
(2000) 07 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 9149 of 1999

Mostt. Imamani and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Bihar Bhoodan Yagna Act, 1954 — Section 11, 14, 22

Citation : (2000) 4 PLJR 563

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Raghib Ahsan, K.A. Siddiqui, for the Appellant; Sharvendra Kumar Verma for Committee and M/s. Yogendra Pd. Sinha -I, Arun Kumar, Nirmal Kumar Sinha -III For Respondent no. 5 and Ms. Madhuri Lata for State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—A piece of land 2 kathas 6 dhurs in area, forming part of Plot No. 1144 under Khata No. 793, situate at Village and P.S. Andhara Tharhi in the district of Madhubani was given in settlement to a certain Iqbal Hassain under the provisions of section 14 of the Bihar Bhoodan Yagna Act, 1954 (hereinafter referred to as "the Act"). This fact is not in issue. The settlement is expressly admitted in the counter affidavit filed on behalf of the Bihar Bhoodan Yagna Committee, respondent no. 2 and it is also not denied by the contesting private respondent no. 5 in the counter affidavit filed on his behalf.

2. It is stated on behalf of the three petitioners who are the two widowed wives and a son of the settlee Iqbal Hussain, now deceased that some time in the year 1999 when they started construction of a house over the settled land for their residential purpose, some resistance was put up by respondent no. 5 who also filed an objection petition before the Bhoodan Yagna Committee. It is further stated on behalf of the petitioner that on the objection filed by respondent no. 5, Bhoodan Yagna Committee took a curious step which has no sanction in the eyes

of law. The Bhoodan Yagna Committee entered into an exchange agreement with respondent no. 5 and executed a deed of exchange, dated 3.7.1999 whereby and whereunder half of the settled land i.e. an area of 1 katha 3 dhur (hereinafter referred to as "the disputed land") was given to respondent no. 5 in exchange of 5 kathas of his land of plot no. 7437 under Khata No. 647 situate in the same village. It is further stated by the petitioners that on the strength of this deed of exchange respondent no. 5 dispossessed them from the disputed land forming the subject matter of the deed of exchange.

3. The petitioners have accordingly come to this court seeking its protection and for cancelling the deed of exchange and for restoration of their possession over the entire area of the piece of land settled in their favour.

4. In the counter affidavit filed on behalf of the Bhoodan Yagna Committee it is admitted that an area of 2 kathas 6 dhurs from plot no 1144 under Khata No. 793 was settled in favour of Iqbal Hussain and a Praman Patra dated 10.2.1982 was issued in his favour. The relevant averments in this regard are made in paragraph 4 of the counter affidavit which is reproduced below:

4. That at very outset of this counter affidavit it is humbly submitted that it is a fact that 2 Kathas 06 dhurs land had been granted to Md. Iqbal of village- Andhrathari, P.S. Andhrathari, District Madhubani by issuance of Praman Patra bearing no. 524459 dated 10.2.82 as contained in Annexure-3 of this writ application u/s 14 of the Bihar Bhoodan Yagna Act, 1954 and the aforesaid land in question lies in the same village of Andhrathari. The aforesaid land in question has been donated to Bihar Bhoodan Yagna Committee by executing a Danpatra by Darbhanga Raj bearing plot no. 1144 and the said land have been confirmed in confirmation case no. 743A of 1959 by the competent revenue authority D.C.L.R., Madhubani on 15.4.59 u/s 11 of the Bihar Bhoodan Yagna Act, 1954.

5. As regards the execution of deed of exchange with respondent no. 5 it is sought to be explained by saying that though the settlement in favour of Iqbal Hussain was in respect of 2 kathas 6 dhurs, in actual fact his heirs, the present petitioners, were found to be in possession of only half of the settled land, the remaining half (1 katha 3 dhurs being the disputed land) was unauthorisedly encroached upon by respondent no. 5. It is further stated that in order to resolve the dispute between the parties the Committee entered into an exchange with respondent no. 5 in terms of which the disputed land under his unauthorised occupation would be given to him in lieu of 5 kathas of land given by him to the Committee, which the Committee in turn proposed to settle in favour of the petitioners.

6. At this stage it is significant to note that on this issue there is some difference in the stand taken by the petitioners and the Committee. According to the Committee the petitioners were in possession of only half of the settled area while the disputed land being the other half of the settled area was encroached upon by respondent no. 5.

7. On behalf of the petitioners it is asserted that the petitioners were in possession of the entire area of 2 kathas 6 dhurs settled in favour of Iqbal Hussain and it was only after the execution of the deed of exchange by the Committee that respondent no. 5 succeeded in forcibly dispossessing them from the disputed land. In this regard Mr. Raghib Ahsan, learned counsel for the petitioners stated that even in the deed of exchange it was nowhere mentioned that respondent no. 5 was in possession of 1 katha 3 dhurs of the settled land and the exchange was being entered into for regularising his unauthorised possession over the land. Mr. Ahsan also invited my attention to other materials on record in support of the claim of the petitioners that till the execution of the deed of exchange they were in possession over the entire area settled in favour of Iqbal Hussain.

8. It is not required to go into this controversy any further in view of the stand taken by the parties.

9. Mr. Sharvendra Kumar Verma, learned counsel appearing on behalf of Bhoodan Yagna Committee submitted that the arrangement by way of exchange with respondent no. 5 was made with the object that the petitioners may be given 5 kathas of land in lieu of the disputed land being only 1 katha 3 dhurs in area. But if for any reason the arrangement was unacceptable to the petitioners, the Committee would undoubtedly stand by the earlier settlement made by it in favour of the petitioners' predecessor and would take all actions for the removal of encroachment made by respondent no. 5.

10. This Court would like to record its appreciation of the fair stand taken by Mr. Sharvendra Kumar Verma which is in conformity with the letter and spirit of the provisions of the Bhoodan Yagna Act, 1954.

11. At this stage, however, I would like to observe that the action of the Committee in executing the deed of exchange in respect of a piece of land already settled earlier in favour of Iqbal Hussain was quite misconceived and untenable in law. The provisions of section 14 of the Act make it abundantly clear that once a grant of land is made, all rights, title and interests in the land vests in the grantee and the Committee consequently ceases to have any rights, title or interests in the land settled with the grantee. The Committee, therefore, had no right, title or interest in the disputed land in respect of which it entered into the exchange with respondent no. 5. The deed of exchange is, therefore, quite void and it does not confer any right, title or interest whatsoever on respondent no. 5.

12. It is further to be noted that in case of encroachment over the settled land, the Committee is not powerless and there are sufficient provisions in the Act for getting the encroachment removed in favour of the lawful settlee of the land. Section 22 of the Act gives sufficient power to the Committee and in fact it empowers the Revenue Officer to act suo moto for getting an encroachment removed from the land settled in favour of a grantee.

13. At this stage I must in all fairness also note the submission made on behalf of respondent no. 5. Mr. Yogendra Prasad Sinha, learned counsel for respondent no. 5 submitted that the occupation of his client over the disputed land was admitted and this made it a case of disputed facts. Learned counsel further submitted that a writ court might not enter into a case involving disputed facts and the petitioners may seek their remedy before the Civil Court. In support of his submission he relied upon a bench decision of this Court in Union of India vs. Anamika Sahkari Grih Nirman Samiti, 2000(2) PUR 544.

14. I am unable to appreciate the submission made on behalf of respondent no. 5 and I see no application of the decision relied upon by the learned counsel to the facts of this case.

15. In the light of the discussions made above, it is plain and clear that the occupation of respondent no. 5 over the disputed land (1 katha 3 dhurs) is prima facie unauthorised and he is liable to be ejected there from in terms of section 33 of the Act. I do not see any disputed facts at all in the case.

16. Following the above finding respondent no. 5 is directed to vacate the disputed land within a fortnight from today. In case he fails to vacate the disputed land, the Revenue Officer of the Bhoodan Yagna Committee will have respondent no. 5 evicted from the piece of land measuring 2 kathas 6 dhurs settled in favour of Iqbal Hussain after having it clearly indentified and demarcated on the basis of the order and the Praman Patra issued in his favour. He will then proceed to remove all encroachments from the land in question including respondent no. 5 as provided u/s 22 of the Act. The removal of as encroachments must be completed within six weeks from today. The Officer- in charge, Andhrathari P.S. is directed to extend full help and cooperation to the Revenue Officer in having the encroachment removed from the piece of land settled in favour of Iqbal Hussain and now is possession of his descendant, the present petitioners.

17. In the result, this writ petition is allowed but with no order as to costs.