

(2004) 09 PAT CK 0174

In the Patna High Court

Case No : C.W.J.C. No. 12323 of 2001 with MJC No. 167 of 2002

Julum Sah @ Julum Sah Gond

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 5(2)

Citation : (2004) 4 PLJR 529

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Shashi Shekhar Dwivedi for the petitioners, Mr. Abbas Haider, learned JC to Govt. Pleader No. III, for the official respondents, and Mr. Jainul Abedin for the private respondents. The basic issues involved in the three writ petitions and the accompanying contempt applications are common. Common arguments have been advanced without particular reference to the details and are, therefore, being disposed of by a common judgment. In view of the nature of the issues raised in this batch of cases, there is no need to refer to the plot numbers, the settlers (the alleged ostensible owners), the allegedly real owners and the new settlees who are the private respondents. Learned counsel for the parties have chosen to take the basic facts from CWJC No. 12323 of 2001 reference to which alone would suffice and, in view of the position indicated hereinbelow, there would be no need to refer to the variation of facts obtaining in the other two writ petitions.

2. According to the writ petition, it relates to plot no. 246, covering an area of 18.62 acres, which was recorded as Gair-Majurwah Parti Kadim. The petitioners were landless persons and, therefore, the ex-landlord of village Nodda had permitted poor, landless persons like the petitioners to cultivate such Gair-Majurwah lands. The petitioners claim to be in cultivating possession of portions of plot no. 246 and 230 since 1942-43 without payment of rent. Their further

case is that the ex-landlords for mala fide reasons did not submit returns at the time of vesting. The State Government, therefore, treated the petitioners as encroachers and started Case No. 1/97 for their eviction. Ultimately the State Government decided to settle the lands in question in favour of the petitioners which was registered as Case No. 92/79-80. Proposal was prepared for regularisation of the alleged encroachment by the petitioners. The State Government ultimately passed orders dated 8.11.79 (Annexure 3 to 5) regularising the alleged encroachments by the petitioners by settling the same in their favour for rent which was made payable since 26.1.55 at the rate of Rs. 10/- per acre. The further case of the petitioners is that the order became final, who have been paying rent ever since 1955 till the date of the impugned action. However, the State Government suddenly decided to initiate action against the petitioners u/s 49-S of the Bihar Tenancy Act, 1885 (hereinafter referred to as "the Act") to cancel the settlement. The same has been registered as Case No. 128 of 1997-98, leading to the impugned order dt. 9.2.2001, whereby it has been decided to cancel the settlement. The entire order-sheet is marked Annexure-1 to the writ petition. This was followed by settlement of the same lands in favour of the private respondents, allegedly landless persons. It has been found that the petitioners are the Benamidars (ostensible owners) and the real owners are different persons who have obtained settlement in favour of the Benamidars by fraud and misrepresentation. Hence the writ petitions at the instance of the petitioners.

3. While assailing the validity of the impugned order, learned counsel for the petitioners submits that the impugned action is bad in law for non-service of notice on the petitioners which was served only on the allegedly real owners. He next submits that the two conditions which enable application of Section 49-S of the Act are absent in the present case. He relies on the definition of the "raiyat" occurring in Section 5(2) and the provisions engrafted in Sections 21 and 25 of the Benami Transaction (Prohibition of right to recover Property) Act, 1988. He has relied on the judgment of a Division Bench of this Court reported in 1991(1) BLJ 708 (Bechan Chamar vs. State of Bihar). He next submits that the petitioners have been raiyat for 22 years and, therefore, cannot be evicted except on the specified grounds. He also relies on the judgment of the Supreme Court reported in Mahesh Bhagat Vs. Ram Baran Mahto and Others, . The petitioners could be evicted only by the civil court for which he relies on a Division Bench judgment of this Court reported in Ramasray Prasad Chaudhury and Others Vs. Ramsurat Singh and Others, . He lastly submits that having accepted rent over a period, the State Government cannot now turn around and cancel the settlement. He relies on the Division Bench of this judgment of this Court reported in Sheo Narayan Gir Vs. Jugeshwar Kuer and Others, , and Narendra Bahadur Tandon Vs. Shankar Lal (since deceased) by Lrs, .

4. Learned counsel for respondent nos. 6 to 10 has been unable to advance any submission in support of the impugned action. In spite of repeated queries, he has failed to justify the settlements in their favour.

5. Learned government counsel has supported the impugned action. He submits that notices were served on all concerned. He next submits that the petitioners are not Benamidars and the real owners are other persons. The settlement in favour of the petitioners was an act of fraud between the real owners and the junior functionaries of the State Government against whom action has been initiated. He has lastly submitted that the lands in question have been settled in favour of the private respondents who are poor and needy persons.

6. I have perused the materials on record and considered the submissions of learned counsel for the parties. The entire order-sheet of the cancellation proceedings is marked Annexure-1 to the writ petition. It appears to me from a perusal of the order sheet, particularly orders dated 14.11.97, 20.1.98, 7.3.98 and 31.3.98, that notices were directed to be issued to all concerned. For example, the order dated 14.11.97 reads as follows:-

It thus appears to me that notices of the proceedings were issued to all concerned including the petitioners for local inspection. It appears from a perusal of the order-sheet that after the local inspection and preliminary enquiry, the learned Land Reforms Deputy Collector noticed that the real owners were six other persons, namely, Pramod Kumar Singh, Pradip Kumar Singh, Uma Shankar Singh, Durga Shankar Singh, Prahlad Singh and Nirmal Kumar Singh, who have got the lands in question allotted in their names or those of their family members in different partition suits or mutation cases. Steps were accordingly taken to serve fresh notices on the real owners. I am, therefore, convinced that notices were served on all concerned persons including these petitioners soon after the case was registered. The contention is, therefore, rejected.

7. Learned counsel for the petitioners has submitted that the ingredients of Section 49-S whereunder the impugned action has been taken, are not satisfied in the present case. The same is set out hereinbelow for the facility of quick reference:-

49-S. Settlement liable to be set aside-In the event of any land settled as aforesaid not being brought under cultivation within a period of five years from the date of the settlement or the land being alienated in contravention of the provisions of Chapter VII-A by the classes of tenants to whom the Chapter applies, it shall be open to the Collector of the district to set aside the settlement of such land in accordance with the provisions of section 49-B.

Obviously action has not been taken under first part of the Section but under the second part which is directly connected with Chapter VI-A, 49-C whereunder is relevant and is set out hereinbelow for the facility of quick reference:-

49-C. Restriction on transfer of tenant's rights.-No transfer by, a protected tenant of his right in his tenure, holding or tenancy, or in any portion thereof by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

Equally relevant is the definition of "Raiyat" occurring in Section 5(2) of the Act which is set out hereinbelow:-

"Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

It is manifest on a plain reading of the aforesaid provisions that the lands settled in favour of the petitioners cannot be transferred in view of the restrictions on transfer of the tenant's right to cultivate it himself in terms of Section 49-C of the Act which is widely worded and prevents him from alienating his right. In other words, Section 5(2) mandates that the raiyat, in view of his indigent circumstances, must keep the lands in his possession, and for his benefit. Transfer of such a settled land can validly result in cancellation of the settlement. In the present case, the settlements are made in favour of the petitioners but, by an agreement between the petitioners and the real owners, it has been mutually agreed that the right, title and interest shall remain with the latter and the former would be mere name-lender. I must also notice the definition of raiyat occurring in Section 5(2) of the Act as set out hereinabove. It is manifest from a plain reading of the same that "raiya", inter alia, means primarily a persons who has acquired a right to hold land for the purpose of cultivating it by himself or through his agency described therein. It has been found in the impugned order that the petitioners are really not the raiyats but mere name lenders and are, therefore, not entitled to the protection of the Act. In that view of the matter, the learned Collector of the district is right in initiating the proceeding. The contention based on the provisions of Section 49-C of the Act is rejected.

8. The over-borne fact in this proceeding is that the petitioner as well as the real owners have engaged themselves in act of fraud, have misrepresented to the authorities, were in fact in collusion with them, and have got these lands settled in favour of the petitioners. Learned government counsel has invited my attention to the letter dated 13.3.2001, as well as letter dt. 25.9.2001 (Annexure B and C to the counter affidavit of opposite parties in MJC No. 166 of 2002), from the Collector of the district of West Champaran, Bettiah, to the Sub-divisional Officer, Bagaha, directing him to lodge an FIR and initiate action against the guilty persons. Whereas the lands have been settled in favour of the petitioners who are the ostensible owners, the real owners have got the same allotted to themselves in their partition suit or mutation proceedings. Law is well settled that fraud, misrepresentation and the like unravel everything and vitiate all acts. The judgment of the Court of Appeal in England reported in (1956)1 All. E.R. 341 (Lazarus Estates Ltd. vs. Beasley) is relevant in the present context, wherein Lord Denning speaking for the court has observed as follows:- ...I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud

unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;...So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it.

In the result, I am of the view that the three writ petitions are without any merit and are accordingly dismissed. The three contempt applications have neither been pressed, nor have any merit in view of the dismissal of the writ petitions, which are accordingly dismissed.