
(2009) 07 PAT CK 0019
In the Patna High Court
Case No : CWJC No. 1844 of 2003

Krishna Mohan Jha, Secretary, Mithila Mandal Sahyog Samiti
Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(g), 4(h)

Citation : (2009) 4 PLJR 345

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; R.C. Thakur, K. Thakur for the State and Mr. Shardanand Jha, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—On earlier occasion this Court had issued notices to respondent Nos. 3 to 7 indicating that the case is likely to be disposed of at the stage of admission. In response to that, respondent No. 7 has appeared. Subsequently, an order has also been passed for substituting the heirs and legal representatives of deceased-respondent Nos. 3 and 6, and notices were issued upon their substituted heirs and legal representatives, who have not appeared despite service of notice upon them. Thus. proceed to hear the parties and pass order in this case. Heard Mr. Ajit Kumar, learned counsel for the petitioner. Mr. R.C. Thakur learned Standing Counsel (Ceiling) for the State and Mr. Shardanand Jha. learned counsel for respondent No. 7.

2. Shorn of unnecessary details, the following facts are necessary for disposal of this writ application.

3. The dispute relates to Municipal Survey Plot No. 10987, which stands recorded in the khatian as Pokhar in the name of Maharaja Rameshwar Singh of Darbhanga showing him as the landlord. Nature of the land has been described as a tank therein and it is mentioned as Makhanchi in possession of the landlord.

4. Respondent No. 3, Anirudh Sah (now deceased) and V.K. Thakur (respondent No. 4) moved before the Deputy Collector, Land Reforms, Darbhanga, stating that Sri Kant Mishra as well as one Krishna Mohan Jha (the petitioner herein) claiming to be the President and Secretary, respectively, of the Mithila Mandal Grih Nirman Sahyog Samiti Ltd., Darbhanga, had claimed the aforesaid land being part of the tank, which is in use of the local habitants since the time immemorial. According to them, the said tank belonged to Darbhanga Estate and after vesting of Zamindari into the State of Bihar in 1951, the necessary steps were required to be taken to protect the aforesaid tank from the Cooperative Society and upon such application Miscellaneous Case No. 1/88-89 was initiated. However, the prayer was rejected by order dated 31.1.1989 by the Deputy Collector, Land Reforms, Darbhanga, treating the land as raiyati land of Darbhanga Estate, which after vesting of Zamindari was purchased by the Sahyog Samiti from the heirs and legal representatives of the ex-landlord. An appeal was preferred and after hearing the parties, the Collector came to the conclusion that the Zamabandi in the names of the ex-landlord and the purchaser, namely, society and their office bearers were created in their favour in connivance of the officials of the Revenue authorities. Accordingly, he found it a fit case for taking steps and appropriate action in this regard. The aforesaid appellate order was challenged in C.W.J.C. No. 10190 of 1997, which was allowed on 13.7.1999 and it was held that since the land was found to be raiyati land, no proceeding u/s 4(h) of the Bihar Land Reforms Act, 1950 (hereinafter to be referred to as "Act") could be initiated. The State of Bihar challenged the order passed by the learned Single Judge in L.P.A. No. 419 of 2000. A Division Bench of this Court held that the State has right to examine the matter as to whether the land actually vested in the State of Bihar by taking recourse to u/s 4(g) of the Act and having held so this Court remitted back the matter to the Collector, Darbhanga to issue notice to all interested parties including the ex-landlord, the claimants by virtue of the representative of the locality as well as the State authorities to decide in relation to the nature of the land as to whether the same actually vested in the State of Bihar or not, and the consequence, if the same has vested in the State of Bihar. Subsequent thereof, the matter was again heard by the Collector, Darbhanga, who has set aside the order dated 30.1.1989/31.1.1989 passed by the Deputy Collector, Land Reforms, concerned and remitted back the matter to him to initiate a proceeding u/s 4(h) of the Act and dispose of the matter after hearing all the parties.

5. Learned counsel for the petitioner submits that the impugned order is illegal and liable to be set aside for the reason that the direction of this court has not been followed. He submits that the Division Bench of this Court has recorded a finding that the Government was competent to examine the matter as to whether the land vested into the State of Bihar or not under the provisions of Section 4(g) of the Act, whereas the Collector has again directed for initiation of a proceeding u/s 4(h) of the Act. Secondly, the direction was given to the Collector, Darbhanga, to decide the matter himself after hearing all the necessary

parties, however, he has not decided anything rather has set aside the earlier order passed by the Deputy Collector, Land Reforms, concerned, and remitted the matter for initiating a proceeding u/s 4(h) of the Act.

6. A counter affidavit has been filed on behalf of the State. Respondent No. 7, though has appeared, has not filed any counter affidavit.

7. Learned counsel for the State submits that in compliance of the order passed by the Division Bench of this Court, the Collector has initiated the proceeding. However, he could not answer as to how a proceeding u/s 4(h) of the Act could be reinitiated or when the direction was given to the Collector to decide the matter himself how he could remit back the matter to the Deputy Collector, Land Reforms, for deciding the matter afresh.

8. In view of the above, I am of the considered view that the Collector, Darbhanga was directed by the Division Bench of this Court to decide the question as to whether the land under dispute has actually vested in the State of Bihar or not, taking recourse to Section 4(g) of the Act. He was to decide the matter after hearing the parties. Further, he was also to decide that if such land vested into the State of Bihar, then what would be the consequence. In my considered opinion, the aforesaid direction has not been followed by the Collector. Darbhanga, as a result of which this writ application stands allowed, the impugned order dated 10.12.2002, as contained in Annexure-6, is set aside, and the matter is again remitted back to the Collector, Darbhanga to follow the direction of the Division Bench of this Court, as contained in order dated 19.12.2000 passed in L.P.A. No. 419 of 2000 and decide it himself as to whether the land under the dispute vested in the State of Bihar or not, and if it has vested in the State of Bihar, then what would be the consequence thereof. The Collector concerned would be free to take recourse to the provisions of Section 4(g) of the Act for purpose of deciding the aforesaid questions. Since this matter is very old. it is expected that the Collector will take expeditious steps to dispose of the same, preferably within six months from the date of receipt/production of a certified copy of this order. It is also made clear that the Collector concerned is required to again issue notice to all the parties, as had also been directed by the Division Bench of this Court in its order aforesaid. It is further expected that the petitioner as well as respondent No. 7 will appear on their own, as they have appeared in this writ application and this order is being passed in their presence.