

(1972) 07 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 750 of 1972

Md. Shibli

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-07-1972

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 7C

Citation : AIR 1972 Patna 504 : (1972) 5 PLJR 531

Hon'ble Judges : S. Akbar Husain, J;N.L. Untwalia, J

Bench : Division Bench

**Advocate : Bindeshwari Prasad Sinha and Arun Bihari Mathur, for the Appellant;
Uday Sinha and Mani Lal, for the Respondent**

Final Decision : Dismissed

Judgement

1. The petitioner claiming to be an ex-intermediary of village Keko bearing tauzi No. 1362 in the district of Gaya filed this application to challenge the settlement of the mela made by the respondents 1 to 5 with respondent No. 6. The name of the mela is "Ghazi Mian Ka Mela". The petitioner's case is that since he was an ex-intermediary, he had a preferential right for the settlement of the mela if he accepted the terms offered by the authorities. Terms offered by the authorities were accepted in the past and for the year 1972-73 the settlement was made with the Mukhiya of the Gram Panchayat ignoring the claim of the petitioner.

2. It is not necessary to go to the other facts of the case in any detail because this writ application is going to fail on one ground only. In paragraph 3 of the counter-affidavit filed on behalf of the State, it is said that Sections 7-A, 7-B and 7-C of the Bihar Land Reforms Act, 1950 (hereinafter called "the Act") refer only to hats, bazar and melas which were held by the ex-intermediaries on lands deemed to be settled with them u/s 5, 6 or 7 of the Act. If, therefore, any hat, bazar or mela is held on lands in respect of which the ex-intermediary will not be deemed to be an occupancy raiyat under any of the three sections aforesaid, the provisions contained in Section 7-C will not apply. The statement of fact in

paragraph 3 of the counter-affidavit is-

"No portion of the land over which the mela is held as described in para 3 of the petition of Shri Md. Shibli is held by Shri Md. Shibli as an occupancy raiyat after vesting of the Zamindaris."

3. An affidavit in reply has been filed by the petitioner today. The statements in paragraph 3 of the counter-affidavit are replied in paragraph 5 of the affidavit in reply and the said reply runs as follows:---

"That the letter mentioned in paragraph No. 3 of the counter-affidavit has no relevance in this case. There is no question of pre-emption."

It is, therefore, clear that the statement of fact made in paragraph 3 of the counter-affidavit that the mela in question is not held on any piece of land of which the petitioner is a raiyat has not been denied in the affidavit in reply. Furthermore, a counter-affidavit has been filed today on behalf of respondent No. 6 and in this counter-affidavit statement is that the mela was held on gairmazarua land. It is, therefore, claimed that the petitioner is merely an ex-intermediary of the estate which vested in the State of Bihar under the Act He does not claim to be a raiyat of any of the plots over which the mela in question is held. In such a situation, the question for determination is, is the petitioner entitled to any preference in the matter of settlement of the mela in accordance with Section 7-C of the Act or Rule 7-P of the Bihar Land Reforms Rules, 1951 (hereinafter called "the Rules")? Learned counsel for the petitioner submitted that even so, the petitioner is entitled to a preference.

4. Even before the introduction of Sections 7-A, 7-B and 7-C in the Act by the Bihar Act 16 of 1959 there was no dispute that if a mela was held on a gairmazarua parti land which was neither a homestead within the meaning of Section 5 nor a land in khas possession of the ex-intermediary within the meaning of Section 6 or a land which was settled with the ex-intermediary u/s 7, such a mela did vest in the State of Bihar on the vesting of the Zamindari interest because the land over which such a mela was held did vest in the State. Disputes arose and decisions were given in cases whether the land over which the mela was held was settled or deemed to have been settled with the ex-intermediary u/s 5, 6 or 7. This Court took the view that , if the mela was held on such a piece of land it did not vest in the State of Bihar, vide Rameshwar Pratap Narain Singh and Others Vs. Collector of Champaran and Others, . That led to the introduction of Sections 7-A, 7-B and 7-C in the Act. The purport of the law engrafted in those three sections is that the mela held on pieces of land which are deemed to have been settled with the ex-intermediary u/s 5, 6 or 7 also vests in the State. But in that event, a preference is given to the ex-intermediary to have the settlement of the mela in accordance with the rules. On his refusal a preference is given to the Gram Panchayat or to the Co-operative Society. But if it is not a mela held on a piece of land which is settled or deemed to have been settled with the ex-intermediary under any of the three sections,

namely, 5, 6 and 7, then there is no question of giving preference to an ex-intermediary merely because he happens to be an ex-intermediary of the Zamindari within which the mela was held.

The position of law is very clear that if the land and the mela both vested in the State, question of giving preference to the ex-intermediary does not arise. If the mela was held on a piece of land which was a raiyati even before the date of vesting then also it is well settled by now that neither the land vested nor the mela vested. Question of settlement of such a mela by the State does not arise and consequently there is no. question of giving any preference to the ex-intermediary. Such a preference has been directed to be given to the ex-intermediary only in those cases where the land does not vest or in view of the recent decision of the Supreme Court to be more accurate where a new statutory title of the ex-intermediary is created in the land and thus it is saved to him, but the mela vests u/s 7-B of the Act. Then and then only Rule 7-P of the Rules is attracted otherwise not. Here on the facts which seem to be admitted, as there is no statement to the contrary even in the writ application, no portion of the land over which the mela in question is held was saved to the petitioner u/s 5, 6 or 7 and that being so, he is not entitled to claim any preference in the matter of settlement of the mela.

5. For the reasons, given above, this writ application fails and is dismissed, but in the circumstances, there will be no order as to costs.