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(1968) 10 PAT CK 0007

In the Patna High Court

Case No : C.W.J.C. No. 586 of 1967

Noor Mohammad Mian and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 15-10-1968

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1969) 17 BLJR 219

Hon'ble Judges : U.N. Sinha, J;Kanhaiyaji, J

Bench : Division Bench

Judgement

U.N. Sinha and Kanhaiyaji, JJ.—Eight petitioners have filed this application under Article 226 of the Constitution of India, praying that two orders, dated the 30th September, 1965, passed by the Anchal Adhikary, Adapore (Opposite Party No. 3) and dated the 19th December, 1966, passed on appeal, be quashed. These two orders are parts of Annexures B and C appended to this application.

2. The relevant facts are as follows: The petitioners, as descendants and successors-in-interest of one Fakir Bux were holding about 19.07 acres of land and a proceeding for fixation of rent under Sections 5, 6 and 7 of the Bihar Land Reforms Act was commenced. By order passed on the 30th September 1965, the first authority, namely, the Anchal Adhikary fixed the rent at Rs. 3/- per acre. An appeal was filed before the appellate authority one of the present petitioners and by order dated the 19th December, 1966, the appellate authority, being the Additional Collector held that the appellant before him was not entitled to any relief whatsoever, and on the contrary, the appellate authority held that the rent fixed at Rs. 3/- per acre was too little and that the proper rent should have been fixed at Rs. 5/- per acre. With this direction the appeal was dismissed and the Anchal Adhikary was directed to re-fix the rent at Rs. 5/- per acre. It is in these circumstances that the petitioners have come to this Court in this case.

3. The first contention raised by learned Counsel for the petitioners is that his clients were not intermediaries in possession but they were raiyats in possession

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and, therefore, the Anchal Adhikary had no jurisdiction to fix rent purporting to act u/s 6 of the Land Reforms Act. We do not think that this contention has any validity. The matter has been considered in detail by the Additional Collector, holding that Fakir Bux was a Khewatdar in possession. In those circumstances, it is clear that Section 6 was attracted and the authorities had jurisdiction to fix fair and equitable rent u/s 6. The second contention of learned Counsel for the petitioners is that the Additional Collector should not have increased the rent fixed by the Anchal Adhikary on an appeal filed by one of his clients, where the state of Bihar was satisfied with the rent fixed by the Anchal Adhikary. Without going into the question as to whether the appellate authority had the jurisdiction to increase the rent fixed by the first authority or not, it seems that on the statements made in paragraph 7 of this writ application, the increase made by the Additional Collector must be struck down. It is stated in paragraph 7 of the application that the appellate authority, had increased the rent from Rs. 3/- to Rs. 5/- per acre without giving any notice to the petitioners and that the petitioners come to know of this increase only after the judgment of the case was delivered by the Additional Collector. No counter-affidavit has been filed on behalf of any of the opposite parties converting this statement. In these circumstances, when the appeal filed by one of the petitioners was dismissed by the appellate authority, we do not think that the rent should have been increased from Rs. 3/- to Rs. 5/- per acre suddenly. There has been a breach of natural justice in this case by the increase made by the Additional Collector. We would, therefore, strike down that part of the order by which rent has been increased from Rs. 3/- to Rs. 5/- per acre. In all other aspects the orders passed by the appropriate authorities are affirmed. Let a direction issue to the authorities concerned in this light. In the circumstances the parties are directed to bear their costs of this Court.

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