
(2007) 07 PAT CK 0086
In the Patna High Court
Case No : LPA No. 900 of 1998

Md. Shahabuddin Ansari and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h)

Citation : (2007) 4 PLJR 205

Hon'ble Judges : Rekha Kumari, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Dhananjay Kumar, for the Appellant; Manu Shankar Mishra and Rajni Kant Murthy for the State, for the Respondent

Judgement

Barin Ghosh and Rekha Kumari, JJ.—The respondents-writ petitioners in Year 1987-88 approached the revenue authorities seeking to register their names in the revenue records in respect of the lands, being the subject matter of the writ petition, as raiyats. In order to establish that they were entitled to be recognized as raiyats of the lands in question, the writ petitioners-respondents relied upon receipts issued in the Year 1943 by or on behalf of Hathua Raj. The receipts acknowledged receipt of payment of money for settlement of the lands in question. The request so made by the writ petitioners-respondents was accepted and, accordingly, the writ petitioners-respondents were entered in Register II as persons entitled to pay revenue in respect of the lands in question. The moment this happened, people of the locality including the appellants before us lodged protest. At the instance of the Appellant No. 1, a case was started for cancellation of recording of the names of the writ petitioners in Register II. While this succeeded before the authorities under the Act, the same was defeated when the actions of the authorities were challenged by the writ petitioners-respondents by filing a writ petition in this Court registered as CWJC No. 5841/1993. The orders passed by the revenue authorities to delete the names of the writ petitioners-respondents from Register II were quashed by this Court in the said writ petition by an order dated 5th July, 1993. While doing so, this Court

felt that the only way left for the authorities concerned to deal with the subject claim of the writ petitioners respondents can be found from Section 4(h) of the Bihar Land Reforms Act, 1950 which is as under:-

"4(h). The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:

Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure:

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

2. The appellants, who were parties to the said writ petition, permitted the order so passed by this Court in the said writ petition to reach its finality. As a result of the mandate of this Court given in the said writ petition, the claim of the writ petitioners-respondents could only be interfered with provided the Collector was authorised to take steps in terms of Section 4(h) of the Act.

3. The Collector purported to initiate a proceeding u/s 4(h) of the Bihar Land Reforms Act, 1950. While doing so, the Collector heard the appellants as well as the writ petitioners-respondents. On principle he held that the recording of the writ petitioners-respondents as raiyats of the lands in question in Register II was unauthorized. He, therefore, purported to do what he was prevented from doing by the previous order of this Court which was binding on him. While considering the respective submissions he recorded the submission of the appellants that the lands in question are public land as recorded in the revisional survey. This was countered by the writ petitioners-respondents by contending that the entire land situate on the plot in question is not public land, a part thereof is. However, the order of the Collector does not show that while he opined that the entire land is public land he had any occasion to look into either the cadestral survey records of rights pertaining to the land in question or the revisional survey conducted sometimes in 1960 in respect of the self same land. Ultimately the Collector opined that inasmuch as it was a public land, the erst-while Zamindar could not settle the same in favour of the writ petitioners-respondents. The assumption of

the Collector that it was a public land was based on the submissions made on behalf of the appellants to the effect that the same, as such, had been recorded in the revisional survey. It is quite unfortunate that the Collector did not abreast himself of the fact that he was dealing with a 1943 settlement, while the revisional survey was made in 1960. He did not bother to ascertain whether the lands in question were shown as public land in the cadestral survey records of rights. Furthermore, as aforesaid, only on the face value of the submissions made on behalf of the appellants, the Collector proceeded to conclude that in the revisional survey the lands in question have been shown as public land.

4. Despite noting the fact that in 1943 Hathua Raj was under the Court of Wards, he did not make any effort to ascertain whether the settlements relied upon were actions authorised by the Court of Wards or not. Despite noting the fact that the 1943 settlement came to light only in 1987-88, when the writ petitioners-respondents applied for being recorded in Register II, he did not make any effort to ascertain whether the alleged settlements of the Year 1943 were, in fact, of 1943 or were creations after the 1st January, 1946. The manner in which the Collector has dealt with the matter is irresponsible. In the event in the revisional survey records the lands in question in entirety have been recorded as public land, it was incumbent upon the Collector to enquire of the writ petitioners-respondents as to why they did not object to such recording in the revisional survey. The Collector failed to ascertain from the writ petitioners-respondents as to what prevented them from approaching to record them in the Register II for almost 32 years. The appeal against the order of the Collector was rejected by the appellate authority wrongfully by holding out that the appeal was time barred, while the appellate order was passed within sixty days from the date of the order of the Collector and at the same time the statute grants sixty days time to prefer an appeal. Similarly, the revisional authority wrongfully held that an order passed u/s 4(h) of the Bihar Land Reforms Act, 1950 cannot be revised, although Section 4(a) of the said Act clearly grants such revisional power.

5. The writ petitioners-respondents, therefore, challenged the said order of the Collector and the aforementioned wrongful actions of the appellate authority as well as of the revisional authority by filing the second writ petition. Before the Writ Court, arguments were advanced on merit. The Court found that the law, as settled by various judgments of this Court is that u/s 4(h) of the Bihar Land Reforms Act, 1950, the Collector has two powers, namely, (A) to enquire whether any transfer was made after 1st January, 1946, and (B) if such transfer was made after 1st January, 1946, whether the same was with the object of defeating any provisions of the said Act or causing loss to the State or obtaining higher compensation thereunder.

6. There being no finding that the settlements of 1943, as propounded by the writ petitioners-respondents, were caused to have been brought into existence after 1st January, 1946 for the purpose of defeating the provisions of law as made under the said Act, the Court held that exercise of power by the Collector

as was purported to be done by him u/s 4(h) of the said Act by passing the order impugned in the writ petition is illegal and without jurisdiction.

7. Having regard to the facts of this case and having regard to the manner of dealing such facts in the instant case and the applicable law, we are of the view that the order appealed against is not interferable, but at the same time having regard to the fact that the Collector failed to make appropriate enquiries pertaining to a land claimed as public land, our conscience would not permit us to uphold the judgment and order under appeal and accordingly instead of sealing the matter it would be appropriate to remand the matter to the Collector for fresh investigation.

8. In those circumstances, while we set aside the order under appeal, we also set aside the orders passed by the Collector, the appellate authority as well as the revisional authority. We remand back the matter to the Collector with a direction upon him to look into the cadestral survey records of rights as well as the revisional survey pertaining to the lands in question and thereupon to proceed with the matter strictly in accordance with Section 4(h) of the said Act and not in the manner he purported to do while passing the order struck down by us. The appeal is, accordingly, disposed of.