
(2013) 01 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 2661 of 2004

Md. Abul Kalam Khan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 21
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2013) 3 PLJR 696

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Rashid Alam and Md. Anis Akhtar, for the Appellant; Nilima Sinha, Anil Kumar Sinha and Rajiv Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard learned counsel for the petitioner, learned A.C. to Govt. Pleader No. 15 as well as Sri Hemendra Prasad Singh, learned Senior Counsel, who was assisted by Sri Ram Naresh Rai, learned counsel appearing on behalf of Respondent Nos. 4 and 6. The petitioners in the present writ petition have prayed for quashing of an order dated 13.1.2003 passed in Case Nos. 11/2002, 12/2002 and 13 of 2002 passed by the Collector, Araria, whereby the appeal preferred by the petitioners u/s 21 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as the "Act") was rejected. The petitioners have further prayed for quashing of Basgit Parchas issued on 7.3.1980 in Case Nos. 56/1979-80, 57/1979-80 and 58/1979-80 by the Respondent No. 3 in favour of Respondent Nos. 4 to 6.

2. Learned counsel for the petitioners, while assailing the order as well as Basgit Parchas issued in the year 1980, submits that the land in question was earlier purchased by them and they came in peaceful possession over the land in question. Even without issuing notice to them, the proceeding was initiated under the Act and Parchas were issued. After noticing the fact regarding issuance

of Parchas in favour of private Respondents, the petitioners filed an application u/s 21 of the Act before the Collector, Araria. However, on one day, no Pairvi was made in the case and thereafter the case was rejected due to non-prosecution. In sum and substance, it has been argued by learned counsel for the petitioners that without issuance of notice to the land-holders, the proceeding initiated for issuance of Parcha was void ab initio. In support of his argument, learned counsel for the petitioners has relied upon a single Bench judgment, reported in *Rajeshwar Prasad and Others Vs. State of Bihar and Others*, . He submits that on this ground alone, the order passed by the Collector as well as Parchas issued in favour of the Respondents are fit to be set aside. By taking aid of averments made in the counter affidavit of Respondent Nos. 1 to 3, which was sworn by Respondent No. 3/Circle Officer, Narpatganj, Araria, it has been argued that the Respondent/State has admitted that notices were issued upon Respondent/Wali Md. Khan. It was submitted by learned counsel for the petitioners that Wali Md. Khan was vendor of the land and in the year 1974, the petitioners had purchased the land in question from Wali Md. Khan and, as such, the proceeding initiated in the year 1979-80 was vitiated.

3. Sri Hemendra Prasad Singh, learned Senior Counsel appearing on behalf of Respondent Nos. 4 and 6, while opposing the prayer of the petitioners, submits that in this case Basgit Parcha was issued long back under the Act and the private Respondents were given possession over the land in question. They continued in peaceful possession over the said land for several years. At much belated stage i.e. after about expiry of 22 years, filing of petition u/s 21 of the Act before the Collector, Araria without giving any explanation for delay was itself sufficient for its rejection. He submits that once Basgit Parcha is issued, it cannot be cancelled without adopting the procedure of law. He further submits that the petitioners in paragraph-19 of the writ petition have stated that for cancellation of Parchas, the petitioners had filed a title suit vide Title Suit No. 149 of 2003 i.e. before filing of the present writ petition and, as such, during the pendency of the title suit, the petitioners were not entitled to invoke writ jurisdiction by this Court. Admittedly, the present writ petition was filed on 27.2.2004 i.e. during the pendency of title suit. He further submits that at subsequent stage, title suit was withdrawn in the year 2005. A preliminary objection has also been raised by learned Senior Counsel for the private Respondents that once the case filed by the petitioners before the Collector was dismissed due to non-prosecution without dealing with the merit, the proper course for the petitioners was to approach the same court for restoration of the case. Instead of filing petition for restoration, the petitioners have preferred to invoke its writ jurisdiction before this Court and, as such, the writ petition is liable to be rejected on this ground also. In the counter affidavit, a stand has been taken that the private respondents i.e. Respondent Nos. 4 to 6 after issuance of Basgit Parchas in the year 1980 was continuously coming in peaceful possession, but to the reasons best known to the petitioners they tried to disturb the private Respondents and even criminal offence was committed by them, for which private Respondents

had lodged an F.I.R. vide Narpatganj P.S. Case No. 48 of 2003 for the offence under Sections 147, 148, 149, 323, 324 and 435 of the Indian Penal Code. He submits that lodging of the F.I.R. itself indicates that the petitioners had unauthorisedly tried to disturb the peaceful possession of Respondent Nos. 4 and 6 from the land in question. He has further taken an objection on the ground that though Respondent No. 5 died during the pendency of the present writ petition, the petitioners have not taken any step for substituting his legal heirs. A specific statement has been made in paragraph-13 of the counter affidavit filed on behalf of Respondent Nos. 4 and 6 that Respondent No. 5 had on 16.1.2010 (sic). On the aforesaid ground, it has been prayed to reject the writ petition.

4. Besides hearing the parties, I have also perused the materials available on record. Fact remains that in the present case, the proceeding for issuance of Basgit Parcha issued (sic--initiated?) under the Act in the year 1979-80 and Parchas were issued in favour of private Respondents i.e. Respondent Nos. 4 and 6 in the year 1980. Once Parcha is issued under the Act, the same cannot be cancelled without taking aid under the provision contained in the Act. Moreover, after about 22 years, the petitioners, to the reasons best known to them, had approached the Collector u/s 21 of the Act and cases were initiated vide Case Nos. 12/2002, 11/2002 and 13/2002. It is evident that the said cases were dismissed due to non-prosecution. Meaning thereby, without merit, the said cases were dismissed. Once the cases were dismissed for non-prosecution, in normal course, the petitioners were required to approach the same court for its restoration. Instead of making prayer for restoration, the petitioners approached this Court in its writ jurisdiction.

5. In view of the facts and circumstances, particularly the fact that Parcha were issued long back in the year 1980 in favour of private Respondents, at such belated stage it would not be appropriate for this Court to interfere either with the issuance of Parchas or with an order which was passed due to non-prosecution. The writ petition stands dismissed.