
(2014) 07 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 22533 of 2013

Kamta Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Bihar Land Disputes Resolution Act, 2009 — Section 4, 4(1), 4(5)

Citation : (2015) 1 PLJR 823

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Arjun Kumar, Advocates for the Appellant; Shail Kumari, Advocates for the Respondent

Judgement

Jyoti Saran, J.—Heard Mr. Arjun Kumar, learned counsel appearing on behalf of the petitioners and Mr. S.K. Rahjan, Assisting Counsel to S.C. 15 for the State and Mr. Mohan Kumar Singh, counsel for the private respondent Nos. 6 to 8. Though served respondent No. 9 has not chosen to appear. The petitioners by way of the present writ petition have questioned the order dated 8.10.2013 passed by the Bihar Land Tribunal, Patna in Bihar Land Tribunal Case No. 640 of 2013 whereby the tribunal while dismissing the case filed by the petitioners has confirmed the order dated 16.7.2013/6.8.2013 passed by the Commissioner, Patna Division in Land Dispute Resolution Appeal No. 126 of 2013 whereby the appeal preferred by the petitioners was dismissed and the order dated 9.3.2013 passed by the Deputy Collector Land Reforms, Patna Sadar, Patna in Land Dispute Case No. 72 of 2012-13 under the provisions of the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as the "Act") was affirmed.

2. Facts of the case briefly stated is that the petitioners happen to be the purchasers of different plots of land in total admeasuring four kathas and six dhurs situated in Village-Sheikhpura in the town and district of Patna. It is the case of the petitioners that the land in dispute formed 2.15 1/3 acres of land situated in Village-Sheikhpura in the town and district of Patna which was

mortgaged by the husband of the respondent No. 6 Pratima Devi, namely, Ram Naresh Singh alongwith his brother Siya Saran Singh with the Bihar State Cooperative Land Mortgage Bank Limited, Patna for securing a loan. Since, the mortgagors failed to repay the loan amount, hence the entire property was put on auction sale in a certificate proceeding bearing Case No. 58 of 1987-88 and was purchased by the wife of the other mortgagor Siya Saran Singh, namely, Shanti Devi. Following the purchase the certificate officer issued a certificate on 30.6.1988 placed at Annexure-2 following which the delivery was effected on 15.7.1988 and copy whereof is placed at Annexure-3. It is thereafter that from the purchased land, Shanti Devi the auction purchaser sold 1.6 kathas of land in favour of the petitioner No. 3 Anju Devi on 18.6.2001 vide a registered sale deed placed at Annexure-4 series at page 44 and in a similar manner executed a sale deed for 2 kathas in favour of the petitioner No. 1 and for 1 katha in favour of the petitioner No. 2 Satendra Narain Singh through separate registered sale deed both dated 29.3.2010 which also forms part of Annexure-4 series. Consequent upon the purchase the petitioner Nos. 1, 2 and 3 came over the possession of the land and their names have been mutated in the revenue records as is reflected from the rent receipts placed at Annexures-5 and 6 series. It is nobody's case that these sale deeds were ever put to question before any court of competent jurisdiction and thus hold good. Three years later while the matter rested at such stage, respondent No. 6 who is the wife of one of the mortgagors Ram Naresh Singh filed a case under the provisions of the Bihar Land Disputes Resolution Act, 2009 before the Deputy Collector Land Reforms giving rise to Land Dispute Case No. 72 of 2012-13 questioning the title of the vendor of the petitioner Nos. 1, 2 and 3, namely, Shanti Devi to execute the sale deeds and while raising such issues a prayer was made to declare the possession of the respondents over the disputed land as illegal and for restoration thereof to the applicant Pratima Devi. Interestingly neither the vendor Shanti Devi nor the purchasers were made party to the proceedings rather the three sons of petitioner No. 1 Kamta Singh and the husband of petitioner No. 3 Ashok Singh were arraigned as opposite parties. Clearly the application in absence of the vendor or the vendees of the disputed land, was suffering from the defect of non-joinder/misjoinder of the parties and was not maintainable. Yet the D.C.L.R. proceeded to consider the matter assuming jurisdiction over the dispute which was clearly beyond the jurisdiction vested in him under the provisions of the Act and proceeded to pass his order on 9.3.2013 which was affirmed by the appellate authority as well as the Tribunal and hence this writ petition.

3. Before embarking on the issue raised it would be fruitful to refer to some of the provisions of the Act which would have a bearing on the conclusion.

4. Section 4 of the Act deals with the jurisdiction of the competent authority under the Act and it is discernible that it limits such exercise exclusively in respect of unauthorized/unlawful dispossession or any other dispute raised by a settlee/allottee of any land or part thereof, settled or allotted to him under any Act as referred to in Schedule-1 to the Act. Schedule-1 to the Act gives the list of

enactments which runs as follows:--

1. The Bihar Land Reforms Act, 1950
2. The Bihar Tenancy Act, 1885
3. The Bihar Privileged Persons Homestead Tenancy Act, 1947
4. The Bihar Bhoodan Yagna Act, 1954
5. The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961
6. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956

5. It is thus manifest from above that it only in circumstances where, if an allottee or a settlee under the enactments referred to in the Schedule, is dispossessed unauthorizedly or a dispute is raised in this regard that the authority can exercise his jurisdiction. The Act under Section 4(1) while conferring jurisdiction on the competent authority providing as such very clearly limits the exercise of such jurisdiction in sub-section (5) thereof which reads as follows:--

Section 4. Jurisdiction and authority to resolve disputes.--(1) The Competent Authority shall have jurisdiction and authority to hear and adjudicate, on an application or complaint or on any application referred to by a Prescribed Authority or officer, any issue arising out of following types of disputes:--

- (a) Unauthorized and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act contained in Schedule-1 to this Act by issuance of any settlement document/parcha by a Competent Authority;
- (b) Restoration of possession of settled/allotted land in favour of legally entitled settlee/allottee or his successors/heirs, upon adjudication of unauthorized and unlawful dispossession;
- (c) Threatened dispossession of a legally entitled settlee/allottee;
- (d) Any of the matters enumerated in (a), (b) and (c) above appertaining to raiyati land;
- (e) Partition of land holding;
- (f) Correction of entry made in the Record of Rights including map/survey map;
- (g) Declaration of the right of a person;
- (h) Boundary disputes;
- (i) Construction of unauthorized structure; and
- (j) Lis pendens transfer.

Section 4(5). The Competent Authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.

6. It is thus eloquent from the provisions of the Act that it is only in cases where a person raises any grievance of dispossession or any of the dispute claiming settlement or allotment under either of the enactments mentioned in the Schedule that the competent authority can invoke his jurisdiction vested under the Act but exercise of jurisdiction in disputes bordering on issue of title and possession has clearly been kept outside the purview of the Act. It does not require this Court to go into more intricacies of the matter to hold that the Deputy Collector Land Reforms had clearly over stepped his jurisdiction to enter into the issue of title and possession. Even otherwise the application in absence of the vendor Shanti Devi or the vendees was not maintainable nor any order passed could be enforceable against them. It is rather surprising that such glaring defect in the proceedings was neither noticed by the Commissioner exercising appellate power under the Act or by the Land Dispute Tribunal even when it was brought to their notice that a Title Suit No. 287 of 2013 filed at the instance of the petitioner Nos. 1 and 2 for declaration of their title and possession over the land in question remains pending before a court of competent jurisdiction. It has been stated by Mr. Arjun Kumar that subsequently the petitioner No. 3 has also filed Title Suit No. 671 of 2013 for the same relief.

7. This Court notices that the authorities got swayed by the unsuccessful attempt of Shanti Devi, the vendor of petitioner Nos. 1, 2 and 3 in questioning the order cancelling her mutation. This Court wonders to think as to how this issue would be relevant in the present case when the admitted position is that the sale deeds executed by Shanti Devi in favour of the petitioners have not been questioned by anybody before any court of competent jurisdiction and following the purchase the name of the petitioner Nos. 1, 2 and 3 have been entered in the revenue records and receipts are being issued in their name. Whether or not the petitioner Nos. 1, 2 and 3 got title by virtue of the purchase from Shanti Devi was an issue which the Deputy Collector Land Reforms could not have entered into while considering the complaint and exercising jurisdiction under the Act nor would this Court express any opinion thereon, for the matter is pending consideration before the competent Civil Court.

8. For my conclusion drawn hereinabove it is only a completion of formality to hold that the orders impugned in this application cannot be upheld being contrary to law and the provisions of the Act and are accordingly set aside. This writ application is allowed.