

(1982) 12 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2297 of 1978

Khiru Gope and Others

APPELLANT

Vs

Land Reforms Deputy Collector, Jamui and Others

RESPONDENT

Date of Decision : 21-12-1982

Acts Referred:

Bihar Tenancy Act, 1885 — Section 25

Citation : AIR 1983 Patna 121 : (1983) PLJR 727

Hon'ble Judges : Uday Sinha, J;Prabha Shanker Mishra, J

Bench : Division Bench

Advocate : Ugra Singh and Kumar Sidheshwar Prasad Singh, for the Appellant;
Ram Balak Mahto, A.A.G. and Mahesh Prasad, for the Respondent

Judgement

P.S. Mishra, J.—The petitioners have moved this Court for quashing the order of the Land Reforms Deputy Collector, Jamui, dated the 6th March, 1978. The said order is contained in Annexure "1" to the writ application.

2. All the petitioners have claimed that they have been in possession of their respective lands in plot No. 2420 Khata No. 170 of Village Maura, police Station Lakshmipur. District Munger, According to Petitioners Nos. 1 and 2. they got a settlement of 4 acres of land by virtue of a Hukumnama dated the 2nd February, 1950. issued by the General Manager of the Wards" Estate, Gid-dhaur. A copy of the said Hukumnama is Annexure "5" to the writ application. According to them, the land was originally recorded as Gairmazarua Malik and when the intermediaries" interests vested in the State of Bihar. pursuant to a notification, in the year 1952, the ex-intermediaries filed returns showing them as Raiyats and Jamabandi No. 362 was accordingly created in their favour. Their names were included in the Re-gister of Tenants under the State of Bihar. and rent was realised from them by the State.

3. According to the case of Petitioner No. 3, his name was included to the Register of Tenants and Jamabandi No. 448 was created in his favour. The Land Reforms Deputy Collector Jamui, ordered for fixation of rent in Rent Fixation

Case No. 175 of 1962-63, as also for opening the Jamabandi in his name.

4. One Vijay Kant Jha, claiming to be a local leader, filed an application before the Block Development Officer of Lakshmipur. making certain allegations against the local Mukhiya. Hira-man Yadava, and others, and alleged that many persons had illegally occupied about 32-35 acres of Gairmazarua land of Khasra No. 2420 and sought intervention by the local authorities for the removal of such illegal occupations. Upon his application a local inquiry was conducted by the Circle Officer of Lakshmipur, who submitted a report before the Land Reforms Deputy Collector of Jamui. After receipt of the said report of the Circle Officer, notices were issued to the persons found occupying the lands in Plot No. 2420. including the petitioners. A copy of the order directing for the issuance of the notices is Annexure 2 to the writ application.

5. The petitioners and other occupants of the lands in Plot no. 2420 were asked to show cause as to how had they obtained their respective lands. According to the petitioners only petitioner No. 3 received the notice and appeared before the Land Reforms Deputy Collector in Jamabandi Correction Case no. 3 of 1977-78, a case started upon the report of the Circle Officer. Petitioners Nos. 1 and 2 have asserted that they did not receive any notice.

6. Petitioner No. 3 and other occupants of lands in Plot No. 2420 produced their documents, filed show cause petitions and were heard by the Land Reforms Deputy Collector. By an order dated the 6th March. 1978, he, however, found that their claims were generally unfounded and based either upon illegal documents or misrepresentation. He accepted the claim of possession of petitioner No. 3 upon 10 decimals of lands vide Jamabandi N?. 448. and cancelled the Jamabandi and, consequently, the Laggit, in respect of 1.90 acres of land out of the total area of 2 acres claimed by him. The entire claim of 4 acres of land of Petitioners Nos. 1 and 2 was cancelled for the very same reasons by the order of the Land Reforms Deputy Collector. Jamui, dated the 6th March, 1978, a copy of which is Annexure "1" to the writ application.

7. The petitioners have annexed some rent receipts to show that they have been paying rent, that Jamabandis stood in their names, and that they have been recognised as tenants in occupation of the lands claimed by them by the Revenue authorities, including Respondents Nos. 1 and 2.

8. Learned Counsel for the petitioners has contended that there being Jamabandis opened in their names and rent realised from them by the respondents, it was not open to the Land Reforms Deputy Collector to re-open the matter and remove their names from the Jamabandis and the Register of the Raiyats. According to him, once the State started realising rent from them, and, in the case of Petitioner No. 3 when rent was fixed by the Land Reforms Deputy Collector, Jamui. in Rent Fixation Case No. 175 of 1962-63, he had/has no authority to rescind and/or review the matter. His further contention is that the order fixing rent in favour of Petitioner No. 3 became final as no appeal was filed

against the said order. The petitioners became occupancy Raiyats by virtue of their continuous possession and thus the respondents were estopped from questioning the legality of their possession upon the lands claimed by them.

9. Some other ancillary arguments, namely, that there is a presumption that the persons who pay the rent are the Raiyats of the person receiving the rent, and the State is, therefore, obliged to accept the petitioners as tenants, as its agents realised rent, etc.. from them, have also been advanced by the learned Counsel for the petitioners.

10. Before I proceed to consider the abovementioned main contentions, I propose to dispose of the contention about the presumption that the petitioners are Raiyats under the State for the reason that the petitioners paid rent to the State and the State received the rent.

11. On the facts available before this Court it is not possible to accept such an extreme claim of the petitioners. Rent receipts granted by the State of Bihar are "without prejudice." Learned Additional Advocate General appearing for the State, has informed this Court that the field Bulharat for finalisation of the claims of the tenants has not yet been done in the area concerned. Merely on the basis of the arrangement for acceptance of rent on the basis of the claims of the tenants it cannot be said that there is an admitted relationship of landlord and tenant between the State and the petitioners. Different considerations, however, may arise, if there is a valid settlement in favour of certain person and after acknowledging the said settlement, rent is realised from him. I shall make a reference to this aspect of the matter when I shall discuss the case of petitioners Nos. 1 and 2 separately.

12. The main contention, however, raised on behalf of the petitioners, when tested with reference to the case of Petitioner No. 3, does not appear to be acceptable. According to the statement of the case at the Bar before this Court, although he was in possession of 2 acres of land in Plot No. 2420 of Khata No. 170 the ex-intermediary did not include his name in the return filed by him in the list, of Raiyats. He, therefore, filed an application before the Land Reforms Deputy Collector of Jamui, who started Rent Fixation Case No. 175 of 1962-63. and finally made the order to open Jamabandi No. 448 and the demand for payment of rent by him to the State of Bihar. There is no such statement, however, made in the writ application. The only statement made in the writ application is that by an order dated the 25th Dec. 1962, the Land Reforms Deputy Collector of Jamui, in Rent Fixation Case No. 175 of 1962-63 ordered Jamabandi No. 448 to be opened in favour of the Petitioner No. 3 Raghu Gope, and he continued to pay rent from the year 1962-63 up to the year 1974-75. Learned Additional Advocate General, appearing for the respondents, has shown to us a copy of the petition showing cause filed by the Petitioner No. 3 before the Land Reforms Deputy Collector. In the said show cause petition, the petitioner No. 3 has stated as extracted hereunder :--

"That in 1961, the learned Block Development Officer, Lachmipur, who. as the representative of state of Bihar, was coming in possession of the unsettled lands of the said Plot 2420, settled an area of 2.00 acres of the said Plot with your petitioner, Raghu Gope, under Jamabandi No. 448. Since then he is coming in possession over the said lands. On a portion of the said lands he has got his residential house besides well etc. Rent receipts are all along issued in his name."

This clearly goes to show that the land claimed by the Petitioner No. 3 had vested in the State of Bihar, and. he could legally come in possession only upon a valid settlement by the State in his favour. There being no such settlement brought to our notice and the specific assertion on behalf of the respondents being that Petitioner No. 3 had somehow managed to occupy the said 2 acres of land and constructed upon about 10 decimals of the same some sort of a residential establishment and also succeeded in getting some sort of order of fixation of rent in his favour. I am not inclined to accept the contention urged on behalf of the petitioners that the Petitioner No. 3 has got any claim of a valid order of settlement, opening of jamabandi and/or fixation of rent in his favour, which shall create the occupancy right. It is also not possible to hold that in the case of petitioner No. 3 the impugned order is an order of either review and/or an order in a collateral proceeding undoing something validly done in his favour.

13. The case of Petitioners Nos. 1 and 2. however, is on a different footing. According to them, they got 4 acres of land claimed by them by virtue of a Hukumnama dated the 2nd February, 1950, issued by the General Manager of the Wards" Estate. Giddhaur. Their names were included in the returns filed by the ex-intermediaries. As a consequence of the acknowledged relationship of landlord and tenant between the ex-intermediaries and the Petitioners Nos. 1 and 2, their names were included in Register II. that is to say, the Tenants" Register, and Jamabandi was opened in their favour, being Jamaband No. 362. Although the respondents have maintained that notices had been served upon the Petitioners Nos. 1 and 2. as well, there was no appearance on their behalf before the Land Reforms Deputy Collector. There was no show cause filed and their documents, including the Hukumnama (contained in Annexure "5" to the writ application) were not before him. It is obvious, therefore, that there could be no examination of the validity or otherwise of the document of settlement in favour of the petitioners Nos. 1 and 2 executed by the ex-intermediary. There is an apparent non-application of mind by the Land Reforms Deputy Collector, as he has chosen to reject the documents of settlement of petitioners Nos. 1 and 2 saying that they had obtained the same by foul means and that the Hukumnama was illegal.

14. The question that arises in such a situation is as to whether there is any jurisdiction or power in the Land Reforms Deputy Collector to go behind settlement by the ex-intermediary in favour of petitioners Nos. 1 and 2 or not. The other allied question which requires consideration is as to whether a mere routine act of the Karamchari or the Anchal Adhikari of making entries in Register

II and opening the Jamabandi and accepting rent "without prejudice", will work as conclusive act of the Respondent state and rob the Land Reforms Deputy Collector of any jurisdiction to go behind such action.

15. A question similar to the one posed above has fallen for decision by this Court in the case of Harihar Singh v. Addl. Collector 1978 BBCJ (HC) 323. A Bench of this Court noticed the contents of Letter No. 5-LR/RC-1073/693-LR. dated the 8th October, 1969. from the Secretary to the Government of Bihar in the Department of Revenue to all the Collectors, and another letter dated the 25th April, 1959, bearing No. 3354/IR FB-744/1959, to all the Divisional Commissioners, and held that till 1969. new Jamabandis, on the basis of Sada Hukumnamas and rent-receipts granted by the ex-intermediaries, were not only being opened by the approval of the Anchal Adhikari. but were being opened by the Karamcharis themselves, and, as such, it was within the competence of the Anchal Adhikaries to open new Jamabandis in favour of the petitioners. Further it was noticed that the Additional Collector, who had cancelled the Jamabandi, had issued a notice merely directing to produce rent receipts and other papers issued by the ex-intermediaries, and held that by issuing such a notice the learned Additional Collector was not entitled, after hearing the petitioners to cancel the Jamabandi created in their favour. The said case also related to a claim of possession by virtue of a Sada Hukumnama in respect of Gairmazarua Malik land. Harihar Singh's case is a direct authority for the proposition that there is no authority given to the Collector under the Bihar Land Reforms Act to cancel a Jamabandi made in favour of a settler from the ex-intermediary as also for the proposition that the Anchal Adhikari and the Karamchari were competent to make necessary entries in the tenants' register and open Jamabandi and fix rent in relation to such a settled land in favour of the settler.

16. The view taken in Harihar Singh's case 1978 BBCJ (HC) 323 has been reaffirmed by another Bench decision of this Court in the case of Jama-luddin Ahmed v. Subdivisional Officer, Khagaria 1979 BBCJ (HO 605. On the strength of these two Bench decisions of this Court, it is obvious that the Land Reforms Deputy Collector had no jurisdiction or power to cancel the Jamabandi and remove the names of Petitioners Nos. 1 and 2 from the tenants' register, the effect whereof in a way was to cancel the settlement by the ex-intermediary in favour of the Petitioners Nos. 1 and 2.

17. Learned Counsel for the petitioners has placed reliance upon a Bench decision of this Court in the case of Mahabir Das Vs. Udit Narain Verma and Others, , as also on some observations in Harihar Singh's case 1978 BBCJ (HC) 323 to persuade us to hold that because rent receipts, even though without prejudice, were granted in favour of the petitioners, they will be deemed to be occupancy Raiyats, as they have been in cultivating possession for more than 20-25 years. Neither of the two cases adopt this extreme view. In Harihar Singh's case it has been noticed that the rent receipts were granted pursuant to the settlement by the ex-intermediary and entries were accordingly made after

making necessary corrections in the Jamabandi and the tenants" register. It is in that background that this Court held that the rent receipts granted "without prejudice" shall also give rise to a presumption that the tenant was an occupancy Raiyat, I have pointed out above that there has been no such settlement in favour of the petitioner No. 3 and rent receipts granted to him by the Karamchari and/ or the rent fixation in his favour on the basis of his claim by the Land Reforms Deputy Collector or the Anchal Adhi-kari are not such acts which can be taken to conclude that his occupancy right has been cancelled by the State of Bihar. In this connection, I have also noticed the statement made at the Bar by the learned Additional Advocate General that field Bujharat for ascertaining the real state of affairs has not yet been done in the area concerned. In his case, therefore, the proceeding was one in respect of which the Land Reforms Deputy Collector is empowered to take action u/s 40 (1) of the Bihar Land Reforms Act.

18. For the reasons stated above, I am not inclined to accept the claim of the Petitioner no. 3, and his application, according to me, is fit to be rejected. Petitioners Nos. 1 and 2, however, stand on a different footing and their case, according to me, is fully covered by the ratio of the case of Harihar Singh 1978 BBCJ (HC) 323(supra) and the order contained in Annexure "1" to the extent it concerns them is without jurisdiction and is therefore hereby quashed.

19. In the result, the application of Petitioners Nos. 1 and 2 is allowed and the order of the Land Reforms Deputy Collector dated the 6th March, 1978 (contained in Annexure "1" to the writ Application), in so far as it concerns the Petitioners Nos. 1 and 2, is quashed. Let a writ of certiorari accordingly issue. The application of petitioner No. 3 is rejected. On the facts and in the circumstances of the case, there shall be no order as to costs.

Uday Sinha, J.

20. I agree.