
(2008) 10 PAT CK 0036
In the Patna High Court
Case No : CWJC No. 3632 of 1995

Lali Rai and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Citation : (2009) 1 PLJR 341

Hon'ble Judges : S.C. Jha, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Anil Kumar Sinha, for the Appellant; Anil Kumar Jha and Ratan Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Prasad and Jha, JJ.—In view of the order dated 29th of April, 2005 passed by the Supreme Court in Civil Appeal No. 2931 of 2005, the writ application and the letters patent appeal have been heard together. Shorn of unnecessary details, facts giving rise to the present application, are that lease agreement was entered between Krishnadeo Rai and the Collector, Samastipur on behalf of Governor of Bihar on 4th of February, 1992, whereby land bearing Survey Plot No. 45 situated in Mohalla Bishanpur in the town of Samastipur as also Survey Plot No. 348 situated in Mohalla Bangra in the town and district of Samastipur having an area of 2.43 acres, had been settled with him for ten years for running a bus stand. Apprehending that the agreement shall be cancelled and he shall be dispossessed, he filed the writ application, inter alia, praying for a direction to the respondents not to cancel the lease agreement and not to take any step to dispossess him.

2. During the pendency of the writ application, settlement made in his favour was cancelled by the District Magistrate by order as contained in memo dated 24th of May, 1995 (Annexure-6) in the light of the order dated 21.4.1995 of the State Government. By way of amendment, prayer of the petitioners is also to quash the said order.

3. During the pendency of the writ application, said Krishnadeo Rai had died and this writ application is being pursued by his legal heirs.

4. It is not in dispute that the land in question is of Khas Mahal land and the Collector had made settlement for ten years for running a bus stand.

5. It is relevant here to state that the aforesaid Krishnadeo Rai had filed another writ application i.e. C.W.J.C. No. 1697 of 2002 before this Court, inter alia, praying to renew the lease deed. A learned Single Judge of this Court, by order dated 16.9.2003, declined the relief. However, while doing so, it gave liberty to him to seek damages or compensation before a Civil Court of competent jurisdiction. Said Krishnadeo Rai, during the pendency of the writ application died and the aforesaid order was passed after his wife was substituted in his place.

6. Aggrieved by the aforesaid order, L.P.A. No. 1048 of 2003 (Chandradeo Rai and Others vs. The State of Bihar and Others) was filed before this Court. A Division Bench of this Court, by order dated 5.4.2004 Reported in Chandradeo Rai and Others Vs. State of Bihar and Others, , set aside the order of the learned Single Judge and observed that the appellants shall be entitled to restitution of the demised property.

7. Aggrieved by the same, State of Bihar preferred petition for leave to appeal before the Supreme Court and after the leave being granted, registered as Civil Appeal No. 2931 of 2005 (State of Bihar and Others vs. Chandradeo Rai and Others). The Supreme Court, by order dated 29th April, 2005, set aside the aforesaid order and remitted the matter back to this Court for fresh disposal alongwith C.W.J.C. No. 3632 of 1995. That is how the writ application and the letters patent appeal have been posted together for consideration.

8. Undisputedly, the land which has been settled in favour of Krishnadeo Rai (hereinafter referred to as the petitioner), is Khas Mahal land and the settlement has been made for the purpose of running a bus stand for a period of ten years. It is not in dispute that such a settlement can be made only after the approval of the State Government.

9-10. Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the petitioners-appellants, submits that though the agreement was entered by the Collector without the approval of the State Government, but later on, the State Government has granted post facto approval to the settlement made in favour of the petitioner, it cannot be said that it has been illegally settled with him. In this connection, Mr. Sinha has brought to our notice the minute of the Minister dated 10.11.1994 (Annexure-2).

11. Mr. Anil Kumar Jha, G.A.-II, however, contends that the order relied on by the petitioner to be an order of the State Government is nothing but the minute of the Minister in the file and as such, cannot be said to be an order of the State Government. He points out that after the aforesaid note of the Minister, the matter was examined afresh and the file was submitted through the Land

Reforms Commissioner and the Chief Secretary to the Chief Minister, which did not grant post facto approval to the settlement made in favour of the petitioner. In such circumstance, Mr. Jha points out that the settlement made in favour of the petitioner, was absolutely illegal which did not confer any right on him. He points out that once it was brought to the notice of the State Government, it has been cancelled and consequential orders have been passed by the District Magistrate.

12. Having appreciated the rival submissions, we do not find any substance in the submission of Mr. Sinha. Undisputedly, the land settled with the petitioner is Khas Mahal land. Its settlement is permissible only with the approval of the State Government. It has not been done with the approval of the State Government.

13. In our opinion, the minute of the Minister in the file cannot be said to be an order of the State Government. No authenticated order has been brought to our notice to show that any Government order has been issued, granting post facto approval to the settlement. Not only this, the Chief Minister did not agree with the minute of the Minister concerned and in this background also, it cannot be said that post facto approval was granted to the lease granted to the petitioner by the Collector. Lease of the land in such circumstances is itself illegal and as such, nothing prevented the respondents from canceling the same.

14. To put the record straight, Mr. Jha has also pointed out that the Collector had no jurisdiction to permit establishment of a bus stand in the Khas Mahal land as that has to be done by the Transport Authorities only.

15. As we have found the settlement made in favour of the original writ petitioner to be bad in law and have upheld its cancellation, we do not consider it expedient to go into this question.

16. C.W.J.C. No. 1697 of 2002 has been filed for renewal of the lease. Same was dismissed by the learned Single Judge. However, in appeal, said order has been set aside. The order passed in appeal has been set aside by the Supreme Court in Civil Appeal No. 2931 of 2005.

17. As we found that the settlement itself is bad and upheld its cancellation, the prayer for extending its period of lease is absolutely misconceived and in our opinion, the learned Single Judge did not err in declining the said relief. Accordingly, we do not find any merit either in the writ application or in the appeal and as such, both stand dismissed, but without any order as to cost.