
(1993) 03 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 7521 of 1991

Jyotish Lal Mandal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1994) 2 BLJR 1376 : (1994) 2 PLJR 394

Hon'ble Judges : S.B. Sinha, J; R.M. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 20th August, 1991, passed by the Collector, Katihar, whereby and whereunder he set aside an order dated 11-4-1986 passed by the D.C.L.R. Katihar in case No. 55/85-86.

2. The basic fact of the case is not in dispute. The petitioner allegedly purchased plot Nos. 178 and 180 measuring an area of 193 acres appertaining, to Maliki Khata No. 53 from the heirs of original owner, by reason of a registered deed of sale dated 27-2-1975.

3. A proceeding was initiated u/s 145 of the Code of Criminal Procedure between the petitioner and Respondent Nos. 5 to 7 in relation to the lands in question.

4. The aforementioned respondents claimed themselves to be the "bataidars".

5. The said proceeding u/s 145 of the Cr. P.C. was decided in favour of the petitioner by an order dated 16-5-1980.

A revision-application was filed before the Sessions Judge against the said order which was dismissed.

6. However on 10-9-1985 respondent Nos. 5 to 7 filed an application before the D.C.L.R. Katihar u/s 48-E (1) of the Bihar Tenancy Act. By an order dated

11-4-1986 the D. C. L, R. rejected the said application.

7. A revision application was filed by the respondent Nos. 5 to 7 before the Collector, Katihar, who by reason of the impugned order allowed the same and remitted the matter back to the D.C.L.R. directing him to constitute a Board.

8. Mr. Tarkeshwar Dayal, learned Counsel appearing on behalf of the petitioner has raised a number of contentions in support of this application.

The learned Counsel submitted that the revision-application before the Collector was not maintainable. It was further submitted that in any event the application u/s 48-E (i) of the Act was not maintainable, in view of the fact that the possession of the petitioner had been declared in a proceeding u/s 145 of the Cr. P.C.

9. The learned Counsel appearing on behalf of respondent Nos. 5 to 7 on the other hand, submitted that evidently the petitioner has not been prejudiced by reason of the impugned order, as the Collector could exercise his appellate jurisdiction u/s 48-F of the said Act.

10. From a perusal of the impugned order passed by the Land Reforms Deputy Collector, Katihar, it appears that he did not admit the said application having held that on the one hand the respondents have stated that they are in possession of the land but at the same time they had made a prayer for restoration thereof in the said application.

11. Section 48-F (1) of the said Act reads thus:

48-F. Appeals-(1) An appeal shall lie from an order in Sub-section (7) and Sub-section (8) of Section 48-E-

(i) if such order is passed by an officer other than the Collector of a district, to the Collector of the district or to any officer specially empowered by the State Government by notification to hear such appeals, and

(ii) if such order is passed by the Collector of a district to the prescribed authority.

12. From a perusal of the aforementioned provisions, it is clear, that an appeal shall lie against orders passed under Sub-section (7) and Sub-section (8) of Section 48-E of the Act.

13. Sub-sections (7) and (8) of Section 48-E reads thus:

(7) Where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same, receive such evidence as it considers necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings:

Provided that failure on the part of any member of the Board to sign the finding shall not affect the validity of that finding:

Provided further that if any member does not want to sign the finding of the Board he will submit his disagreement on the findings in writing failing which the Chairman will submit his notes on the subject.

(8) In case of disagreement with the report or the findings of the Board, the Collector shall after recording his reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, make such enquiry, if any, as he thinks necessary and on being satisfied that-

(i) the person threatened with ejectment is an under raiyat the Collector shall declare the threatened ejectment illegal and direct that the landlord shall not interfere with the possession of the under raiyat in his tenancy or any portion thereof:

(ii) the land under dispute is in the tenancy of the under raiyat the Collector shall declare possession of the raiyat and order the crop or produce or the sale proceeds thereof, as the case maybe, to be divided between the under raiyat and his landlord in accordance with the provisions of Sections 69 to 71 of the Act;

(iii) the person alleged to have been ejected was an under raiyat on the disputed land on the date of ejectment and was ejected within twelve years before the commencement of proceeding under this section in contravention of Section 89, the Collector shall order that the landlord, or, where any other person is in possession of the land comprised in under raiyat tenancy of portion thereof under any claim derived from the landlord, such person shall restore the under raiyat to possession of the tenancy or portion from which he was so ejected.

14. In this case, evidently, the Land Reforms Deputy Collector did not admit the application. He even did not constitute a Board, Thus, the question of the Collector exercising his power under Sub-sections (7) and (8) of Section 48-E of the Act did not arise and consequently no appeal lay against the said order in terras of Section 28-F thereof.

15. Thus even assuming that the petitioner has not been prejudiced in any manner only because the respondent Nos. 5 to 7 labelled the memorandum as a revision application instead of an Appeal, in view of the fact that even an appeal did not lie, the Collector has no jurisdiction to entertain even the said appeal.

16. The learned Counsel appearing on behalf of respondent Nos. 5 to 7 however drew our attention to Sub-section (13) of Section 48-E of the Act and submitted that on the basis thereof the jurisdiction of the Civil Court would be barred. The submission of the learned Counsel cannot be accepted.

17. In this case the possession of the petitioner has been declared by an Executive Magistrate in a proceeding u/s 145 of the Code of Criminal Procedure.

18. A Civil Suit would, thus, be maintainable at the instance of respondent Nos. 5 to 7. Further as no proceeding under Sub-sections (7) and (8) of Section 48-E of the Act was initiated, Sub-section (13) thereof does not impose any bar for

maintainability of the suit.

19. For the reasons aforementioned, this application is allowed, the impugned order is set aside but in the facts and circumstances of the case there will be no order as to costs.

R.M. Prasad, J.

20. I agree.