

(2019) 07 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13830 Of 2010

Mahendra Mandal And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h)
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 PAT CK 0020

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Ajay Kr. Thakur, Md. Imteyaz Ahmad, Swati Sinha

Final Decision : Disposed Off

Judgement

1. Petitioners have filed this writ application under Article 226 of the Constitution of India for setting aside the order dated 28.2.2009 passed by the Circle Officer, Baheri, District Darbhanga, in Encroachment Case No. 4/2001-02 as well as for setting aside the order dated 27.3.2010 passed by learned Additional Collector, Darbhanga in Encroachment Appeal Case No. 3/2008-09.

2. Earlier, this writ petition was disposed of by this Court vide order dated 5.11.2014 setting aside the impugned orders dated 28.2.2009 passed in Encroachment Case No. 4/2001-02 as well as order dated 27.3.2010 passed in Encroachment Appeal Case No. 3/2008-09. The respondent No. 5 challenged the order dated 5.11.2014 before the Division bench of this Court in Letters Patent Appeal No. 383 of 2016, which was allowed by Division Bench quashing the order dated 5.11.2014 passed in C.W.J.C. No. 13830 of 2010 and restoring the instant writ petition to its original file.

3. Respondent No. 5, namely, Mohan Mahto gave a petition before Circle Officer, Baheri, Darbhanga, stating therein that petitioners forcibly encroached his land bearing Khata No. 816, Khesra No. 3927 of village Kumhiya Tol and, accordingly,

he prayed for measurement of his lands. On the aforesaid petition of respondent No. 5, Circle Officer, issued show cause to petitioners, who appeared before the Circle Officer Baheri and filed their show cause stating therein that they have no concern with Khesra No. 3927 of village Kumhiya Tol. However, the Circle Officer, Baheri, directed the concerned Amin for measurement of plot No. 3927 and in pursuance of aforesaid direction of Circle Officer, Baheri, the concerned Amin measured the aforesaid land and submitted his report disclosing this fact that plot No. 3926 of khata No. 986 of village Kumhiya Tol was encroached by the petitioners and, thereafter, Circle Officer initiated Land Encroachment Case No. 4/2001-02 against the petitioners and, accordingly, again notices were issued to petitioners, who appeared before Circle Officer in aforesaid Land Encroachment Case No. 4/2001-02 claiming that petitioners No. 2 to 6 had purchased lands of khata No. 986, Khesra No. 3926 of village Kumhiya Tol from Mahendra Mandal (petitioner No. 1) through various sale deeds and they have no concern with plot No. 3927. Furthermore, petitioner No. 1 claimed before Circle Officer, Baheri, that lands appertaining to Khata No. 986, Khesra No. 3926 was taken by his father in settlement from Ex-landlord through rent settlement and after settlement, his father had been paying rent to Ex-landlord, who, subsequently, had submitted return showing the father of petitioner No. 1 as Raiyat of the aforesaid land and, thereafter, the father of petitioner No. 1 had been paying rent to State Government but learned Circle Officer rejected the claim of petitioners vide impugned order dated 28.2.2009 and directed the petitioners to vacate the plot No. 3926 within ten days. The petitioners challenged the aforesaid order dated 28.2.2009 before learned Additional Collector by filing Encroachment Appeal No. 3/2008-09 but learned Additional Collector, too, dismissed the aforesaid appeal vide order dated 27.3.2010 only on the ground that the Ex-landlord had got no jurisdiction to settle the Gairmajarua Khas land after 1.1.1946.

4. As I have already stated that earlier the instant writ petition was allowed by this Court vide order dated 5.11.2014 but Division Bench quashed the order dated 5.11.2014 only on the ground that order dated 5.11.2014 was passed without giving any notice to respondent No. 5.

5. Learned counsel appearing for petitioners submits that, admittedly, plot No. 3926 was recorded in Cadestral Survey Khatian as Gairmajarua Khas Parti Kadim and the aforesaid land was settled by Ex-landlord in favour of father of petitioner No. 1 after 1.1.1946 but before abolition of Zamindari. He, further, submitted that learned Circle Officer passed the order of eviction against the petitioners from land in question on presumption that the documents produced by the petitioners in Land Encroachment Case No. 4/2001-02 was forged and fabricated. He, further, submitted that learned Circle Officer had no right to give finding regarding genuineness of the documents and the genuineness of the documents adduced on behalf of the petitioners could not have been judged in summary proceeding. He, further, submitted that learned Additional Collector dismissed the appeal filed on behalf of the petitioners only on the ground that Ex-landlord had

got no power to settle the lands after 1.1.1946. He submitted that the aforesaid view of the learned Additional Collector is also not in accordance with law because Bihar Land Reforms Act, 1950 (hereinafter referred to as "the Act"), nowhere restricts the Ex-landlord to settle the lands except with one rider that the Collector can make an inquiry under Section 4(h) of the Act, if the transfer has been made after 1.1.1946. He, further, submitted that, admittedly, no proceeding under Section 4(h) of the Act has been initiated in the present case, moreover, the transfer made after 1.1.1946 can only be declared null and void, if the aforesaid transfer is made with an object to defeat the purpose of provisions of the Act. He referred decision of *Suman Kumar Chaudhary v. The State of Bihar* passed by this Court in C.W.J.C. No. 14959 of 2007 as well as the judgment dated 05.9.2018 rendered by this Court in First Appeal No. 159 of 2012 (*Gangajali Devi v. The State of Bihar*). He, next, submitted that it is settled principle of law that complicated question of title cannot be decided in summary proceeding.

6. On the other hand, learned counsel appearing for the State refuted the above stated submissions arguing that the plot No. 3926 was registered in Cadestral Survey Khatiayan as Gairmajarua Khas Parti Kadim and when it came to the notice of Circle Officer, Baheri, that petitioners had encroached the aforesaid Government land, the Circle Officer, Baheri, proceeded in accordance with law and passed the impugned order dated 28.2.2009. He, further, submitted that the learned Additional Collector rightly dismissed the appeal of the petitioners because after 1.1.1946, the Ex-landlord had no right to settle the lands and, admittedly, in the present case, the land in question was settled after 1.1.1946 as claimed by the petitioners.

7. Learned counsel appearing for respondent No. 5 also refuted the submissions advanced on behalf of the petitioners arguing that plot No. 3926 was recorded as Gairmajarua Maskur in Cadestral Survey Khatiyan and the aforesaid land was in used of general public and, therefore, the Ex-landlord had no right to settle the aforesaid land. He, further, submitted that in Revisional Survey Khatiyan also the aforesaid land has been recorded as Gairmajarua Maskur. He, further, submitted that no doubt, when the concerned Amin went for measurement, petitioner No. 1 produced one rent receipt said to be granted by Ex-landlord but the concerned Amin as well as Circle Officer found that there was interpolation in the aforesaid rent receipt and that was the reason the concerned Amin as well as Circle Officer refused to take note of the aforesaid rent receipt. He submitted that when neither petitioner no. 1 nor his father had any right and title in respect of the above stated land, the remaining petitioners could not get any valid title as the petitioner No. 1 had no right to transfer the lands in question to remaining petitioners and, therefore, the Circle Officer as well as the Additional Collector rightly passed the order in encroachment case as well as in appeal. He submitted that since possession of the petitioners over the land in question is illegal, therefore, the order of eviction in encroachment case has rightly been passed.

8. It is pertinent to note here that after disposal of L.P.A. No. 383 of 2016, the Circle Officer, Baheri, again issued a notice on 13.4.2018 directing the petitioners to vacate plot No. 3926. The petitioners filed I.A. No. 3622 of 2018 before this Court praying therein for setting aside the notice dated 13.4.2018 issued by circle Officer, Baheri, and also to permit them to amendment their pleading in aforesaid manner.

9. It is an admitted position that initially, respondent No. 5, namely, Mohan Mahto, filed petition before Circle Officer, Baheri, stating therein that petitioners have encroached his land bearing khesra No. 3927. The aforesaid petition has been annexed with writ petition as Annexure 3. Furthermore, it is also an admitted position that Anchal Amin inquired the matter and submitted his report on 15.7.1999 to Circle Officer, Baheri, stating therein that petitioner No. 3 and petitioner No. 5 had purchased some portion of khesra No. 3927 from petitioner No. 1 and apart from above stated petitioners, the other petitioners also claimed that they had purchased some lands of the aforesaid plot from petitioner No. 1. Furthermore, the concerned Amin reported that petitioner No. 1 had produced rent receipt of Ex-landlord in respect of khesra No. 3926 but the said Amin doubted the genuineness of the aforesaid rent receipt. The report of Anchal Amin has been annexed as Annexure 4 to the writ petition. Furthermore, it is an admitted position that on the basis of aforesaid report of concerned Amin, the Circle Officer, Baheri, initiated Encroachment Case No. 4/2001-02 and in the aforesaid case, the petitioners appeared and claimed that father of petitioner No. 1 had taken settlement of plot No. 3926 from Ex-landlord and in respect of aforesaid claim, rent receipts, which have been annexed with this writ petition as Annexure 10 series, were filed. The aforesaid Annexure 10 series go to show that the aforesaid rent receipts are said to have been issued in 1356 Fasali equivalent to the year 1949. Therefore, it is admitted case of the petitioners that plot no. 3926 was settled to father of petitioner No. 1 after 1.1.1946. In the aforesaid backdrop, the question arises as to whether Exlandlord had power to settle plot No. 3926 after 1.1.1946 or not. The Bihar Land Reforms Act, 1950 does not put any restriction over the right of Ex-landlord to settle the land after 1.1.1946 but there is only one rider under Section 4(h) of the Act, which says that if transfer is made after 1.1.1946 by Ex-landlord, the Collector has power to make inquiry in respect of the aforesaid transfer and if Collector comes to the conclusion that the aforesaid transfer has been made after 1.1.1946 with a object to defeat the Provisions of the Act or causing loss to the State or obtaining higher compensation under the aforesaid Act, he shall pass appropriate order in respect of the above stated transfer after giving reasonable opportunity of being heard to the concerned person. Section 4(h) of the Act does not say anything regarding the restriction of transfer of land by Exlandlord after 1.1.1946. It is obvious that the learned Additional Collector based his finding in Encroachment Appeal Case No. 3/2008-09 on erroneous ground, which cannot sustain in the eye of law.

10. It is admitted case of State respondents that plot No. 3926 was recorded in revisional survey khatiyani as Gairmajarua Malik, which is also corroborated by

Annexure R-5/3, the report of Karamchari dated 25.9.2002 as the Karamchari in his report dated 25.9.2002 has mentioned that after perusal of relevant revenue record, he noticed that plot no. 3926 pertaining to khata No. 986 was recorded in Cadestral Survey Khatian as Gairmajarua Khas Parti Kadim and, furthermore, Annexure R-5/1, goes to show that plot no. 3926 was in possession of landlord. Therefore, it is obvious that the plot no. 3926 was in exclusive possession of the landlord at the time of preparation of Khaitan. Petitioners have claimed that the plot No. 3926 was settled to father of petitioner No. 1 by Exlandlord after 1.1.1946 but before abolition of Zamindari. As I have already stated that there was no rider on the right of Zamindar (Ex-landlord) to transfer the land even after 1.1.1946 except the rider provided in Section 4(h) of the Act and, therefore, even if plot No. 3926 was settled to father of petitioner No. 1 after 1.1.1946, then also, the aforesaid settlement cannot be denied only on the ground that the Exlandlord had got no right to settle the land after 1.1.1946. In the present case, admittedly, no proceeding under Section 4(h) of the Act has been initiated by the Collector in respect of the disputed transfer. Moreover, it is apparent from the above stated facts that complicated question of right and title was involved in Encroachment Case No. 4/2001-02 and the aforesaid complicated question of right and title could not have been decided in summary proceeding and, therefore, in my view, learned Circle Officer committed error in passing the order of eviction against the petitioners.

11. On the basis of aforesaid discussions, this writ petition is allowed and the impugned order dated 28.2.2009 passed by the Circle Officer, Baheri, District Darbhanga in Encroachment Case No. 4/2001-02 as well as impugned order dated 27.3.2010 passed by learned Additional Collector, Darbhanga in Encroachment Appeal Case No. 3/2008-09 as well as notice dated 13.4.2018 issued by the Circle Officer, Baheri, District Darbhanga, are, hereby, quashed.

12. In the aforesaid manner, this writ petition as well as I.A. No. 3622 of 2018 stand disposed of.