

(1992) 07 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4587 of 1990

Maya Rani Chatterjee and others

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 14-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 PLJR 612

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Advocate : Jagdish Pandey and Mrs. Indu Bala Pandey, for the Appellant; J.P. Karn and Nageshwar Pd. Sinha for Respondents 1 and 2 and Mr. Subro Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—Through this writ application, watch was originally filed by Braj Mohan Chatterjee, the predecessor of the present petitioners, a prayer has been made to quash the Order dated 2.3.1953, passed by the Circle Officer, Thakurganj, District Purnea (Respondent no. 2) in Case No. 2 of 1968 (as contained in Annexure 2), by which Parcha under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act") was granted to Respondent no. 3, Gopal Chandra Das, in regard to 3 decimals of land out of 9 decimals in Plot no. 1336, appertaining to Khata no. 572 of Mouja Kanakpur, District Purnea. The relevant facts asserted by the petitioners are to the following effect :?

Plot No. 4336 (Area 9 decimals) under Khata no. 572 stands recorded as the house and Sahan of Braj Mohan Chatterjee as the Kaimi Raiyat, which is evident from the record of Rights as contained in Annexure 1 to the writ application; that during the cadestral survey, this house was under the mortgage of one Saikh Khalil, which was redeemed and the original writ petitioner came in possession; that it is situated in the heart of Thakurganj Bazar near the Railway Station, Bus

Stand and Police Station and two middle schools and hospitals are situated very close to it; that a portion of the house measuring 3 decimals out of 9 decimals was let out to Respondent no. 3, on which he had started a business; that the petitioner wanted to take half of his house for his two unemployed sons to run business and Respondent no. 3 was asked to vacate, but the latter asserted that it is his own house and he refused to vacate and he failed even to pay the agreed monthly rental; that respondent no. 3 has got a platial building over 4 decimals 8 links of land appertaining to Plot no. 4555 Khata no. 443 after taking settlement from on Ram Ashish Mandal of Thakurganj; that the writ petitioner (Braj Mohan Chatterjee) is aged 99 years, paralytic and confined to bed since more than 20 years and taking advantage of his long illness, Respondent no. 3 managed to get a Parcha under the Act collasively; from Respondent no. 2 without any enquiry or notice; that everything was done stealthily, and collusively; and that copies of the Parcha and orders etc. were procured at the time of enquiry in 1989-90 when they were filed before the Circle Officer, before whom the original petitioner had prayed for cancelling the Parcha.

2. In the counter-affidavits filed on behalf of Respondent no. 3, Allowing facts have been asserted; The Parcha was issued to him validly and legally after duly complying with the provisions envisaged under the Act; that the petitioner was served with notice prior to the settlement of land in question as well as prior to the grant of Parcha and he had full knowledge of the same since 1968; that out of 9 decimals, the petitioner had sold 2 decimals of land to Surendra Devnath and Mahendra Devnath, respectively, in the year 1972 by sale-deed no. 5923 dated 11.10.1972 and that again 3 decimals to Prabha Rani, Anita and Thama Rani Das and that the remaining land was Parti; that the land in question was not let out to Respondent no. 3, that there was no residential house of Respondent no. 3 in the town of Thakurganj; that Mouja Kanakpur was constituted as a notified area in the year 1976 under the provisions of the Bihar and Orissa Municipal Act, 1922; that the writ petition has been filed after a period of 22 years, which is not maintainable and fit to be dismissed; that Respondent no. 3 was a privileged person within the meaning of the Act, who had filed a petition for fixation of rent of the land in question before the Circle Officer, who, after exercising his powers under the Act, sent the petition for enquiry and report and, thereafter, issued the Parcha and also fixed the rent, which Respondent no. 3 started remitting regularly to the writ petitioner; that at that time Thakurganj was not constituted as a notified area; that Sadhu Rani Das and Sabitri Rani Das took Sikmi Kabuliat by virtue of deed no. 196 on 1.1.1991 from one Jogeshwer Mandal, land owner, over Khata no. 443, Khesra no. 4553 (Part) comprising of 3 Khthas each; that the petitioner had appealed before the Deputy Collector, Land Reforms, Kishanganj, against the grant of Parcha, who, after notice and enquiry, confirmed the order of the Circle Officer; that son of Respondent no. 3 tried to obtain photo copies of the records of the case but was told by the Circle Officer, Thakurganj that he will show papers when the High Court will ask him to do so; that he can find out documents to support the fact that the petitioner had

knowledge of the notice of the grant of Parcha; that the petitioner had lodged a complaint against the grant of Parcha and prayed for its cancellation before the Sub-Divisional Officer, Kishanganj, who asked the Circle Officer, Thakurganj to enquire into the matter, on which the latter submitted a report (as contained in Annexure "C"), and that for these reasons the writ petition is liable to be dismissed.

3. In a supplementary affidavit filed on behalf of the original writ petitioner, in reply to the statements made in the first and second counter-affidavits of Respondent no. 3 about non-issue of notice of the proceeding or non-holding of any enquiry, non-service of the notice, non-knowledge of the petitioner, have been reasserted. It has also been pointed out that statements made by the son of Respondent no. 3 in the counter-affidavits should not be accepted as he was small child in the year 1968 and was a minor in 1980; and that Annexure "C" is a suspicious document, on the basis of which it cannot be said that the writ petitioner had knowledge nor does it indicate that the writ petitioner had filed any case against Respondent no. 3 before the Sub-Divisional Officer.

4. While admitting this writ application, this Court had directed Mr. Karn, learned S.C.V. to try to have the original records of the case in question and produce it at the time of hearing and Mr. Sanyal to produce the certified copies of the Photo-stat copies, which have been appended as annexures to the counter-affidavit.

5. Mr. J.P. Karn, learned Standing Counsel no. 5 states that despite letter to Respondent no. 2, records have not been sent for their production.

6. Mr. Sanyal, Learned Counsel for Respondent no. 3, states that the certified copies could not be traced out till the date and hence he cannot produce them.

7. Mr. Jagdish Pander, Learned Counsel appearing in support of the Rule, submits as follows :?

(i) The original writ petitioner, Braj Mohan Chatterjee, was not noticed in the proceeding and for this reason alone, the impugned order is liable to be quashed. The direction to the Respondents to produce original records and/or certified copies has not been complied with and hence contempt proceeding be initiated and an adverse inference be drawn up against them inasmuch as from the order-sheet, it would have appeared that no notice was given to the petitioner.

(ii) The land in question is in Bazar-area to which provisions of the Act were not applicable and, thus, grant of Parcha of a piece of land situated in the Bazar-area was not permissible under the Act.

(iii) Respondent no. 3 was a tenant of the original writ petitioner and not a privileged person under him and for this reason also, the writ application is fit to be allowed ;

(iv) The writ petition having been admitted should be disposed of on merits. There was no deliberate laches. The Original Petitioner was paralytic and

bedridden and had filed an application for cancelling the Parcha on the ground of fraud but as there was no jurisdiction, the instant application was filed.

8. Mr. Karn, Learned Counsel appearing on behalf of Respondents no. 1 and 2, submits that the writ application having been filed after a lapse of 22 years should be dismissed on this ground alone.

9. Mr. Sanyal, Learned Counsel appearing for Respondent no. 3 submits as follows :?

(i) The present writ application is not maintainable since the original writ petitioner had died. The substituted petitioner are not entitled to the reliefs prayed for.

(ii) The writ petition should be dismissed as there was intentional laches on the part of the original petitioner, who had knowledge of the proceedings from before as is evident from Annexure "C" the enquiry report submitted on his complaint.

(iii) The Parcha was granted after a valid enquiry under the Act; no notice was required to be given to the writ petitioner under the Act.

10. I deal with the first objection raised by Mr. Sanyal. I am of the view that by their substitution, the present petitioners had stepped into the shoes of the original writ petitioner, and being the legal representatives are fully entitled to continue the lis and protect their interest. Accordingly, I hold this objection as wholly misconceived and overrule it.

11. Now I take up the first submission of Mr. Pandey. The counter-affidavit on behalf of Respondent no. 3 has been sworn not by him but by his son. Respondent no. 3 has not given any explanation in this regard as to why he is allowing his son to swear them, whereas the deponent for the petitioner has offered a cogent explanation in paragraph 4 of her affidavit.

12. In paragraph 9 of the supplementary counter-affidavit, dated 16.7.1991, sworn by his son, it has been stated as follows :?

9. That the deponent had frantically rushed to the Karamchari of the Block which is also the office of Circle Officer, Thakurganj and tried to obtain photo copies of the records of the case, but the Circle Officer, Thakurganj told the deponent that he will show the papers only when the High Court asks him to do so.

The sentence aforementioned appears to be incorrect. Perhaps, the deponent means that he tried to obtain photo copies of the records of the case, but was told by the Circle Officer, Thakurganj, that the papers would be shown only to this Court when they are asked. This counter-affidavit is dated 18.1.1991 and filed on 16.7.1991 that is to say before the admission of this writ application, whereas, in the main counter-affidavit in regard to the annexures appended to it, it has been stated that they are photo-copies of their respective originals. Paragraph 8 of the writ petition reads as follows :-That the petitioner wanted to take half his house for his two unemployed sons to run their own business and

the respondent No. 3 was asked to vacate the house then he asserted that it is his own house and he would not vacate it. He even refused to pay monthly rental agreed. Thereupon the petitioner's sons began to move in the police station and the Circle Officer etc. and then the order of the C.O. granting Parcha and Revenue was produced by him in the year 1989 and the petitioner procured the copy from then. "Even though a bald-denial has been made in paragraph 9 of the counter-affidavit, the fact, that copy of the order granting Parcha was produced by Respondent in the year 1989 and that the original petitioner procured a copy of the same, in my view, has not been categorically denied.

13. I would have initiated a proceeding for contempt against the Respondents for noncompliance of the direction of this Court for producing the documents but instead of doing so I merely draw an adverse inference against them that had they produced the original records and/or their certified copies, it would have been shown that no notice, as required under the law, was given to the original petitioner. From the averments made in the writ petition, coupled with Annexure 3, it appears that the original petitioner was paralytic, and bed-ridden, and had been moving from places to places for his treatment, which has also not been categorically denied by Respondent no. 3, who has failed to prove his case that repeated notices were served on the petitioner. Accordingly, I hold that no notice, as required under Rule 5 was given to the original petitioner and the proceeding was not validly conducted.

14. Now I consider the third submission of Mr. Pandey. Privileged person was defined, at the relevant time, as follows :?

"2(1)" privileged person means a person?

- (1) who is not a proprietor, tenure-holder, under-tenure-holder or a mahajan and
- (2) who, besides his homestead, holds no other land or holds any such land not exceeding one acre ;

Privileged tenant was also defined as follows:?

(j) "privileged tenant" means a privileged person who holds homestead under another person and is, or but for a special contract would be liable to pay rent for such homestead to such person.

It was/is not the case of Respondent no. 3 that he was/is a Privileged person, who was holding homestead under the original writ petitioner. This aspect has also lost sight of Respondent no. 2 while passing his impugned order. No finding has been recorded that Respondent No. 3 is such a privileged person.

15. Now I deal with the objection raised by Mr. Karn and Mr. Sanyal that this application should be rejected on the ground of inordinate delay and laches. Limitation Act does not apply to the proceedings before this Court under Articles 226 and 227 of the Constitution of India. A question would arise as to whether, in view of the patent facts, it would be desirable for this Court to refuse to exercise

its discretion vested in it by the Constitution on the ground of laches and/or inordinate delay. The answer must be in negative. It has also been stated by the petitioners that the original petitioner filed an application as contained in Annexure 3 before the Circle Officer, Thakurganj, on 5.2.1990 for cancelling the Parcha, which has also not been denied. Under the provisions of the Act, as they were in existence at the relevant time, the Collector was not vested with powers to cancel parchas granted exparte, With reference to Annexure C to the counter-affidavit, Mr. Sanyal placed great reliance while contending that the petitioner had prior knowledge of the impugned order. It is true that it shows that an explanation was called from the Anchal Authorities. This document, which is photocopy of certified copy of a report of the Anchal Adhikari, Thakurganj, submitted pursuant to the letter of the Sub-Divisional Officer, Kishanganj, being No. 92 C dated 22nd February, 1980, has been filed alongwith Supplementary Counter-affidavit dated 18.1.1991. The petitioner in paragraphs 7 and 8 of his affidavit dated 4.4.1991, has stated some interesting facts calling it to be suspicious document. Mr. Sanyal, despite categorical direction made by order dated 12.9.1991, has not produced the certified copy of Annexure C. It is, thus, difficult to place reliance on it. Specially when no counter has been filed by Respondent no. 3 to the affidavit dated 4.4.1991. The petition (Annexure 3) cannot be said to be an efficacious remedy for obtaining reliefs by the original petitioner.

16. Taking into account the entire facts and circumstances, I am of the view that justice requires remittance of the case.

17. As the case is remitted back in regard to second submission of Mr. Pandey, liberty to the parties is granted to make their submissions/counter submissions in this regard before Respondent no. 2. Parties will maintain status quo of the lands in question till adjudication by Respondent no. 2.

18. Accordingly, I quash the impugned order, as contained in Annexure 2, and direct Respondent no. 2 to dispose of the case in accordance with law expeditiously within six months from the date of receipt of a copy of this order. In the result this application is allowed to the extent indicated above but without cost.