

(1984) 11 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Journ. Cases No's. 45, 330, 387 and 613 of 1968

Mosemmat Bibi Sayeeda and Others, etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-11-1984

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 2(1), 3, 4, 5, 6

Citation : AIR 1985 Patna 77 : (1985) 33 BLJR 176 : (1985) PLJR 66

Hon'ble Judges : Uday Sinha, J;S.K. Jha, J;S.K. Choudhuri, J

Bench : Full Bench

Advocate : K.D. Chatterjee, Asghar Hussain Imam Ali, Balbhadra Prasad Singh, Parmeshwar Prasad and Baleshwar Prasad Gupta, for the Appellant; Lal Narayan Sinha, R.B. Mahto, A.A.G., Rafat Alam, S.K.P. Sinha and Harendra Prasad, Jr. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—The common question of law falling for consideration in these four applications under Articles 226 and 227 of the Constitution is whether the markets of the petitioners located at Patna, Arrah, Bhagalpur and Piro vested in the State of Bihar consequent upon the vesting of their estates in terms of notification issued u/s 3 of the Bihar Land Reforms Act C. W.J.C. No. 613 of 1968 relates to Patna Market at Patna, C.W.J.C. No. 45 of 1968 relates to Gudari Bazar in the town of Arrah, C.W.J.C. No. 387 of 1968 relates to Hassan Bazar to Piro and C.W.J.C. No. 330 of 1968 relates to Bazar known as Tilak Babu Ka Hat" in the town of Bhagalpur.

2. The markets mentioned above are the main marketing centres in the towns where they are located. By separate notices the proprietors were called upon to handover possession of the markets. The four writ applications will be disposed of by this common judgment. The vires of any provision of the Bihar Land Reforms Act (hereinafter referred to as "the Act") has not been questioned. The contention urged on behalf of the petitioners shortly put is that the properties of

which possession is sought to be taken over by the State are buildings and not Bazar and buildings did not vest. It is not disputed that Hat and Bazar vested upon the issuance of notification u/s 3 of the Act. But since there is no Bazar, but only buildings let out to several tenants, they did not vest. In C.W.J.C. No. 613 of 1968 which relates to Patna Market, the further plea is that it was a homestead at one point of time prior to the abolition of zamindari and, therefore, it was homestead on the day of issuance of notification. The submission is that being homestead, the properties must be deemed to have been settled back with the ex-proprietor in terms of Section 5 of the Act.

3. Before embarking upon consideration of the submissions urged at the Bar, it would be appropriate to set out the relevant provisions of the Statute. The long title of the Act reads as follows :

"An Act to provide for the transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith.

Whereas it is expedient to provide for the transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith."

Section 3 of the Act lays down that the State Government may issue notification vesting estates or tenures in the State. Section 3(1) reads as follows :

"(1) The State Government may, from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State."

Section 4 lays down the consequences of the vesting of an estate or tenure in the State. The consequences are enumerated in Sub-sections (2) and (3). Sub-sections (2) and (3) of Section 4 read as follows :

"(a)(2) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars, and mela and ferries and all other sairati interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and

minerals, comprised in such estate or tenure other than the interests of raiyats or under-raiyats shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act."

The other parts of Section 4 have no bearing on the question which falls for consideration before us. Section 5 of the Act lays down that all homesteads comprised in an estate or tenure of an intermediary and in his possession on the date of vesting shall be deemed to be settled by the State with the ex-intermediary subject of course to the provisions of Sections 7A and 7B. Section 5(1) of the Act reads as follows :

"(1) With effect from the date of vesting, all homesteads comprised in an estate or tenure, and being in the possession of an intermediary on the date of such vesting shall, subject to the provisions of Sections 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent;

Provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner."

Section 6 of the Act gives some succour to the ex-proprietors by providing that lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on date of such vesting, the intermediary shall, subject to the provisions of Sections 7A and 7B, be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat subject to the payment of fair and equitable rent In terms of Section 7 buildings which were in possession of intermediaries and used as golas, factories or mills shall be retained by them on payment of rent. Section 7A of the Act which reads as follows cuts down some of the privileges extended to ex-proprietors by Section 5.

"7A. Lands on which hat or bazar was held not deemed to be settled with the intermediary Nothing in Section 5, Section 6 or Section 7 shall be deemed to confer any right on the intermediary in respect of any land on which at any time within one year prior to the date of vesting to the estate or tenure the intermediary was holding a hat a bazar."

4. In order to appreciate the contention urged on behalf of the petitioners, it is also necessary to set out the definition of two other expressions, viz, "estate" and "homestead" defined in Section 2(i) and (j) respectively. They read as follows :

"(i) "estate" means any land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and

maintained under the law for the time being in force by the Collector of a district, and includes revenue-free land not entered in any register and a share in or of an estate."

(j) "homestead" means a dwelling house used by the proprietor or tenure-holder for the purpose of his own residence or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-buildings and includes any outbuildings used for purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

Explanation.-- In this clause, the expression "dwelling house" or "out-building" shall include any hind on which there stood such dwelling house or out-building at any time before the date of vesting."

We have now to consider the rival claims of the parties in the background of the provisions, quoted above.

5. To repeat, the stand of the State is that the properties are Bazars and vested as such consequent upon issuance of notification u/s 3 of the Act. The consequences of vesting, I have already quoted earlier. The provisions of Section 4(2) lay down that the estate including the interest of the proprietor in any building or part of a building, comprised in such estate or tenure as office or cutchery for the collection of rent of such estate or tenure and his interest in trees, forests fisheries, jalkars, hats, bazars, melas and ferries and all other saraiti interests shall vest absolutely in the State free from all incumbrances. It is not in controversy that Bazars vest in State of Bihar in terms of Section 4 of the Act. The only question is whether the properties in question are Bazars. According to the petitioners, they are not Bazars but are only buildings let out on rent to individuals.

6. It is not the stand of the petitioners that the Bihar Legislature was not competent to legislate in regard to Bazars. Item 28 in List II of the 7th Schedule reads as "Markets and Fairs". It is now well established that the items in the 7th Schedule must be liberally construed to cover every conceivable legislation having a bearing on the subject. I have no reason to think that the expression "market" does not include "Bazar". The expression "Bazar" used in Section 4 of the Bihar Land Reforms Act must, therefore, be equated with market. Section 4 of the Act takes in its sweep hats, bazars and melas. There can be no doubt that hats and melas are prima facie somewhat distinct from bazars. A hat generally is congregation of buyers and sellers on specific days of the week, A "mela" on the other hand, is held on special occasions in the year. They are usually associated with some religious festivals. For example, melas are held on Mondays in the month of Srawan (July) in the State of Bihar or on the occasion of Urs and so on. A "bazar" on the other hand, is a daily feature and is held day after day.

7. I have equated bazar with market The expression "Bazar" is synonymous with "Market" and is so well known that it has been adopted in English Dictionary as

well. The Chambers Dictionary 1941 (Reprint) gives the meaning of "Bazar" as "an Eastern market-place etc.-". Webster's New World dictionary states it as "In oriental countries a market or street, of shops etc." The glossary prepared and published by Ministry of Law, Government of India on the recommendation of Official Law Languages Commission gives the meaning of "Bazar" as "a market". In Aiyer's Law Lexicon of British India a Bazar is "market, a daily market, a market place as opposed to a Bazar where a hat is held only on certain days". In Shorter Oxford English Dictionary, a Bazaar is an oriental market place or market usually consisting of ranges of shops or stalls; a ferry, fair for the sale of useful and ornamented articles and a "Market" is "the meeting together of people for the purchase and sale of provisions or live-stock, publicly exposed, at fixed time and place, an open space or covered building in which cattle, provisions etc. are exposed for sale; a market place, market house; a place or seat of trade". In Webster's Seventh New Collegiate Dictionary "Market" is stated as follows : "(i) a meeting together of people for the purpose of trading by private purchase and sale and usually not by auction; a public place where a market is held; a place where provisions are sold at wholesale or retail". There can, therefore, be no manner of doubt that a Bazaar is synonymous with market

8. The petitioners in all the applications are exclusive owners of places where merchants congregate or have congregated for buying and selling. In the Patna Market subject matter of C. W. J. C. No. 613 of 1968, there are rows and rows of shops and nothing but shops. There can, therefore, be no difficulty in holding that "Patna Market" is Bazar. In fact it is the most important marketing centre in this town of Patna. Similarly complex of shops at Bhagalpur which is subject matter of C. W. J. C. No. 330 of 1968 is famous as Tilak Babu Hatia". A Hatia is nothing but a Bazaar. It is another matter that there is a restaurant too in that row of shops, but that does not and cannot conceal the essential character of the complex. The complex of shops which is subject matter of C. W. J. C. No. 387 of 1968 is known as "Hassan Bazaar". It was established by Late Hassan Imam, Bar-at-Law in village Piro. The names themselves are suggestive of their essential character. The entire complex consists of 180 shops, some of which are brick-built and some are Kacha. It is not the petitioners' case that the buildings are Golas. Undoubtedly, there is averment in paragraph 6 in C. W. J. C. No. 387 of 1968 that there is no incidence of any Hat or Bazaar on the lands or building. But there is no denial by the petitioners that all tenements are shops. Similarly the complex at Arrah (subject matter of C. W. J. C. No. 45 of 1968) is famous as "Gudari Katra Bazaar". The names in each case are rather suggestive of their essential character. All of them are famous as Bazaar or Market. In all of them the whole complex is row of shops. There may be a tenement or two which may be an office but that does not alter the essential character of the complex. Buying and selling operation is the main, rather only operation. It is thus obvious that the complexes which the petitioners are claiming as buildings or Homesteads are nothing but Bazzars. It is not the case of any of the petitioners that buying and selling activity does not take place at the places described as

Bazaar. I have, therefore, no hesitation in holding that the petitioners were owners of a market which must be held to be equivalent to a Bazaar.

9. Mr. K.D. Chatterji contended that a Bazaar is not just a place where buying and selling activity is carried on, but it is a place where besides buying and selling activity, toll is realised by the persons holding the Bazaar. According to him, exaction or levy of some kind or the other by the persons holding the Bazaar is an essential feature of a Bazaar. It was submitted that it is nobody's case that toll is levied from the dealers. Therefore, it is not a Bazaar or Market. I regret, there is nothing to support the submission of Mr. Chatterji that realisation of toll is an essential feature to constitute Bazaar. Toll may or may not be realised, but if buyers and sellers congregate, the place must be held to be a market or Bazaar. The realisation of toll is nothing but the consideration for the right to sell at a place where buying and selling activity is carried on. That right may be granted on payment of toll, or in the form of rent. The rent may be per day, per week, or per month. I am, therefore, unable to hold that just because toll is not realised, the complexes are not Bazzars. In order to constitute Bazaar all that is necessary is a piece where buyers and sellers congregate to sell and buy. It will be difficult for me to accept that the complexes are not Bazzars within the meaning of Section 4(1)(a) of the Bihar Land Reforms Act. They being Bazzars of a proprietor or ex-intermediary, they must be held to have vested consequent upon issuance of the notifications u/s 3 of the Act Counsel for the petitioners were at pains to show that the complexes in question were not Bazzars, but were merely buildings consisting sometimes of pucca buildings and, therefore, they did not vest I regret, I have considerable difficulty in accepting this submission. I have mentioned earlier, the various meanings given to a "Bazaar" in various dictionaries. According to those well known meanings the nature of the structure is entirely irrelevant. In fact, the Shorter Oxford English Dictionary includes "covered buildings" also within the meaning of the expression "Market". A big chain store may also be described as "Market". The fact that the structures in the complexes in question are pucca structures cannot lead me to hold that they are not Bazzars. They are certainly Bazzars in my view,

10. Counsel for the petitioners were at pains to establish that the complexes are buildings and buildings did not vest consequent upon the issuance of the notification u/s 3 of the Act. I regret, upon the concluded finding that the complexes in question are Market or Bazaar, the question of buildings vesting or not vesting does not arise. Further, if I may say so with respect, it is difficult for me to accept that complexes are mere buildings. Someone might also describe them not even as buildings but just bricks and still some others as mere earth. That will not be right approach. It cannot be denied that these are buildings. But if there are rows and rows of shops and nothing but shops and the only operation carried on there is of buying and selling, they cease to be mere buildings. The buildings become bazar,. Just as a man has hands, feet, ears etc. but a man is not merely those limbs, but something different from those limbs. A man is a man, not limbs alone. Similarly the buildings in question took the character of

Bazaar. The entire submission advanced before us with great labour that buildings do not vest can be of no avail. They are not mere buildings. They are Bazaar (Market).

11. On the basis of my concluded finding that the subject matters of the Writ applications are Bazzars, it would not have been necessary to consider other aspects of the matter strenuously advanced before us, but out of deference to learned counsel, I must cover that pitch as well. Mr. Balbhadra Prasad Singh, learned counsel for the petitioners in C. W. J. C. No, 330 of 1968 contended that all that vests is the estate of the proprietor and nothing more. It was submitted that in terms of Section 4(1) (a) the estate or tenure of the proprietor vests free from all incumbrances. "Estate" is defined as any land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands. Buildings of the proprietor are not lands. Therefore, they did not vest. Section 4(1) (a) lays down that besides the estate or tenure of the proprietor buildings used primarily as office or cutchery for the collection of rent of such estate shall vest absolutely in the State. On the basis of this it was submitted that it is only building of one kind which vests, i.e. buildings used as cutchery for collection of rent. Buildings which were homesteads of the intermediary would be entitled to retention of possession. Section 7 also deals with right of ex-intermediary in regard to buildings of certain categories, but all the benefits conferred on the ex-intermediary will be subject to the provisions of Section 7A of the Act. That section, therefore, gives the underlying pattern that buildings apart from cutchery also vest in the State but in terms of the section the proprietor will be entitled to retain them as tenant. In terms of Section 7A nothing in Sections 5, 6, or 7 would be deemed to convey any right on the intermediary in respect of any land on which at any time within one year prior to the date of vesting of the estate the intermediary was holding a hat or bazaar. As I have already held earlier, the complexes are Bazzars. Sections 5 and 7 are, therefore, set at naught by Section 7A. In my view therefore, buildings of the category mentioned in Sections 5 and 7 would also vest, but the proprietor would be entitled to retain possession thereof subject to payment of mere rent, in some cases, and without payment in some cases. In my view, therefore, buildings of the proprietor also vested in the State of Bihar.

12. The homesteads do vest, but the proprietor is permitted to retain them in his possession as lessee of the State. Cutchery, mills and golas also vest, but the proprietor is permitted by the Statute to retain their possession on payment of rent. It is a process of lease-back to the proprietor. For the present, it is not necessary to consider whether hospitals, schools, cinemas and private temples vested in the State of Bihar or not. The buildings, with which we are concerned do not fall in any of those categories.

13. Learned counsel for the petitioners also contended that the buildings now constituting Bazar were homesteads at the time of vesting. The proprietors were, therefore, entitled to retain them in terms of Section 5 of the Act. This point has

relevance only to Patna Market case. The proprietor has claimed that the proprietor had his homestead on the lands on which Patna Market now exists. I have quoted earlier the definition of the expression "homestead" in Section 2(j) of the Act. The expression "homestead" means a dwelling house either used by the proprietor or let out on rent. The dominant idea is that it must be for the purpose of dwelling or be capable of being used as a dwelling house and not for any other purpose in order to constitute a building as homestead. A building which was used as dwelling house would be homestead and would include compound, orchard, out-buildings etc. The Supreme Court case Kanpur Sugar Works Ltd. Vs. State of Bihar and Others, laid down clearly that not only the dwelling house is homestead, but the garage, the kitchen, clubs, dispensary, office building, godown, water tank, cattle-shed, way bridge would be also a homestead. The decision of S. Sarwar AH, J. in C. W. J. C. No. 16 of 1973, decided on the 5th May, 1975 is also unacceptable. I shall not for a moment contend that in order to constitute homestead, the ex-intermediary must have been residing personally in all those buildings which may be claimed as homestead. The requirement of law would be fulfilled if the building is of such a character that it may be used for residential purpose, no matter whether the proprietor resided in it all the year round or at intervals. A proprietor would thus be, capable of owning any number of buildings. They all may be termed as "homestead". But the essential characteristic of residential use must be existent in order to claim the benefit of Section 6 of the Act. The central idea of the Statute is brought out explicitly by enactment of Section 7A (quoted earlier) that if at any time within one year prior to the vesting the building or the homestead was being used by the intermediary as hat or Bazaar, the intermediary would not be entitled to claim the benefit of Section 5 or Section 7 of the Act. In the instant applications, there is no dispute that from years prior to the date of vesting the Bazzars had come into existence and were in flourishing state. The buildings in question so far as C. W. J. C. Nos, 45,387 and 330 of 1968 are concerned, they had not been used as dwelling purpose at any point of time. There can be no question of their being claimed as homesteads.

14. So far as Patna Market is concerned (subject matter of C. W. J. C. No. 613 of 1968), the Bazaar came into being much before 1950. It was established certainly years prior to issue of the notification. It is thus obvious that within one year of the vesting none of them were homestead. They were nothing but Bazzars.

15. Learned counsel for the petitioners submitted that in terms of the Explanation to Section 2(j) if a building or house has been used as a dwelling house at any time before the date of vesting, it would constitute homestead which the ex-proprietor would be entitled to retain on payment of rent. I regret, that is not the expanse of the Explanation. It is possible to consider a situation where a parcel of land was homestead, but at the time of vesting dwelling house on those lands had crumbled and were in disuse; even those would constitute homestead. The Explanation does not mean that even if a hundred years before

the vesting of the zamindari the land was homestead, and its character has changed, yet it would be taken as such in 1955 when the notifications were issued. The properties, therefore, which are subject matter of these writ applications were not homestead on the date of vesting. From homestead it had changed into a Bazaar. The petitioners were holding Bazzars on the lands in question in terms of Section 7 A, therefore, the proprietors were not entitled to retain possession. Section 5 gives clear indication that homesteads also vested but they would be deemed to be settled back with the proprietors on terms. It is not correct exposition of law that homestead did not vest.

16. Learned counsel for the petitioners submitted that it is not only residential house which is covered by the definition of homestead. It also includes the expression "for the purpose of letting out on rent". In my view, the dominant idea of residence cannot be lost sight of. If a building was used for the purpose of letting out on rent, it would constitute homestead only if the letting out was for the residential purpose and not otherwise. Nothing has been brought to our notice to indicate that the leases were for anything but for holding shops. I am not going into the question whether the leases were registered bilateral leases in terms of the Transfer of Property Act or not, but certainly there is nothing before us to show that they were for residential purposes.

17. Learned counsel for the petitioners submitted that if the tenant of a building used it as a homestead, the use made by the tenant as a shop subsequently will not change the nature of the building and the proprietor would not be deprived of right u/s 5 of the Act. In my view, in every letting out the dwelling purpose will have to be existent, if the provisions of Section 2(j) have to be given a meaning. It must be as letting out for residential purpose.

C. W. J. C. No. 387 of 1968 :

18. In this application a special argument advanced at the Bar on behalf of the petitioner was that the proprietor built- Golas. No such claim has been made in the writ application. I am, therefore, unable to hold that "Hasan Bazaar" is a Gola which the proprietor may retain in terms of Section 7 of the Act. No such claim having been put forth in the writ application, I am unable to consider the submission seriously. I would, however, leave this matter open for the authorities to decide whether "Hassan Bazaar" is a Gola or not, if such a claim is made before the Revenue authorities. It was further submitted that the proprietor had built Golas and shops on some lands obtained from Raiyats by exchange. The shops being on raiyati lands, they would not vest. I regret, there is no substance in this submission as well. When the proprietor exchanged these lands with the lands of a raiyat, a merger of interest took place and the possession of the ex-proprietor became ex-proprietary and not as a raiyat. In my view, there is no merit in this contention as well.

19. My conclusions, therefore, are that the shops covered by the various writ applications constituted Bazzars. They were not mere buildings. They were not

homestead. At no point of time were they homestead. So far Patna Market is concerned, it may have been homestead earlier, but it lost its character of a homestead when Bazaar was set up after demolishing the homes. I am, therefore, constrained to hold that the Bazzars covered by the four writ applications vested in the State of Bihar consequent upon the issuance of the notification u/s 3 of the Bihar Land Reforms Act.

20. Before parting with the judgment it must be made clear that the present application C.W.J.C. 613 of 1968 in respect of Patna Market is directed against a notice calling upon the petitioner to surrender possession of Patna Market. The State claims vesting in it only of Patna Market There is another bazar adjacent to it and which falls within the compound of the ex-proprietor Mr. Haider Imam. This is popularly known as Meena Bazar. The notification u/s 3 of the Bihar Land Reforms Act will result in vesting of Patna Market only not Meena Bazar. This Meena Bazar was established much after the vesting of the zamindari in the State of Bihar. Learned Additional Advocate General frankly conceded that Meena Bazar cannot vest and has not vested in State of Bihar. We, therefore, categorically lay down that although Patna market has vested in State of Bihar, Meena Bazar has not vested.

21. For the reasons, stated above, I find no merit in any of the applications. They are dismissed accordingly. But in the special circumstances of the case, there shall be no order as to costs.

22. Mr. Lal Narayan Sinha conceded that it would not be fair for the State to claim mesne profits for the Bazzars in question from 1955 till this day. He assured us that he will advise the State Government not to claim mesne profits. We hope the State Government will honour the advice.

S.K. Jha, J.

23. I agree.

S.K. Choudhuri, J.

24. I agree.