
(1972) 09 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jursdn. Case No. 867 of 1971

Md. Sikandar Mian

APPELLANT

Vs

The Sub-Divisional Officer and Another

RESPONDENT

Date of Decision : 20-09-1972

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 20

Citation : AIR 1973 Patna 265

Hon'ble Judges : U.N. Sinha, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : S.R. Ghosal, for the Appellant; Govt. Pleader No. 2 and Dilip Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has applied under Articles 226 and 227 of the Constitution of India for quashing an order passed by the Subdivisional Officer, Jamtara. dated the 11th May, 1971, a copy of which has been given as Annexure 1.

2. It appears, that, opposite party No, 2 of this case had made an application for restoration of his land appertaining to plots Nos. 36, 727 and 775 of A. K. J. No. 18 within police station Narainpur, on the allegation that his lands had been illegally occupied for three or four years by certain persons, including the writ petitioner. The present petitioner had shown cause, claim-ing only plot No. 36. Some other persons had chimed the other lands. The writ petitioners case was that, his father had given 31 acre of land, out of Jamabandi plot No. 811, to the father of the present opposite party No. 2 and, in exchange. The writ petitioner's father had obtained plot No. 36 which was continuous to his land. Thereafter the father of the writ petitioner had constructed two houses, costing Rs. 5,000. The writ petitioner's case was, that, he and his family had been in continuous possession of plot No. 36 and had obtained prescriptive right over the same by adverse possession. The Subdivisional Officer had referred the matter to the Deputy Collector, Land Reforms, Jamtara for enquiry and report, and the report

was that the present writ petitioner had a house on plot No, 36 for about 8 to 10 years and now he had constructed a new house in its place with tiled roof. The Subdivisional Officer, Jamtara, had also held a local enquiry in presence of the parties and he came to the conclusion, that, the provisions of Section 20 (1) of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949, had been contravened. He, therefore, passed an order of eviction against all the persons claiming the three plots of land, mentioned above.

3. The learned counsel for the petitioner has relied upon Section 20, Sub-section (5) of the Act, as it now stands after amendment, and he has argued, that, the learned Subdivisional Officer did not apply his mind either to the first proviso or to the second proviso incorporated in that sub-section. Under the first proviso, if the transferee has, within 30 years from the date of transfer constructed any building or structure, the Deputy Commissioner had to follow certain procedure, while passing an order of eviction. Under the second proviso, if the Deputy Commissioner is satisfied, that, the transferee has constructed a substantial structural building, he has to follow some other procedure laid down in that proviso. It appears, that, the Subdivisional Officer, Jamtara, did not apply his mind to either of these provisos and, therefore, even on the facts found by him he has to proceed either under the first proviso or under the second proviso. We, therefore, remand the case to the Subdivisional Officer, Jamtara, for considering these two provisos and for passing necessary orders in accordance with law with respect to plot No. 36. In the circumstances of the case, there will be no order for costs.

4. The order of stay is vacated.

5. Kamruddin Mian and Budhan Mian, who had claimed the other two plots, filed an application sworn on 31st July, 1971, praying, that, they may also become petitioners in the writ application filed by Md. Sikandar Mian, the original petitioner of the writ case. No order has been passed on this petition upto date and we do not think, that, the prayer made by these two persons can be allowed. Their petition for addition of parties is rejected.