

(1989) 03 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 4789 of 1982

Laxman Sahni and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1990) 1 BLJR 701 : (1990) 1 PLJR 170

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—The petitioners through this writ application under Articles 226 and 227 of the Constitution of India seek grant of a writ of certiorari quashing the order, dated 6.2.1979 (as contained in Annexure-1) passed by the Deputy Collector, Land Reforms, Madhubani Sadar, (Respondent 3) in Case No. 3 of 1978-79 State of Bihar v. Shri Laksman Sahni and Shri Ram Chandra Sah, u/s 4(g) of the Bihar Land Reforms Act, 1950 issuing notices to the State of Bihar as well as the petitioners for showing cause as to why against their illegal act a case be not instituted under appropriate section on after treating 1 bigha of gair mozarua khas pokhra of land of khasra No. 19 appertaining to khata No. 322 of Mohalla Bhawanipur alias Saraiyaganj of Mauza Madhubani as Government land, the order dated 22.11.1979 (as contained in Annexure-2) passed by respondent No. 3 cancelling the Jamabandi in regard to 3 bigha 18 kathas and 7 dhura of land and out of the aforementioned khasra and khata and directing the petitioner No. 1 Ram Chandra Sah to deliver possession of the aforementioned land to the Anchal Adhikari, Radhika within one month, failing which giving liberties to the latter to take special steps or to use such force which may be necessary for compliance of his order, the appellate order, dated 17.9.1982 (as contained in Annexure-3) of the Collector, Madhubani Respondent No. 2 passed in Appeal case No. 153/77-80 dismissing the appeal of the petitioners filed against the order

contained in Annexure-2, and the notice dated 7.10.1982 (as contained in Annexure-4) of the Respondent No. 3 issue to the petitioners to hand over possession of the aforesaid lands to the Anchal Adhikari, Radhika. The petitioners also pray for issuing a direction to the Respondent No. 1 to 3 not to the Respondent No. 1 to 3 not to disturb the peaceful possession of the petitioners over the aforesaid land.

2. The facts as it appears from the writ application, the counter-affidavit of respondent Nos. 1 to 3 and the petitioners' rejoinder to that counter-affidavit are short, 3 bighas 18 kathas and 7 dhurs of lands was a tank situate within Mohalla Bhawanipur of the Madhubani Municipality, district Madhubani at one point of time belonged to Bhaktidhari Singh, the then landlord who in the year 1952 settled the same with the petitioners. The petitioners came in possession of the land and started paying rent to the Bhaktidhari Singh after obtaining rent receipts. At the time of vesting of his estate in the State of Bihar the ex-landlord filed a return showing the name of the petitioners as raiyats. The petitioners also renovated the tank and started growing Makhanas therein and rearing fishes. A vesting proceeding was started against the said landlord vide Government notification No. 487-L.R./JAN, dated 17.2.1953 which has published in the Bihar Gazette Extraordinary, dated 2.6.1953. A compensation case No. 8/53 State v. Shri Bhaktidhan Singh, was also initiated by the order dated 11.5.1953 of the then Additional S.D.O. (as contained in Annexure-9) and a notice was issued u/s 40 of the Bihar Land Reforms Act and a return was submitted by Bhaktidhar Singh and full compensation amount was paid to him in the year 1960-61 after verification of the Jamabandi of the aforementioned land. The petitioners too started paying rent to the State of Bihar and obtaining rent receipts upto-date in their own names. On an application filed by certain persons seeking settlement of lands of khasra Nos. 892 and 4251, a further enquiry was initiated in regard to the settlement of the petitioners' land and it was found that those lands have already been settled by the ex-landlord after holding of above enquiry by the Circle Inspector. In his reports (Annexure-6 and 6-A) the Circle Inspector stated that the land in question were already settled through bandobasti rasidi in favour of the petitioners, who are Jamabandi raiyats and have been paying rents and that the land in question does not figure in the sairat register. The petitioners out of the aforementioned lands sold 1 katha 10 dhurs of land to Deokant Jha and Naini Jha and when in 1978 they wanted to sell the aforementioned tank to one Ram Chandra Sahu, the said proceeding was illegally initiated. The petitioners filed show cause resisting initiation of the proceeding on the aforesaid facts in support of which they also filed several documents but without any success.

3. In the counter-affidavit filed on behalf of the Respondent Nos. 1 to 3 it has been asserted that the petitioners have illegally claimed the tank by way of settlement even though it had already vested in the State of Bihar. The fact of the change in the shape and size of the tank before vesting in the State of Bihar, its reclamation by the petitioners, growing up of mekhana and rearing fishes by them as also sale of 1 katha of land to Deokant Jha and Naini Jha was dubbed as

wrong or baseless. The petitioners' claim that in settlement case No. 28/75-76 their settlement was found to be genuine and that the said proceeding was in regard to same tank, were dubbed as not entirely correct. The validity of the orders passed by the Respondent Nos. 2 and 3 have also been supported and it has been asserted that the instant case comes either u/s 4(g) or u/s 4(h) of the Bihar Land Reforms Act.

4. It is of much important that the story of the petitioner's settlement in the year 1952, their possession, payment of rent to the ex-landlord against rent receipts, submission of return by the ex-landlord showing the name of the petitioners as raiyat of the land in question at the time of the vesting of his Estate, all have not been denied in the counter-affidavit.

5. Mrs. Gyan Sudha Mishra, learned Counsel appearing for the petitioners contended as follows:

(i) Respondent No. 3 had no jurisdiction to issue any notice to the petitioner No. 1 and the intending purchaser Ram Chandra Sah asking them to submit to his jurisdiction for explaining as to way a case under appropriate section be not started against them in regard to the intended sale by the petitioner No. 1.

(ii) In view of the compensation paid to the ex-landlord Bhaktidhari Singh in compensation case No. 8 of 1953-54 started after the vesting of his Estate who at the time of submission of his return had also showed therein that the land in question as already been settled with the petitioners, the enquiry contemplated u/s 4(g) of the Act, was utterly misconceived.

(iii) The settlement in question, if at all, could be annulled order u/s 4(b) of the Act.

(iv) The case of the petitioners never being that the settlement in their favour and made by any settlement deed followed by a Kabuliat Respondent Nos. 2 and 3 have erred in law in drawing an adverse inference against them from their alleged failure to produce the alleged settlement and/or Kabuliat deeds.

(v) There was nothing wrong on the part of the then landlord to make oral settlement in favour of the petitioners which was followed up by grant of rent receipts.

(vi) Respondent Nos. 2 and 3 have erred in law in drawing an adverse inference against the petitioners from the non-appearance of the landlord who was not noticed by them besides having parted away his right, title and possession of the land in question in favour of the petitioners his non-appearance could not be a ground in itself for rejecting the claim of the petitioners.

(vii) The finding that the rent receipts filed by the petitioners are manufactured is based on merely surmises and conjectures and not on their actual perusal.

(viii) Neither from the orders nor even from the counter-affidavit filed by the Respondents, it is apparent as to under what provision of law the matter has

been dealt with and this itself is indicative of the fact : that Respondent Nos. 2 and 3 have not applied their mind to the provisions of Section 4(g) and (h) of the Act.

6. Learned Counsel for the respondents on the other hand replied as follows:

- (i) Since there was no settlement, no proceeding u/s 4(h) of the Act was started.
- (ii) The reasonings given by Respondent Nos. 2 and 3 in their orders are valid.
- (iii) No interference is required by this Court specially when questions of fact are involved.

7. While issuing the rule on 8.12.1982, the following order was passed by this Court in this case:

At the time of final hearing it shall also be considered whether in the facts and circumstances of the present case an order u/s 4(g) could have been passed, without initiating a proceeding u/s 4(h) of the aforesaid Act.

In the meantime status quo shall be maintained. It is made clear that the petitioners shall not sell the land in question during the pendency of the writ application.

8. Mr. Mishra also brought to my notice that far from maintaining status quo Respondent Nos. 2 and 3 have got initiated a proceeding u/s 145 of the Code of Criminal Procedure in regard to the land in question as well another proceeding under the provisions of the Bihar Public Land Encroachment Act vide case No. 277/85-86.

9. In order to appreciate rival contention it would be necessary to refer to Sub-sections (g) and (h) of Section 4 of the Act which runs as follows:

(g) Where by reason of the vesting of any estate or tenure or any part thereof in the State under provision of this Act, the Collector is of opinion that the State is entitled to the direct possession of any property he shall, by an order in writing served in the prescribed manner on the person in possession of such property, require him to deliver possession thereof to the State or show cause, if any, against the order within a time to be specified therein and if such person fails to deliver possession or show cause or if the Collector rejects any cause shown by such persons after giving him reasonable opportunity of being heard, the Collector shall for reasons to be recorded, take or cause to be taken such steps or use or cause to be used such force as, in his opinion, may be necessary for securing compliance with the order or preventing a breach of the peace:

Provided that if the order under Clause (g) is passed by an officer below the rank of the Collector of a district, an appeal shall, if preferred within sixty days of the order, lie to the Collector of the district and the Collector shall dispose of the appeal in accordance with the prescribed procedure.

(h) The Collector shall have power to make inquiries in respect of any transfer

including the settlement or lease of any land comprised in such estate or tenure or the transfer including the settlement or lease of any kind of interest in any building used primarily as office or "Cutchery" for the collection of rent of such estate or tenure of part thereof, (* * *) and if he is satisfied that such transfer was made (at time after the first day of January, 1946) with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispose the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable), provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure :

Provided further that no order annulling a transfer shall take affect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government.

10. From a bare perusal of Section 4(g) of the Act aforementioned it is clear that recourse under the same can be token only when any estate or tenure or any part thereof vests in the State and that u/s 4(h) of the Act the Collector has been clothed with a jurisdiction to make enquiries in respect of any transfer including the one in hand made in favour of the petitioners, made any time after 1st January, 1946 with an object of defeating any provision of this Act or causing loss to the estate or obtaining higher compensation and to annul that transfer/settlement and dispossess the person claiming under that transfer and take possession of that property on such terms as the Collector may deem fair and equitable but that order could be effective order after its confirmation by the State Government.

11. Even though in the order dated 6.2.1979 Respondent No. 3 claimed the land of khasra No. 89 as a Government Land he was not justified in ignoring the facts that while dealing with the request for settlement made by one Sunil Kumar Sinha and others, the Anchal authorities in their reports as contained in Annexure-6 and 6/A have categorically reported that this land does not form part of the Sairat mentioned in the Sairat Register and that during the local enquiry it had transpired to them that these lands were settled by the outgoing landlord in 1359 Fasli (1952). It further appears from the order dated 16.12.1975 of the Anchal Adhikari (Annexure-6-B) that the lands in question had already been settled by the outgoing landlord and thus no land had remained for settlement without Sunil Kumar Sinha aforementioned and others. It thus appears that the stand of the State that there was no settlement of the lands in question with the petitioners stand falsified by the reports of their own authorities. It is intriguing as to what prevented the Respondent No. 2 in not initiating proceeding u/s 4(h) of the Act if he was of the view that the settlement in question have been made

for causing loss etc. to the State.

12. A Division Bench of this Court in CWJC No. 404 of 1963--Bishambhar Kumar Sharma and Anr. v. The State of Bihar and Anr., disposed of on 3rd January, 1966 in which the petitioners of that case had assailed an order of annulment of their settlement u/s 4(h) of the Act in which also the State of Bihar had a plea that the settlements and the so-called receipts are bogus etc. held as follows:

4. Hence, for the purpose of exercising the power of annulling a transfer under Clause (h), quoted above, the following findings must be arrived at;

(1) There was transfer (including the settlement or lease) of any land comprised in an estate or tenure.

(2) It must be satisfied that such transfer was made at any time after the first day of January, 1946.

(3) He must also be satisfied that such transfer was made with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder.

5. In the present proceeding there is no finding by any of the revenue authorities to the effect that settlement of the disputed land was made with the petitioner after the first day of January, 1946. Such a finding could not obviously be arrived at because the revenue authorities were of the view that in reality there was no settlement with the petitioner, the rent receipts were bogus receipts and the land remained all along in the possession of the Mahant as bakasht land. Thus the necessary findings, which are the basis for exercise of jurisdiction by the Collector under Clause (h), are wanting in this case, and the order of annulment under Clause (h) must be set aside,

(6) We are not called upon to decide here whether, the Collector finds that the alleged settlement or lease is bogus and not real and that the land remained all along in the possession of the intermediary till the date of vesting, he has power under some other provision of the Land Reforms Act to take possession of the property, or else whether he must proceed in accordance with the general law prevailing in the State. It is sufficient to say that Clause (h) of Section 4 applies only where the transfer (including settlement or lease) is real and also valid but for the provisions of this clause. Different considerations might have arisen if the Legislature in Clause (h) had used the words "Transfer or purported transfer". But no such word are found, and this Court cannot by mere interpretation add some words to the clause so as to confer jurisdiction on the revenue officer to annul even purported transfers or settlements or leases. Where in reality there was no transfer at all and the revenue officer finds that the intermediary was all along in possession, notwithstanding any paper transaction or the granting of bogus rent receipts, he cannot obviously be satisfied that such a transfer was made after the first day of January, 1946 nor can he annul a transfer which did not exist.

(7) We also do not consider it necessary for us to decide here whether the observation of the Commissioner to the effect that the settlement was bogus and that the land remained as the bakasht land of the intermediary was justified or not. It may be that the parties may have to take action under some other provisions of the Land Reforms Act or under the general law in force and we do not wish to prejudice the case of either party. It is sufficient to State that, inasmuch as the revenue authorities have purported to annul the transfer under Clause (h) of Section 4, this Court must quash that order, because there is no finding about the existence of the jurisdictional facts on the basis of which alone such an order of annulment can be made.

(8) For these reasons, we allow the petition to the limited extent of quashing the entire proceedings against the petitioners in purported exercise of the powers under Clause (h) of Section 4 of the Bihar Land Reforms Act.

13. Another Division Bench of this Court in CWJC No 1815 of 1976--Hari Shanker Singh v. The State of Bihar and Ors., disposed of on 26th October, 1978 while dealing with the validity of the orders passed u/s 4(h) of the Act by different authorities assailed in that case held as follows:

There is no legal bar to an oral settlement of raiyati lands. The mere fact that a registered document is not executed would not effect either the validity of the settlement if actually made, or show that in fact no settlement was made. The first reason for rejecting the case of the settlee does not appear to be sustainable in law. So far as the report of the Anchal Adhikari is concerned, it has to be appreciated that the report is a mere assertion of the officers of the State. The said assertion has to be substantiated by cogent and acceptable evidence and materials which must be adduced in a case if there is contest in relation to the report. No conclusion could, therefore, be based only on the basis of the report.

In this very case it was further laid down as follows:

So far as the report of the Anchal Adhikari is concerned, it has to be appreciated that the report is a mere assertion of the officers of the State. The said assertion has to be substantiated by cogent and acceptable evidence and materials which must be adduced in a case if contest in relation to the report. No conclusion could, therefore, be passed only on the basis of the report.

14. Yet, another Division Bench in CWJC No. 1004 of 1973--Bimla Kumari Devi v. The State of Bihar and Ors., decided on 2nd December, 1975 while dealing with the quashing of the orders passed u/s 4(h) of the Act, wherein one of the reasons given by the authorities was that the settlement of gairmazrui land was not permissible in law held as follows:

5. The assumption of the authorities that there could not be a legal and valid settlement of Gairmazrui Aam lands is also not based on a correct appreciation of law. It has been held in several decisions of this Court, which have been referred to in Musammat Hasanbano v. The State of Bihar 1959 BLJR 310 that

there could be a valid settlement of even Gairmazrua aam lands as the landlord has the right to deal with them in such manner as he chose so long as he did not interfere with the customary other legal rights of the villagers. It would thus appear that as a broad proposition of law it is not correct to say that there cannot be a settlement of Ghairmazrua aam lands.

15. This Court in CWJC No. 2342 of 1976--Ram Chandra Singh and Ors. v. The State of Bihar and Ors., arising out of an annulment proceeding u/s 5(1)(iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 conferring a jurisdiction in the Collector to annul transfers made by the land-holders after 22.10.1959 in which the authorities concerned had taken into account the fact of "non-showing of any cause by the transferor, held as follows:

The circumstance that the transferor has not shown cause is completely irrelevant. The transferor had no interest in the property and no adverse inference was legally permissible on account of his failure to show cause.

16. From the order (Annexure-2) it appears that no notice whatsoever was issued to the then landlords Bhaktidhari Singh or his heirs and legal representations. The appellate authority, however, in its order (Annexure-3) has proceeded to observe that despite notice the landlord did not turn up. Even if it is assumed that a notice was given to the landlord the drawing up of the adverse inference could not be a relevant ground for disbelieving the settlement in question altogether as held in Ramchandra Singh's case (*supra*).

17. In Kheero Gope and Ors. v. The Land Reforms Deputy Collector, Jamui and Ors. 1983 PLJR 727 a Division Bench held that there is no authority given to the Collector under the Bihar Land Reforms Act to cancel a Jamabandi made in favour of the settlement from the ex-intermediary. In this view of the matter, the impugned orders cancelling the Jamabandi and removing the name of the petitioners from the records was also wholly without jurisdiction.

18. The other reasons given in Annexures-1 to 4 in view of the decisions of this Court referred to above are patently erroneous.

19. For the reasons aforementioned I am constrained to hold that the Impugned notices and orders as contained in Annexures-1 to 4 are vitiated and are fit to be quashed. In the result this writ application is allowed and the impugned notices and orders as contained in Annexures-1 to 4 all are quashed. However, it would be open to the authorities to initiate appropriate proceedings in accordance with law u/s 4(g) or (h) of the Act, if conditions mentioned therein exist in regard to the settlements in question in favour of the petitioners. Hearing fee assessed at Rs. 250. Let a writ of certiorari issued accordingly.