
(2015) 11 PAT CK 0068

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14182 of 2001

Khurshid Anwar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Bihar and Orissa Municipal Survey Act, 1920 — Section 15, 9

Citation : (2015) 11 PAT CK 0068

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Jitendra Prasad Singh, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard learned counsel for the petitioner, learned counsel for the State and Mr. Arvind Kumar Pandey for the private respondents.

2. The petitioner is aggrieved by the order dated 30.12.1998 of the Superintendent of Survey under the Bihar and Orissa Municipal Survey Act, 1920 (hereinafter referred to as the "Act") in a matter arising from Appeal No. 92 of 1995 whereby the Superintendent has allowed the appeal and directed for inclusion of the name of the private respondent Late Bindeshwari Prasad in the municipal survey record in place of the original writ petitioner Md. Aiyub Qureshi since deceased and substituted.

3. The disputed plot in question bears C.S. Plot No. 589 of C.S. Khata No. 204 which corresponds to Municipal Survey Plot No. 1530 and 1531 situated in Mohalla-Gola, Ward No. 5, Daudnagar Municipality in the District of Aurangabad. According to the petitioner these plots are Bakast land of one Bal Kisun Das who transferred the same vide a sale deed executed in favour of the Kara Estate who in turn settled these plots with one Mahboob Miyan. The petitioner claims purchase of these two plots vide separate sale deeds executed in the year 1973. According to the petitioner the sale deed executed in favour of the original writ

petitioner by the vendor Mahboob Miyan is bearing No. 4978 and one executed in favour of the daughter-in-law, namely, Farjan Begum wife of Khurshid Anwar, bears sale deed No. 4979. According to the petitioner, soon thereafter he approached municipal authority under the erstwhile Bihar and Orissa Municipal Survey Act, 1920 (hereinafter referred to as the "Act") and the lands were mutated in the name of the petitioner as well as Bibi Farjan Begum. It is the case of the petitioner that more than 20 years after the purchase that an objection was filed by the original private respondent Late Bindeshwari Prasad since substituted, against the mutation giving rise to Objection Case No. 45 of 1994 insofar as the writ petitioner is concerned and Objection Case No. 46 of 1994 insofar as Bibi Farjan Begum is concerned. The objections were filed under Section 9 of the "Act". Both the objections so preferred by the deceased private respondent were considered analogous and were dismissed by the Assistant Superintendent of Survey vide order passed on 05.1.1995, a copy of which is placed at Annexure-1. Being aggrieved the private respondent preferred two statutory appeals in terms of the provisions underlying Rule 15 of the Bihar and Orissa Municipal Survey Rules, 1920 (hereinafter referred to as the "Rule") framed under Section 15 of the "Act" giving rise to Appeal Case No. 92 of 1995 insofar as the original writ petitioner is concerned and Appeal Case No. 93 of 1995 insofar as the daughter-in-law Farjan Begum is concerned. While the appeal so preferred by the private respondent as against the municipal survey entry in favour of the writ petitioner bearing Appeal Case No. 92 of 1995 was allowed by the impugned order dated 30.12.1998 passed by the Superintendent of Municipal Survey, the appeal preferred by the private respondent as against the daughter-in-law of the petitioner bearing Appeal No. 93 of 1995 was dismissed by the same authority vide order passed on 20.11.1999. Copies of the orders passed in the two appeals are Annexure-3 and 2 respectively. It is being aggrieved by the differential response by the Superintendent of Survey on identical facts in dismissing the appeal preferred against Bibi Farzan Begum while allowing the appeal insofar as the mutation granted to the petitioner is concerned, that the petitioner is before this Court.

4. It is in consideration of the issue raised that the writ petition was admitted for hearing vide order passed on 15.1.2002 and the operation of the order was stayed. The petitioner Md. Ayub Quereshi has since deceased and has been substituted by his legal heirs namely Md. Khurshid Anwar who is pursuing the matter. Even the challenger private respondent Bindeshwari Prasad has deceased and stands substituted.

5. I have heard learned counsel for the parties and I have perused the records. The only ground on which the Superintendent of Survey while dismissing the appeal preferred against the mutation granted in favour of Bibi Farjan Begum, has allowed the appeal against the mutation granted in favour of the writ petitioner, is the absence of supporting documents. Mr. Singh learned counsel for the petitioner has submitted that even when the foundation for the mutations rests on the two sale deeds executed on the same date in the year 1973 and

while plot No. 1530 was mutated in the name of the original writ petitioner, plot No. 1531 was mutated in the name of daughter-in-law Farjan Begum and even when the vendor is the same namely Mahboob Miyan, yet the differential approach. It is the contention of learned counsel that if the plea advanced by Bibi Farjan Begum has been accepted by the Superintendent of Municipal Survey, there was no occasion for him to doubt the mutation granted in favour of the writ petitioner. It is the argument of learned counsel that it is simply on the basis of the claim advanced by the private respondent on the basis of a settlement stated to have been made in his favour that the Superintendent of Survey despite noticing that the issue raised involved disputed issues of fact and required an adjudication by a court of competent civil jurisdiction yet has entered to resolve the same while performing statutory functions.

6. While counsel for the State has simply supported the impugned order on the anvil of absence of document the contest is mainly led by the counsel for the private respondent who has endeavoured to justify the impugned order while supporting the settlement made in favour of the private respondent. Though there has been a contest to the claim of the writ petitioner but neither the counsel for the State nor the private respondent is able to justify as to why the order of the Superintendent of Survey in dismissing the appeal of the private respondent against Bibi Farzan Begum was never contested before the Superior Court.

7. Besides the fact that there is no justification for the act of the Superintendent of Survey to record different opinion in the case of the petitioner and his daughter-in-law Bibi Farjan Begum especially in the circumstances where the two plots registered in their name were purchased on the same date in the year 1973 through two separate sale deeds from the same vendor, there is also no explanation for the delay in challenge. The sale deeds were executed in favour of the original writ petitioner and his daughter-in-law Bibi Farjan Begum in the year 1973 and it took more than two decades for the respondent to raise his objection. Another important aspect of the matter is that each of the parties, is relying upon respective documents to support their respective claim. The Assistant Superintendent of Survey on examination of documents has expressed satisfaction to mutate the name of the original petitioner and his daughter-in-law Bibi Farjan Begum in the municipal records. Now even if the private respondent did seek to question the entry on the basis of some kind of settlement which did not find favour with the Assistant Superintendent of Survey, then considering such disputed nature of claim, in my opinion the only option available to the objector would have been to seek his remedy before a court of competent civil jurisdiction. Certainly the nature of the dispute raised by the private respondent which required adjudication on the respective claims and appreciation of evidence, the Superintendent of Survey certainly could not have entered into such arena of disputed claims.

8. For the discussions so made above, certainly the order passed by the

Superintendent of Survey in Appeal No. 92 of 1995 dated 30.12.1998 impugned at Annexure-3 cannot be upheld and is accordingly set aside. The writ petition is allowed. However, there shall be no order as to costs.