

(1998) 11 PAT CK 0075
In the Patna High Court
Case No : C.W.J.C. No. 10727 of 1997

Md. Hasim Khan and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Citation : (1999) 1 PLJR 116

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

Bench : Single Bench

Advocate : Shashishekhar Dwivedi, Viveka Nath Pathak, Umesh Kr. Singh and Ravi Shankar Dwivedi, for the Appellant; Arjun Singh and G.P. II, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both the cases as common order is under challenge and they relate to same set of land, they were heard together and are being disposed of by this common order.

2. The dispute relates to total land of plot No. 489/891 and 8 decimals of plot No. 734, both under khata No. 64 of village Chaurawn in the district of Gopalganj. The Petitioners claim to be reiyats in respect to such land.

3. According to the Petitioners, they belonged to Malik Babu Gangadhar Prasad Singh on whose death the son Ram Kumar Babu Ganesh Prasad Singh acquired Milkiyat interest vide a deed of gift dated 2nd February, 1920. Subsequently, 33 bighas 14 kathas and 2 dhurs of land were settled by him vide registered Patta dated 7th December, 1923 in favour of Md. Maruf Khan, who came in possession over the same. Although, the name of Md. Maruf Khan was mentioned in the Patta, but his three other brothers had also shares to it. The title of the settled land ultimately vested on sons of Bankey Khan, who died leaving behind four sons Sajyait Khan, Abdul Latif Khan, Md. Hanif Khan and Maruf Khan. First Petitioner Md. Hasim Khan and second Petitioner Md. Mansur Alam of C.W.J.C.

No. 10727/97 are sons of Md. Hanif Khan whereas third Petitioner Reyaz Ahmad Khan of the said case is grand son of Abdul Latif Khan.

4. A separate Jamabandi No. 41 was created by the Ex-Landlord in favour of settlees, who collected rent from the settlee and then from the successor of the settlee till the vesting of the State. Thereafter, the names of settlees and their successor having shown in the return, Jamabandi No. 41 continued in their favour in Register-II maintained by the State, who realised rent from the Petitioners and other sharers. Some lands were also sold by a fourth conditional sale deed dated 23rd May, 1960 to one Raghubar Singh, who could not pay back the money within time. Hence, Bishwanath Singh executed different sale deeds in respect to portions of such land to different persons. The Petitioners claim to have re-purchased even such land from Bishwanath Singh.

5. It appears that 5th to 10th Respondents filed an application before the D.C.L.R. and alleged that the disputed plots/lands are Gairmazarua Ditch as shown in R.S. Khatiyani and they were in possession of Plot No. 496. On such application, enquiry was made by Circle Officer, who submitted a report wherein he mentioned that there was a "Chhat Asthan" over Plot No. 734 and over half decimal of Plot No. 489/891. It was registered as Jamabandi Correction Case No. 61 of 1996-97 against some of the Petitioners wherein an order was passed on 20th October, 1996 by D.C.L.R. He dismissed the application as was preferred by 5th to 10th Respondents, but directed to declare half decimal of Plot No. 489/891 as public land.

6. Thereafter, 5th to 10th Respondents preferred Jamabandi Correction Appeal No. 8 of 1996 wherein the Collector, Gopalganj passed the impugned order on 25th October, 1997.

7. The main stand of the Petitioners is that the jamabandi already created, cannot be cancelled, without annulment of settlement or transfer in terms with Section 4(g) or 4(h) of B.L.R. Act. There was no occasion to cancel part of the jamabandi, which was created more than 50 years back.

8. The contesting 5th to 10th Respondents appeared and contested the case. According to them, the Petitioners, who claim to be the raiyat has no right and title in respect to total land. By the sale deed as contained in Annexure-2 only 17 bighas 10 kathas and 10 dhurs of land were purchased by the ancestors of some of the Petitioners and not the total 33 bighas 14 katha and 2 dhurs of land for which jamabandi was created. The counsel for the Respondents placed reliance on the sale deed dated 7th December, 1923 as enclosed (Annexure-2) to the writ petition.

9. The counsel for the Petitioners disputed the aforesaid stand taken on behalf of the Respondents and placed reliance on last portion of the sale deed wherein the details of plots, area, boundary etc. has been shown. In the last portion, the total area has been shown to be 33 bighas, 14 kathas and 2 dhurs of land. However, the aforesaid sale deed was clarified by the counsel for the Respondents, who

placed reliance on the first page of the sale deed to show that only 17 bighas, 10 kathas and 12 dhurs of "Zairat" and "Bakast" land were purchased by the ancestors of the Petitioners, out of aforesaid 33 bighas, will kathas and 2 dhurs of land.

10. From the aforesaid pleading made by the parties, it appears that they are remains a dispute relating to right (sic)ion title and the area conveyed by sale deed dated 17th December, 1993 (Annexure-2). Such dispute cannot be decided by this Court under writ jurisdiction.

11. A Division Bench of this Court in the case of Sitaram Choubey and Others Vs. State of Bihar and Others held that creation or cancellation of jamabandi does not create nor extinguishes right and title of any person. In that view of the matter, it can be safely stated that the right and title, whatever, which accrued in favour of the Petitioners in pursuance of sale deed aforesaid (Annexure-2) does not stand extinguished in pursuance of the impugned order dated 25th October, 1997 (Annexure-1).

12. So far as impugned order dated 25th October, 1997 (Annexure-1) is concerned, I may observe that the authorities have power to correct the mistake, if any, committed at the time of creation of jamabandi. However, such correction of mistake should be clerical one and cannot be done which will result in cancellation of jamabandi itself by deciding the case on merit, without cancellation of settlement or annulment of transfer as stipulated u/s 4(g) and 4(h) of B.L.R. Act. The authorities while passing such order in a Jamabandi case has also no right to give a declaration of right and title in favour of one or other person nor can declare sale deed as illegal or inoperative, which can only be declared by a Civil Court of competent jurisdiction.

13. In the present case, the Collector while passing the impugned order dated 25th October, 1997 gave a declaration in by respect to the lands in question that it is (sic) "Chhat Sthan" and "Ditch" and declared (sic) sale deeds executed by some of the Petitioners as illegal, which is without (sic)isdiction. The Respondents failed to (sic)g on record nor the counsel could lay hand on any provision of law to show that the Collector of a district has such jurisdiction to give a declaration of right and title in respect to a land or can declare a sale deed illegal.

14. In view of aforesaid fact, impugned order to the extent above being without jurisdiction and illegal, I set aside the said order dated 25th October, 1997. However, this order will not stand in the way of any one or other person, to move before a Civil Court of competent jurisdiction for appropriate relief.

15. The writ petitions are allowed with the aforesaid observations.