

(2010) 09 PAT CK 0039
In the Patna High Court
Case No : CWJC No. 4017 of 1991

Mohammad Idris Ansari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4

Citation : (2011) 3 PLJR 9

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—In this writ petition, the Petitioners have challenged the order contained in Annexure-1 by which the Sub-Divisional Officer, Jhanjharpur has purported to settle the lands appertaining to Khata No. 474, plot No. 3145 which is a tank having an area of 6 bighas, 4 kathas and 8 dhurs situated in Village-Pachahi within Madhepur Police Station, in the district of Madhubani, in favour of Respondent No. 5. Not only did the Circle Officer order for settlement of the land but he also ordered that the said plot should be entered in the Sairat register of the State Government.

2. The short facts are that the lands appertaining to plot Nos. 3145, 3146, 2304 of Khata No. 474 were subject matter of a proceeding u/s 4(h) of the Bihar Land Reforms Act. The lands in question belonged to several co-sharers and were separately settled in favour of the Petitioners on different dates. Plot Nos. 2304 and 3146 have been described as Bhit lands, whereas plot No. 3145 is described as a tank. In the proceeding u/s 4(h) an order was passed, which is contained in Annexure-3, which holds that lands settled in the year 1933 would not be subject matter of 4(h) proceeding and as such the Additional Collector dropped the proceeding as far as plot Nos. 2304 and 3146 were concerned. With regard to plot No. 3145, the Additional Collector found that "no useful purpose will be served by having a partial interest in the tank by Government" and as such did

not proceed u/s 4(h) of the Act with respect to land of plot No. 3145. This order was passed on 19.6.1956.

3. Subsequently the State Government reopened the proceeding u/s 4(h) of the Act for all the lands which had been settled in favour of the Petitioners by different co-sharers, which included those lands which were settled in the year 1933 as well as lands settled in the year 1952. The Petitioners came to this Court in CWJC No. 473/1973. This Court quashed the proceeding u/s 4(h) of the Act with respect to the lands appertaining to plot Nos. 2304 and 3146, on the ground that the State Government did not have the authority to examine the settlement made u/s 4(h) prior to the cut-off date i.e. 1.1.1946. However, this Court left it open to the State to proceed u/s 4(h) in respect to plot No. 3145. Apparently No. proceeding was initiated u/s 4(h) of the Act cancelling the settlement made in favour of the Petitioners after the order of this Court, dated 7.4.1976. Suddenly the Circle Officer by various orders contained in Annexure-1 after perusing the judgment of this Court aforesaid took steps for settlement of the pond on plot No. 3145 in favour of the Respondents which is under challenge before this Court.

4. The State Government after the order of this Court on 7.4.1976 quashing the proceeding u/s 4(h) of the Act with respect to the lands settled in the year 1952 did not think it fit to continue or initiate a proceeding against the Petitioners with respect to the remaining plots of land. The result, is that as of today, there is No. proceeding u/s 4(h) of the Act pending against the Petitioners. This fact obviously leads to the conclusion that the settlement of the Petitioners made on 4.9.1952 and 3.3.1952 by Darbhanga Raj and Maghpati Singh subsists. If the settlement has not been cancelled, there can be No. justification for the Circle Officer or any other authority in the State Government to proceed with the settlement of the tank.

I accordingly quash the orders contained in Annexure-1 passed in Case No. 108 of 1990-91. This writ petition is allowed.