
(1998) 12 PAT CK 0060
In the Patna High Court
Case No : C.W.J.C. No. 8985 of 1998

Most. Upaneta Kuer

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Citation : (1999) 1 PLJR 810

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Jagdish Pandey, Ashutosh Ranjan Pandey, Anshuman and Keshav Pandey, for the Appellant; Hemendra Pd. Singh and Lalit Kumar for State, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This case arises out of a ceiling proceeding being L.C. Case No. 572/74-75, wherein initially orders were passed and certain lands were declared surplus. As the land as is "being claimed by the Petitioner was also declared surplus, notification u/s 15(1) of Ceiling Act was issued. The Petitioner has challenged such notification and one or other order passed by the authorities.

2. The fact, as admitted, that the land in question, measuring 3.91 acres appertaining to Plot Nos. 264, 265, 266 and 268 under Khata No. 101 originally belonged to ex-land holder Ras Bihari Dubey, against whom ceiling proceeding was initiated. It was declared surplus vide notification issued u/s 15(1) on 16th April, 1977. Husband of the Petitioner Haridwar Pandey was not noticed nor heard, so he moved before the D.C.L.R. for exclusion of the lands claiming to be his own land. It was pleaded that the land, in question, was settled by ex-landlord in 1348 Fasli (1941-42) in favour of Haridwar Pandey, who came in cultivating possession of the same. At the time of vesting, the ex-land-lord submitted return showing the name of settlee Haridwar Pandey. In support of the same, rent receipts as were issued by ex-landlord prior to 1955 have been enclosed as Annexure-1 series.

3. Further case of the husband of the Petitioner was that he (Haridwar Pandey) having found in possession, on verification, Jamabandi was created in his name and since then he continued to pay rent and obtained receipts from the State Government. The land was subsequently recorded in the name of Haridwar Pandey in the records of right prepared after revisional survey and finally published in 1970-71. It was specifically pleaded that the land was declared surplus without any notice to him u/s 15(1) (iii) of Ceiling Act.

4. The case was heard by D.C.L.R. Sasaram, who vide order dated 3rd September, 1980 accepted the aforesaid plea and ordered to exclude the lands and to issue some modified notification after such exclusion (see Annexure-5).

5. However, as no modified notification u/s 15(1) was issued and, in the meantime, step was taken for settlement of land in favour of landless persons (Respondents 5 to 10 herein), the husband of the Petitioner moved before the Collector. The Collector Rohtas vide his order dated 20th February, 1984 rejected the application with observation that Haridwar Pandey was free to move petition u/s 37 before the D.C.L.R. Being aggrieved with the said order, Haridwar Pandey moved before this Court in C.W.J.C. No. 2881/34 and challenged the said order dated 20th February "84". This Court vide its order and judgment dated 8th March, 1984 while set aside the said order, observed that the earlier order dated 3rd September, 1980 was an order passed u/s 37 by the D.C.L.R. It was taken into consideration that no appeal or revision application was preferred against such order by the Respondents-State. However, the case was remanded to the Collector, Rohtas for fresh decision, in accordance with law after opportunity to the said Haridwar Pandey, husband of the Petitioner.

6. It appears that the Collector, Rohtas thereafter passed the impugned order on 7th September, 1998 and held that there was no ground shown to reopen the case nor such power of reopening u/s 48B (sic-45B) was with the Collector after amendment of the said provision.

7. In the counter affidavit, the stanch of the State is that the claim of the Petitioner is based on story of settlement and her husband was not able to produce any evidence of settlement before the authorities concerned. This Court in the earlier case C.W.J.C. No. 2881/95 observed that it was not clear as to when the husband of the Petitioner had accrued (sic-acquired) the land, in question, i.e. whether by sale, gift or by settlement.

8. The Petitioner neither produced any such deed of settlement nor any rent receipt or copy of the return.

9. From the pleading made by the parties and orders passed by one or other authorities, it is evident that the authorities passed one or other order without application of their mind.

10. Admittedly, no notice was issued to Haridwar Pandey, husband of Petitioner u/s 5(1)(iii) and when he preferred application u/s 37, it was decided by D.C.L.R.

vide order dated 3rd September, 1980. Thereafter, neither any appeal nor any review application was preferred by State challenging the order dated 3rd September, 1980. Thus, the order aforesaid dated 3rd September, 1980 become final, in absence of any order reversing the same. Even the State did not choose to reopen the case u/s 45B to assail the said order dated 3rd September, 1980.

11. The Petitioner specifically pleaded that the name of Haridwar Pandey was shown in the return. This fact was not disputed by the Respondents either before the D.C.L.R. or before this Court while earlier writ petition was preferred or even in the present writ petition. The Petitioner has enclosed the copies of rent receipts submitted by ex-landlord showing possession of Haridwar Pandey during the period prior to 1956, which has not been alleged to be a forged document. An-nexure-2, copy of records of right also shows name of Haridwar Pandey in respect to the land in question. Even the State recognised the possession of Haridwar Pandey since 1956-57 by opening Register-II in his name and granting rent receipts in his favour.

12. In the aforesaid circumstances, the Collector should have ordered to issue modified notification u/s 15(1) after excluding the land from the ceiling proceeding, in question, as was ordered by D.C.L.R., vide order dated 3rd September, 1980. There was no occasion to hear the question u/s 45B of the Act.

13. Accordingly, the writ petition succeeds. The Respondents are directed to come out with a modified notification u/s 15(1) excluding the land in question, from the ceiling proceeding aforesaid in terms with order of D.C.L.R." dated 3rd September, 1980 immediately, but not later than a period of three months from the date of receipt/production of a copy of this order. Such notification is to be issued by the Collector of the district.

14. The writ petition is allowed with the aforesaid observations and directions.