

(1998) 07 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 4675 of 1997

Mahanth Bhagat and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-1998

Acts Referred:

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

Citation : (1998) 3 BLJR 2130

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioners have challenged the orders dated 19-10-1996 (Annexure 4); 10-12-1996 (Annexure-5) and 14-2-1997 (Annexure-6) whereby and where under the settlement earlier made in favour of the petitioners have been cancelled and such order has been affirmed by appellate authority and revisional authority.

2. The dispute, in the present case, relates to 3 bighas of land appertaining to R.S. Plot No. 93 Khata No. 246 situated in Mauja Sakhe Ramaas. The aforesaid land was settled by Hathuwa Raj with the petitioners and his bother Kawaldhari on 15-12-1943. They were put in possession over the same and on payment, granted receipts by ex-landlord. After vesting, Jamahandi No. 75 was created in the name of petitioner since when on payment, State of Bihar granted receipts (Vide Annexure-1 series).

It appears that one Md. Sahabuddin Ansari filed a petition for cancellation of Jamabandi, which was registered as Misc. Case No. 18/6 of 1988-89. Initially, on local inspection, the possession of the petitioners having found, the matter was decided against Md. Sahabuddin Ansari vide order dated 1-3-1993. The said order become final, no appeal or revision having preferred.

Subsequently, the respondents issued a show-cause notice as to why their

jamabandi be not cancelled vide order dated 27-4-1993 passed in the earlier case No. 18/6 of 1988-89. This time, it was renumbered as Misc. Case No. 6/92-93. The petitioners moved against the said order before this Court in C.W.J.C. No. 5841/93 and during the pendency of the said case, the jamabandi was cancelled by order dated 5-7-1993. The order of cancellation of jamabandi was also challenged by the petitioners by filing an amendment petition in the aforesaid writ, which was allowed by this Court vide order dated 30-3-1995 with the observation that the jamabandi cannot be cancelled without taking step for cancellation of settlement.

After disposal of the aforesaid writ petition, this time a show-cause notice was given to the petitioners as to why the settlement be not cancelled. It was registered as Jamabandi case No. 3/95-96, wherein the petitioners filed reply and challenged the jurisdiction, the settlement having made in the year 1943. It was further pointed out that over the same very plot, other persons like Bhola Kanu, Banarasi Choudhary and Bishwanath Ahir were settled by Hathuwa Raj in between 1942-44 and they also acquired occupancy raiyati right. The Additional Collector thereafter passed the impugned order dated 19-10-1996 and cancelled the settlement on the ground that the land recorded in the revisional survey as "Gair Mazurua Malik Parti Kadim", whereon public in general takes out Tazia during Muharram, is being used as Mahabiri Akhara and play ground of school students and the ex landlord, had no right to settle the same being used by public in general. Against the said order, the petitioners preferred appeal before the Collector being Case No. 4-H2/96. It was rejected on 10-12-1996 being time barred. Subsequently, when Revision Case No. 94/96-97 preferred by petitioners, it was dismissed by Commissioner, Saran Division vide impugned order dated 14-2-1997 on the ground that no revision application is maintainable against an order passed u/s 4(h) of the B.L.R. Act.

3. The Counsel for the petitioners formulated his submission as follows:

(a) The settlement having made in favour of the petitioners much prior to 1-1-1946, in the year 1943, the Collector under the Act had no jurisdiction to look into the legality of the same and/or to annul such settlement under the provisions of Section 4(h) of B.L.R. Act.

(b) The appellate order was passed on 10-12-1996 i.e. within 60 days from the date of original order (19-10-1996), which shows that the appeal was preferred within time. The appellate authority erred in law in dismissing the appeal on the ground that it was time barred, and

(c) The finding of revisional authority is erroneous, power of revision against an order u/s 4 (h) being vested u/s 4-A of B.L.R. Act.

4. The Counsel for the respondent Nos. 5 to 13 while accepted that the appeal was not time barred having filed within 60 days and that revision is maintainable against an order passed u/s 4(h) of the B.L.R. Act in terms with Section 4-A of the B.L.R. Act, contested the writ petition on merit. According to the

respondents, the petitioners and their brother obtained the settlement in a fraudulent manner, which was taken into consideration by the Collector under the Act to hold the settlement illegal. It was further submitted that any settlement if obtained by fraud, irrespective of its date of execution, the Collector under the Act has power to look into the legality of the same u/s 4(h) of the B.L.R. Act, even if executed prior to 1-1-1946. Much reliance was placed on decisions of this Court in the case of *Moorahoo Sinai) v. Ram Raj Singh* 1960 B.L.J.R. 738 and in the case of *C.P Narain Rao v. The State of Bihar* 1956 B.L.J.R. 24.

5. The question as to whether the Collector under the B.L.R. Act has jurisdiction to make any enquiry in respect of any transfer including the settlement u/s 4(h) of the Act fell for consideration before this Court a number of times and the matter practically stands settled. In the case of *Moorahoo Singh (supra)*, this Court held that the Collector has jurisdiction to enquire whether the transfer was actually made after 1st day of January 1946 and also about the genuineness of the transfer. In the case of *Umesh Jha v. The State* 1956 B.L.J.R. 229, this Court held that existence of the fact of transfer having been made subsequent to the 1st day of January, 1946, only gives jurisdiction to the Collector to annul it. In the case of *Panda v. The Commissioner, Bhagalpur Division* 1988 B.L.J.R. 511, this Court held that the Collector while exercising his power to make an enquiry in respect of annulment of transfer must be satisfied with the such transfer was made at any time after 1-1-1946 and such transfer was made with the object to defeat any provision of the Act or with a view to cause loss to the State or obtaining higher compensation therein. In the case of *Rama Prasad Singh v. The State of Bihar* 1990 (1) P.L.J.R. 165, the aforesaid principle was reiterated while this Court held that the Collector while exercising power u/s 4(h) is to make enquiry only in respect of any transfer made at any time after the commencement of B.L.R. Act, unless a finding to this effect is recorded by the Collector, any order passed thereafter in the proceeding u/s 4(h) will be wholly illegal and will be liable to be quashed.

6. From the aforesaid decisions of this Court and provision of Section 4(h) of the Act, it will be evident that the Collector has power (a) to enquire whether any transfer was made after 1-1-1946 or not and (b) if such transfer is made after 1-1-1946, the Collector can annul such transfer, if it is made with the object of defeating any provision of B.L.R. Act or causing loss to the State or obtaining higher compensation there under.

7. In the present case, admittedly, the settlement was made in the year 1943 prior to 1-1-1946. By impugned order, no finding has been given by the Collector under the Act that the transfer was actually made after 1-1-1946. Even there is no finding recorded on the question whether the transfer in question was made with the object of defeating any provision or causing loss to the State or obtaining higher compensation. In the aforesaid circumstances, I hold that the impugned order dated 19-10-1996 (Annexure-4) is illegal and without jurisdiction.

8. Accordingly, the impugned order dated 19-10-1996 (Annexure-4); the appellate order dated 10-12-1996 (Annexure-5) and the revisional order dated 14-2-1997 (Annexure-6) are set aside.

The writ petition is allowed, with the aforementioned observations.