
(2008) 04 JH CK 0013
In the Jharkhand High Court

Md. Rasul Ansari and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 5, 6, 7

Citation : (2008) 4 JCR 685

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this writ petition the petitioners have prayed for quashing the notice and the entire proceeding of Land Encroachment Case No. 5/06-07 pending before the Circle Officer, Garhwa.

2. The petitioners claimed to have their residential houses over Plot No. 204, appertaining to khata No. 82, measuring an area of 0.35 acre of Village-Tandwa, P.S. and District-Garhwa (hereinafter to be called as "the said land").

The said land was recorded as gairmazarua malik, in the last survey records of rights.

The ex-landlord Chhedan Sao had settled the said land in favour of Dhanku Sao by virtue of hukumrvama, followed by rent receipts and physical possession.

After vesting of zamindari, in the year 1955-56 under the provisions of the Bihar Land Reforms Act. 1950, the ex-landlord Chhedan Sao had submitted return in which Dhanku Sao was shown as raiyat, in respect of the said land.

Necessary enquiry was made by the revenue authorities and rent was assessed in favour of Dhanku Sao in the year 1955-56. The State of Bihar then recognized the said Dhanku Sao as raiyat, and zamindari, was opened in his name. He had been paying rent to the State of Bihar since thereafter.

3. By virtue of a sale deed dated 25.11.1978, Dhanku Sao sold the said land to Most. Sham Kunwar, wife of late Shital Sao, for a valuable consideration.

There was a fresh survey of land in the locality for preparation of Record of Rights. In the said survey, Draft parcha in respect of the said land appertaining to Old khata No. 82 Corresponding to New khata No. 208 and Old Plot No. 204 corresponding to New Plot No. 834 was prepared in the name of Most. Sham Kunwar, showing her raiyat, of the said land.

4. The said Most. Sham Kunwar sold an Area of 0.07 acre and 0.03 3/4 acre of the said land to the petitioner Nos. 1 and 2, for a valuable consideration, by virtue of the registered sale deed dated 27.4.2003. Most. Sham Kunwar died leaving behind her sons as her heirs and legal representatives. The sons of Sham Kunwar sold the remaining land to the petitioners by virtue of a sale deed dated 25.2.2004 for a valuable consideration of Rs. 60,000/-.

5. The petitioners, thereafter, applied for mutation of their names in the office of the Circle Officer, Garhwa in respect of the said land. It has been alleged for that the officials demanded illegal gratification for the same, but the petitioners refused to fulfill the illegal demand. The revenue staffs vindicated their anger by giving a baseless adverse report with recommendation to initiate an encroachment proceeding against the petitioners.

6. The Circle Officer, on the alleged recommendation of the field revenue staffs, initiated a proceeding against the petitioners under the purported provisions of Section 3 of the Bihar Land Encroachment Act. 1956. The case was registered as Land Encroachment Case No. 5/06-07.

7. The petitioners coming to know about the same sought information regarding the basis of such report, under the Right to Information Act.

The petitioners were informed that there was no such record in the Office of the Circle Officer. The petitioners also got information that the respondents have proposed to construct the Fire Brigade Office on the said land by illegally evicting the petitioners. It has been contended that the land encroachment case has been initiated illegally and with oblique motive.

8. The respondents have contested the petitioners' claim by filing counter affidavit. It has been stated, inter alia, that the land in question was gairmazarua, land recorded as "ahri", in the cadastral survey. Under the provisions of the Bihar Land Reforms Act, the said land vested In the State. The plea of settlement by the ex-landlord is false. No such return was filed by the ex-landlord showing raiyati, settlement of the said land in favour of Dhanku Sao. Neither Dhanku Sao nor Most. Sham Kunwar nor the petitioners have got any right title, interest and possession over the land in question. Draft parcha, is not the final record of right and the same has got no evidentiary value. The petitioners had tried to encroach upon the gairmazama. Land.

9. The land was proposed to be transferrer to the Fire Brigade Department. The

allegation of illegal gratification and other allegations are wholly false and baseless. There was no wrong report about the said land. Since the petitioners attempted to encroach upon the said land, proceeding has been initiated against the petitioner under the provisions of the Bihar Public Land Encroachment Act. There is no infirmity and illegality in the said proceeding or in issuing notice to the petitioner, in the said proceeding.

10. I have heard learned Counsel for the parties. It has been submitted on behalf of the petitioners that they are the bona fide owners of the land and property in question. After having purchased the same, they have been residing in their houses. The said land lost its gairmazarua. character long back when the same was settled in favour of Dhanuk Sao by the ex-landlord, much before the vesting of zamindari and coming into force the Bihar Land Reforms Act. Most. Sham Kunwar has been found in possession of the said land by the survey authorities and the draft record of right was prepared recording her name as raiyat in respect of the said land. Draft parcha has been issued after due enquiry by the survey authorities. The report of the field staffs is not proper. The same was submitted against the petitioners with oblique motive as the petitioners failed to satisfy them by fulfilling their illegal demand. The petitioners had purchased the said land for a valuable consideration. The petitioners have brought on record the sale deeds and the copy of the draft Record of Rights of the recent survey.

11. The petitioners have produced the copies of the sale deeds. The documents brought on record by the petitioners go to show that rent in respect of the said land was assessed in favour of Dhanku Sao long back in the year 1955-56. The copies of the sale deeds brought on record go to show that the petitioners have purchased the said land from the persons who had acquired the land from the original settlee. The names of the purchasers have also been recorded in the Draft parcha, showing their possession over the land in question.

12. No document or material has been brought on record by the respondents to show that the said land is a public land. The raiyati, right in respect of the said land was created long long ago and the same was recognized by the State after due enquiry under Sections 5, 6, and 7 of the Bihar Land Reforms Act. There is no material to support the pleas that the land in question is a public land and the petitioner is an encroacher.

13. In absence of such documents or materials, the respondents cannot arbitrarily claim the land as public land and initiate a proceeding for dispossession under the provision of the Bihar Public Land Encroachment Act.

14. For the reasons aforesaid, I find no legal justification for issuing the impugned notice and initiating the proceeding under the purported provisions of the Bihar Public Land Encroachment Act, 1956. The impugned notice dated 18.9.2006 (Annexure 11) as well as the entire proceeding of L.E. Case No. 5/06-07 is, hereby, quashed. This writ petition is allowed.

15. However, there will be no order as to costs.