and they are also the privileged persons having less than one acre of land. Without recording all these findings, simply the claim of the petitioners for grant of homestead parcha with respect to the lands in question was allowed twice. The validity of claim of the respondent no.7 with respect to the lands in question has also not been gone into either by the Circle Officer, Daud Nagar or by the District Collector, Aurangabad or by the learned Bihar Land Tribunal, Patna, while the orders were passed by them with respect to the lands in question under the provisions of the Act, 1947. Therefore, in the considered opinion of this Court, the entire matter requires reconsideration and fresh decision by the respondent Circle Officer, Daud Nagar strictly in accordance with the provisions of the Act, 1947 and the Rules, 1948.

12. For the reasons recorded above, the original orders dated 11.08.2001, 2.12.2005 and 04.01.2007 passed in Homestead Parcha Case No.12 of 2000-01 by the respondent Circle Officer, Daud Nagar, as contained in Annexure-2, 4 and 7 respectively, the consequential Homestead Parcha dated 11.08.2001 (Annexure-3) and Homestead Parcha dated 07.12.2005 (Annexure-5), the order dated 29.12.2014 passed in B.P.P.H.T. Case No.59 of 2007 by the District Collector, Aurangabad, as contained in Annexure-9, as also the order dated 05.10.2015 passed in B.L.T. Case No.163 of 2015 by the learned Bihar Land Tribunal, Patna, as contained in Annexure-10, all are hereby set aside and quashed, and the entire matter is remitted back to the original authority i.e. the Circle Officer, Daud Nagar with a direction to decide the claim of the petitioners with respect to the lands in question afresh strictly in accordance with the provisions of the Act, 1947 and the Rules made thereunder, but, before passing any final order, reasonable opportunity of hearing must be given to all concerned including the petitioners and the respondent no.7, besides others, if any. While passing the fresh order, the respondent Circle Officer, Daud Nagar shall also examine the validity of the claim of the respondent no.7 over the lands in question, and if he is found to be encroacher over the lands in question, then appropriate order shall be passed for his removal also from the lands in question.

13. The parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the lands in question, before the respondent Circle Officer, Daud Nagar.

14. In order to expedite the matter, the petitioners as also the respondent no.7 are directed to appear before the respondent Circle Officer, Daud Nagar within a period of one month from today with a certified copy of the present order, where after the respondent Circle Officer, Daud Nagar shall proceed to decide the matter afresh strictly in accordance with law keeping in mind the observations made above.

15. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.