
(2019) 07 JH CK 0047
In the Jharkhand High Court
Case No : Writ Pition (c) No.1206 Of 2017

Kalabati Mahato	Vs	APPELLANT
State Of Jharkhand And Ors		RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Bihar Tenant's Holdings (Maintenance Of Records) Act, 1973 — Section 3, 14, 15, 16
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0047

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Arbind Kr. Jha, Shubha Jha, Suraj Prakash, Arpan Mishra, Tejaswi

Final Decision : Allowed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the order dated 16.09.2016 passed in Mutation Revision Case No.04/15-16 by the Deputy Commissioner, Seraikella-Kharsawan is under challenge whereby and whereunder the order passed by the Circle Officer in Mutation Case No.313/10-11 dated 30.11.2010 and the order passed by the Deputy Collector Land Reforms in Mutation Appeal No.10/11-12 dated 23.02.2015 has been reversed by setting aside both the orders.

2. The brief facts of the case of the petitioner is that she has purchased a landed property in question through the registered deed of sale bearing No.984/979/2010 dated 03.03.2010 executed by respondent No.6, the vendor, Sumitra Patar and got possession over the aforesaid land and thereafter she has filed a petition for mutation by making an application before the Circle Officer, Rajnagar which was registered as Mutation Case No.313/10-11.

The Circle Officer after accepting the aforesaid application has directed the Halka Karamchari to submit a report by visiting the site, in pursuance thereto, the report has been submitted by the Halka Karamchari but at that time, an

objection has been filed by the respondent No.5 raising the objection against the creation of mutation in favour of the petitioner and therefore, the matter has been heard at length by the Circle Officer concerned.

3. The report has been submitted by the Halka Karamchari whereby and whereunder it has been reported that the land in question is not unabad Bihar/Jharkhand, not recorded as the forest land and the land is not coming under the schedule area as also the land is in possession of the petitioner, the applicant before the Circle Officer.

4. The respondent No.5 has claimed to be the title holder of the landed property in question through an agreement to sale, and therefore, recommendation has been made to create mutation in favour of the petitioner and accordingly appropriate order has been passed, in pursuance thereto, the petitioner has started making payment of rent to the Government but the respondent No.5 has preferred an appeal before the Deputy Collector Land Reforms which was registered as Mutation Appeal No.10/11-12 which was decided vide order dated 23.02.2015 (Annexure-4) by which the appellate authority has declined to interfere with the order passed by the Circle Officer against which the respondent No.5 has preferred revision before the Deputy Commissioner, which was registered as Mutation Revision Case No.04/15-16 but according to the petitioner the revisional authority ignoring the fact finding recorded by the Circle Officer which has been brought on record by way of a report submitted by the Halka Karamchari has come to the finding even recording therein that the claim of the respondent No.5 since is based upon sale to agreement dated 20.01.1980 which is not in accordance with law but by discarding the report of the Halka Karamchari that the claim of the petitioner being in possession over the land in question is not clear which has not been appreciated and hence, the order passed by the Circle Officer as also the Deputy Collector Land Reforms has been reversed.

5. The aforesaid order is under challenge by way of instant writ petition inter alia on the ground that the revisional authority in exercise of power of the revenue authority has decided the title by holding therein that the transfer made by the respondent No.6 namely Sumitra Patar in favour of the petitioner is not in accordance with law and therefore, mutation has been created on the basis of wrong decree and as such the subsequent action i.e., creation of mutation will also be said to be improper, which according to the petitioner is nothing but exceeding the jurisdiction since the revenue authority is only required to pass an order for creating or refusing to create mutation basis upon possession of a party over the landed property and nothing else.

6. Respondent No.5 has put his appearance through his counsel namely Mr. Arpan Mishra, who has submitted with all vehemence that there is no error in the order passed by the revisional authority since the question of possession has been disputed on the basis of the fact that no cogent evidence has been produced in this regard by the petitioner and the mutation since is to be created

on the basis of possession when the possession itself is in doubt, therefore, the order passed by the revenue authority cannot be said to be just, proper and the revisional authority after taking into consideration the aforesaid aspect of the matter has reversed the order passed by the original authority i.e., the Circle Officer as also the Deputy Collector Land Reforms, therefore there is no infirmity in the impugned order.

7. Ms. Tejaswi, learned counsel representing the respondent No.6 has submitted that the order passed by the revisional authority suffers from infirmity for the reason that the revisional authority acting in the capacity of revenue authority has exceeded the jurisdiction by deciding the title by holding therein that the sale itself is illegal which he cannot do and further observation has been made that neither the petitioner nor the respondent No.5 can claim either on the basis of the agreement to sale dated 20.01.1980 or registered sale deed dated 03.03.2010. Now the question is that who will be declared to be the owner of the property, therefore, the order passed by the revisional authority is without any application of mind.

8. Learned counsel for the State has defended the order passed by the revisional authority.

9. Having heard the learned counsel for the parties and before looking into the legality and propriety of the order impugned this Court deem it fit and proper to deal with the relevant provisions of Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 (hereinafter referred to as the Act, 1973) which has been enacted to provide for maintenance of up to date records of holdings of raiyats of State of Bihar and matters connected therewith.

It is evident from the aforesaid provision that the enactment has been brought in order to maintain up to date records of holdings of raiyats for the purpose of collecting revenue by inserting the name of the legal occupants in the record of rights and tenant's ledger register.

Section 3 as contained under Chapter II confers power upon the Circle Officer to prepare and maintain continuous khatian, tenant's ledger register and village maps.

Chapter III deals with the mutation under which, under Section 14 it has been provided for making requisition and disposal of mutation case wherefrom it is evident that if any requisition would be made by a transferee before the Circle Officer, he will start a mutation proceeding and after entering it in the mutation case register which shall be maintained in the prescribed form shall cause such enquiry to be made as may be deemed necessary and for that a general notice will be issued inviting objections and to be submitted within a period of 15 days and in case of no objection the Circle Officer will dispose of such application within a period of one month.

Section 15 & 16 provides the provision of appeal and revision to be filed before

the Deputy Collector Land Reforms and the Collector respectively.

Therefore, it is evident from the provision of Act, 1973 and more particularly Section 14 thereof, that it does not recognize or confer any title or interest in any property of any person but it only recognizes the person from whom the rent is to be realized in respect of lands.

10. In the backdrop of this statutory provision the factual aspect as has been brought on record by way of affidavits wherein the admitted fact, so far as the case of the petitioner is concerned, is that the petitioner has purchased the property in question through registered sale deed executed on 03.03.2010 by one Sumitra Patar and thereafter entered into possession and made an application before the Circle Officer invoking the jurisdiction conferred under Section 14 of the Act, 1973 but at that time the respondent No.5 put his appearance by way of objection and made an objection to the requisition made by the petitioner to that effect that no order is required to be passed for creating mutation in favour of the petitioner since he is also claiming the ownership over the property through the sale to agreement dated 20.01.1980.

11. The Circle Officer in order to adjudicate the issue has directed the Halka Karamchari to submit a report and in pursuance thereto, the Halka Karamchari has submitted a report giving therein that the landed property in question is in possession of the petitioner and the respondent No.5 is claiming title on the basis of sale to agreement dated 20.01.1980, the said report has been accepted by the Circle Officer and came to a conclusive finding by passing an order of creating mutation in favour of the petitioner.

12. The respondent No.5 has questioned the same before the appellate authority by invoking the jurisdiction conferred under Section 15 of the Act, 1973 but the appellate authority has refused to interfere with the order passed by the Circle Officer under Section 14 of the Act, 1973 against which the revision has been preferred before the Deputy Commissioner in exercise of power conferred under Section 16 of the Act, 1973.

13. The revisional authority has reversed the finding of the original as well as the appellate authority against which this writ petition has been filed.

14. The sole question which is to be decided in this case is that the mutation is to be created on the basis of possession or the revenue authority can be allowed to look into the legality and propriety of the title.

15. As has been referred hereinabove that the provision of Act, 1973 which confers power upon the revenue authority to register the name of the person who claims to have purchased the property so that he may be able to pay tax by way of rent, to be deposited in the State Exchequer, meaning thereby, if any decision is being taken by the revenue authority in exercise of power conferred under Section 14 of the Act, 1973 it does not touch the title of the party since the question of title is to be adjudicated by the competent court of civil

jurisdiction.

The mutating authority is only required to see the possession and if an applicant who is making an application for getting his name entered in the rent register and if found to be in possession then the mutating authority is required to pass an order for acceptance of rent from him by entering his name in the rent register.

16. The Circle Officer has acted in pursuance to the said process and came to the conclusive finding after going through the report submitted by the Halka Karamchari who has inspected the spot personally and found that the petitioner was in possession, therefore, passed an order for mutating the name of the petitioner, to be entered in the rent register.

17. The petitioner is claiming possession through the deed of sale (registered on 03.03.2010) while the respondent No.5 is claiming the title on the basis of sale to agreement dated 20.01.1980.

18. The revisional authority has admitted that the petitioner is in possession but he has travelled beyond his jurisdiction by not following the object and intent of the Act, 1973 which confers power upon the revenue authority only to look into as to whether the name of the applicant is required to be entered in the rent register and for that the only requirement is that the applicant must be in possession, when he has accepted the possession of the petitioner, he has travelled beyond that aspect by considering the question of instrument by which the parties are claiming to have come in possession/title since the petitioner is claiming title on the basis of registered sale deed as also the possession which has conclusively been proved by the Halka Karamchari in its report while the respondent No.5 is only claiming transfer through the sale to agreement and that aspect of the matter has pre-dominantly been considered by the revisional authority by holding in the impugned order that the transfer made by the Sumitra Patar in favour of the petitioner is not a valid decree and since the mutation has been created on the basis of invalid decree, therefore, the same is not sustainable but the question herein is that what led the revisional authority to come to the finding that sale deed by which the petitioner has come in possession having been executed by the Sumitra Patar, respondent No.6 is not in accordance with law and furthermore, the sale to register has been treated to be a decree and therefore, he has failed to make difference in between decree and sale to register, therefore, there is complete non-application of quasi judicial mind by the revisional authority, therefore, the order passed by the revisional authority cannot be said to stand in the eye of law.

19. In view thereof, the order passed by the revisional authority is quashed, accordingly the writ petition is allowed and stands disposed of.