

(2012) 10 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6848 of 1988

Manoj Kumar Nirala

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Bihar Tenancy Act, 1885 — Section 23, 23(1)

Citation : (2012) 4 PLJR 802

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Shravan Kumar, Mr. Dinesh Maharaj and Mr. Rajiv Nayan Singh, for the Appellant; J.S. Arora, SC-6 with Mr. Ajay Kumar, AC to SC-6, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Chakradhari Sharan Singh

1. Invoking the provisions of Section 23 of the Bihar Tenancy Act, 1885 (hereinafter referred to as the Act) and Rule 9 (III) of the Bihar Government Estates (Khas Mahal) Manual, the concerned revenue authorities of the State of Bihar, by their impugned action have enhanced the annual rent of land; appertaining to Khata Nos. 234,223,228 and 237 bearing Plot No. 635, 636, 637 and 638 (admeasuring 1 Acre 3 Decimals); and have asked the petitioners to pay salami on premise that the petitioners had put their agricultural land to commercial use by holding weekly cattle fair over the land for last several years and thus changed the nature of the land. The petitioners are raiyats in respect of four plots. During the pendency of the writ petition, the original petitioner Bhrigunath Singh died and has been substituted by his legal heirs. The expression petitioner(s) in present judgment would, therefore, mean and include the deceased petitioner and the substituted legal heirs and representatives.

2. The petitioners, in present writ application, have challenged the entire

proceeding of case No. 13/84-85 initiated before the Circle Officer (Anchal Adhikari) Maner, particularly the final order dated 10.08.1987 (Annexure-1) whereby and whereunder they have been asked to pay Rs. 2,42,000/- by way of Salami and Rs. 12,100/- by way of annual rent against the land in question described hereinabove.

3. The short issue which is involved in the present case is as to whether holding of cattle haat (cattle fair) would amount to impairing the value of the land so as to render it unfit for cultivation attracting provisions as contained in Section 23 of the Act. Another issue is whether Rule 9 (III) of Bihar Government Estates (Khas Mahal) Manual has any application in facts of the present case for asking for Salami or enhanced annual rent?

4. The writ application was filed on 7.9.1988. On 3.10.1988 this application was admitted. Notice was accepted on behalf of the respondents by the learned counsel for the State and interim order was also passed staying the operation of the impugned order as contained in Annexure-1. 24 years have lapsed, the respondent-State of Bihar and other officials have not chosen to file any counter affidavit, let alone taking any steps for vacating the interim order. The writ application therefore, is being decided on the basis of the pleadings in the writ application.

5. From Annexure-1, which contains the proceedings of Case No. 13/1984 before the Circle officer, (Anchal Adhikari) Maner and subsequent comments made and orders passed by different authorities up to the level of Divisional Commissioner, Patna it appears that on the basis of the report of the Sub-Divisional Officer, Danapur and further on the basis of the information given by the Inspector of Police, Vigilance Department, Patna and the verification report of the concerned Circle Inspector to the effect that the agricultural land in question was being used for commercial purpose as cattle haat (fair) was being held on weekly basis, a proceeding was initiated before Anchal Adhikari, (Circle Officer) Maner vide case No. 13 of 1984-85 for fixing commercial rent of the land in question instead of general land rent. A notice was issued by the Circle Inspector to the petitioners vide order dated 29.1.1985 asking the petitioners to show cause as to why commercial rent be not fixed with respect to the concerned land. 11.2.1985 was the date fixed by the Circle Officer after service of notice. The petitioners sought adjournment for a week on the plea that he had to attend the marriage ceremony in the family. However, next date was fixed on 15.2.1985. On 15.2.1985 the Anchal Adhikari called for the rate of the land from the Circle Inspector so as to determine the amount of salami and land rent and send the same to the District Magistrate and Sub-Divisional Officer. Petitioners could not appear on 15.2.1985 before the Circle Officer as according to the petitioners they had no knowledge about this date fixed for the case. On the basis of the report of the Circle Inspector, vide order dated 19.3.1985 the Anchal Adhikari determined the salami to the tune of Rs. 2,42,000/- and Rs. 12,100/- as annual land rent. While referring to a communication issued by the Office of the Land Reforms

Commissioner the Anchla Adhikari, in his order dated 19.3.1985 has mentioned that under the Bihar Tenancy Act, 1885 and Bihar Land Reforms Act, 1950, a raiyat can hold the land for agricultural purpose and commercial use of agricultural land amounts to violation of statutory provision. In such circumstance, he has recorded, the Government has the power either to divest such raiyat of his right to hold the land who has changed the character of land or regularize the same in accordance with the provision contained in Rule 9(iii) of the Bihar Government Estates (Khas Mahal) Manual.

6. The Deputy Collector Land Reforms, Danapur recommended for approval of the determination of salami and land rent, whereupon the District Magistrate finally approved the same vide order dated 27.2.1986. It appears from Annexure-1 that subsequently the Deputy Collector Land Reforms was communicated approval of the Commissioner, Patna Division through letter No. 730 dated 13.7.1987 as regards the determination of salami and land rent. In view of the above, the Anchla Adhikari vide his order dated 10.8.1987 (the impugned order) asked the petitioners to deposit a sum of Rs. 2,42,000/- as salami and Rs. 12,100/- as annual rent by depositing the amount with Nazir in the Circle Office.

7. It has been pleaded in the writ application that the petitioners were not aware of the date of hearing before the Circle Officer on 15.2.1985 as there was no notice to them with regard to the date and therefore, they could not appear before the Circle Officer. Thereafter, there was no communication as regards the date of the proceeding, though the petitioners were told that the same would be communicated to them.

8. Mr. Shravan Kumar, learned Senior Counsel appearing on behalf of the petitioners contends that none of the authorities up to the level of the Divisional Commissioner applied their mind on the question as to whether holding of weekly cattle haat would amount to impairing the character of the land and would render it unsuitable for Agricultural or Horticultural purposes.

9. According to him, as has been placed in the writ application also, the land in question was purchased as raiyati land by the ancestors of the petitioners from the legal heirs /transferees of the recorded tenants and his name is recorded in the revenue records. The nature of the land is sandy and Horticultural. The Horticultural aspect is clearly recorded in Khatian as bearing 16 palm trees and trees of Bel, Mango, Khajur, Neem etc. Admittedly the petitioners were the proprietors of the said mela having required registration from the Agricultural Produce Market Committee, Bihta (Danapur) under Rule 84 of the Bihar Agricultural Produce Market Act, 1960 and requisite licence from the Committee, renewed from time to time.

10. Learned Senior Counsel, relying on a Division Bench Judgment of this Court reported in AIR 1978 Patna 250 (Ahmad Ali Sah and others vs. State of Bihar and others), contends that the initiation of the proceeding itself was

misconceived, based on wrong notion that holding weekly haat would lead to impairing the value of the land or rendering it unfit for cultivation. This issue having been settled in most unequivocal terms in the Division Bench Judgment of this Court in Ahmad Ali's case (supra), wherein it has been held that the right of a raiyat to use the land in any manner he likes, provided it does not materially impair the value of the land or render it unfit for cultivation, has been expressly declared in sub-sec. (1) of Section 23 of the Act. The Court held that the limitation on the power of a raiyat refers to some damage to the land, permanent in nature. For quick reference, paragraph 3 of the said judgment is being quoted herein below:-

3. The learned Commissioner has mentioned that if a market is held on the land every week, the land shall cease to be fit for agricultural use. This assumption is entirely uncalled for. As soon as the holding of the market is stopped, the land can be put to agricultural operation. It has not been shown as to how the collection of some men or cattle on the land will impair the quality of the land in such a way that in future it will be unfit for cultivation. The limitation on the power of a raiyat refers to some damage to the land, permanent in nature. The fact that a piece of land is not in a position to be cultivated temporarily is not covered by the disability of the raiyat in that respect. For these reasons, we are of the view that the decision of the authorities in the present case is not correct.

11. Learned senior Counsel is right in his submission that asking for salami of Rs. 2,42,000/- on the basis that petitioners was holding haat on the land is beyond jurisdiction as salami cannot be realized from a person already in possession as an occupancy raiyat. There being no resettlement of the land, the petitioners would not be made liable to pay salami. The Anchal Adhikari has referred to Rule 9(iii) of the Bihar Government Estates (Khas Mahal) Manual which according to him is the source of power for the State Government to re-fix the annual rent of the land in a such situation. Rule 9(iii), in my view does not apply to the facts of the present case and the same shall apply only if an agricultural land is converted into building site without permission. The said Rule is being extracted herein below for ready reference:-

iii) A person, who converts agricultural land into building sites without permission whether he be the original raiyat or a transferee is liable under the tenancy law to eviction for changing the character of the land. Such person should not be allowed to continue to hold the converted land on a purely agricultural rent and to appropriate the whole increment in value such cases may be dealt with either by making surrender a condition precedent to any sale of agricultural land for purposes other than agricultural or else by ejecting the transferee formally and resettling with him on a town lease. In either case, a substantial salami should be charged on resettlement. But to avoid hardship the Collector may agree to the transfer of part of his land by an old established raiyat without cancellation of his tenancy on receipt of a Salami on a moderate scale which should be fixed with the sanction of the Commissioner in each individual case.

12. Referring to Section 21A of the Act, learned Senior Counsel submits that the provision empowers the proprietor or tenure-holder to realize salami in settling bakasht lands and there is no other provisions under the Act under which salami can be realized.

13. Following ratio of the Division Bench judgment of this Court in case of Ahmad Ali (Supra) I hold and reiterate that holding of cattle haat on the land in question did not amount to impairing or changing the agricultural character of the land. The impugned action taken by the respondents, by invoking Section 23 of the Act on the presumption that holding weekly haat (cattle fair) impaired the agricultural nature of the land is illegal and beyond jurisdiction. As has been noticed above, Rule 9 (iii) of the Bihar Government Estates (Khas Mahal) Manual would not apply in the present case as the land in question was not being converted into building site. The entire proceeding of Case No. 13 of 1984-85 before the Anchal Adhikari, Maner and the order dated 10.8.1987 (Annexure-1) asking the petitioners to deposit salami and enhanced annual land rent are accordingly quashed. This writ application is allowed. There will be no order as to costs.