

(2007) 01 PAT CK 0164
In the Patna High Court
Case No : CWJC No. 9843 of 2005

Poonam Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-2007

Acts Referred:

Citation : (2007) 2 PLJR 465

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—By this writ application the petitioner, who is the sole daughter of an ex-military personnel, has challenged the order of the district authorities by which it is directed that no rent should be accepted from her and no enquiry, she is informed that the Collector of the district had passed an order in 1989 virtually cancelling the settlement made in favour of her father in the year, 1964 as an ex-military personnel. Counter affidavit and supplementary counter affidavit have been filed on behalf of the State and rejoinder thereto has also been filed. Heard the counsel for the petitioner and learned Additional Advocate General III Shri Lalit Kishore, Senior Advocate on behalf of the State and with their consent, this writ application is being disposed of at the stage of admission itself. Father of the petitioner, namely, Ram Dalip Singh was ex military personnel. In 1963, the State Government, pursuant to initiative of the Central Government, took a decision to make settlements of land upto five acres for agricultural purposes to ex-military personnel or military personnel killed in action and such other military personnel category. The decision was also taken to settle an area not exceeding 12.5 decimals of land for residential purposes to military personnel or their families who were homeless in addition to the agricultural land aforesaid. Accordingly, a circular was issued by the State Government, as contained in its letter No. A/GM-1-0-1/63-1946R, dated 23.3.1963. The said circular has been annexed as Annexure-F to the

supplementary counter affidavit of the State. In that circular, it was stated that the "district officers" are to make settlements at the earliest and inform the Government as the initial target of 10 thousand such families was to be met. It appears, it is accordingly pursuant to the said circular, the petitioner's late father, who was Havildar Clerk in the Indian Army, made an application for settlement of agricultural land to the Block Development Officer, Mohiuddin-nagar. The Block Development Officer called for a report of the land in question and ultimately being satisfied by order dated 9.8.1964 made the settlement in favour of the petitioner's late father in respect of land of about one acre and ten decimals. Thereafter, petitioner's father name was mutated, Jamabandi created and rent was accepted regularly year after year for over three decades. Recently after the father's death when petitioner, who was the only child of her father, went to deposit rent it was not accepted. Enquiries revealed that by some order passed in 1989, the Collector had cancelled the Jamabandi thereby virtually cancelling the settlement. This brought the petitioner to this Court and the petitioner has also asserted that she has no knowledge of any proceeding with regard to the said cancellation nor was the said order of cancellation passed after notice either to her father or to her.

2. The State in the counter affidavit has firstly not denied the aspect that no notice was issued to the settlee before the Collector cancelled the Jamabandi which was done after thirty years nor any authority of the Collector to take such an action shown. However, a stand has been taken that the Block Development Officer was not competent to make such settlement. It was stated that it was only the Collector of the district who was competent to make such settlement. For this, reliance was placed on Annexure-B to the supplementary counter affidavit being letter No. A/GM-1/64/1551-R, dated 24th February, 1964 (Annexure-B) which is a tatter of the Government in response to the query received from the district of Saran. It is not disputed by the State that under the 1963 circular by which the right to make settlement to ex-military personnel was created, the expression used "district officers" and it was not restricted to any particular officer. What is submitted by the learned Additional Advocate General III is that in view of the clarification given by letter dated 24th February, 1964 (Annexure-B), it should be presumed that the State Government had restricted the right of making such settlement only with the Collector of the district to the exclusion of all others. In my view, it is necessary to quote letter dated 24th February, 1964:

I am directed to refer to your letter no. 329 dated the 1st February, 1964 on the subject noted above and to say that in accordance with instruction of Government contained in this Department letter no. 1946-R dated the 23rd March, 1963, Collectors of districts are competent to make settlement of lands with Military Personnel of families of Military Personnel killed in action.

3. A reference to the said letter would show two things. Firstly it is not a circular circulated to all officials in the State. Secondly, it is mere reply to a query made

from district of Saran (not the district with which we are concerned) and a reference to the same would also show that all it says is with reference to the departmental letter dated 23rd March, 1963 (Annexure-F). the Collector of the district is competent to make settlements of land with military personnel. It does not say that all other officers are incompetent or that the Collector of the district is alone competent. In my view, the first letter by which the right to receive settlement was created being the letter dated 23rd of March, 1963 (Annexure-F to the supplementary counter affidavit) the expression used was "district officers". It was not the Collector of the district. In the Khas Mahal Manual, there are large number of circulars and directives issued by the State Government in respect of settlement of land which clearly shows that district officers are a larger group of officers "and Collector of the district is a singular officer in a district. Learned Additional Advocate General III has not been able to pinpoint to any definition, statutory or otherwise of the expression "district officers" to show that it could not include Block Development Officer or it only meant the Collector of the district to the exclusion of all others. As I have pointed out above even the letter which was not for general circulation but between two individuals dated 24.2.1964 is concerned even that does not say that all others except the Collector of the district are incompetent to make the settlement.

4. This is the only ground on which cancellation of settlement in favour of petitioner's father has been made and that too after thirty years and further without any notice to the petitioner. In that view of the matter, I hold that when the settlement was made, whatever may be the situation thereafter, Block Development Officer was not incompetent to make the settlement. Settlement was validly made. By subsequent circular, the power could be taken away but only prospectively and not retrospectively. So far as the letter dated 24th February, 1964 is concerned, it is not a general circular or a directive of the State Government. It was not meant for mass circulation and, as such, it cannot have the power of curtailing the general application of the general circular dated 23rd of March, 1963 by which rights were created in ex-military personnel. A reference to the said circular of 23rd of March, 1963 would show that the decision was taken by the Government and communicated to all district officers of the State. This was not the case in respect of the letter dated 24th February, 1964. Therefore, in my view, the letter dated 24th February 1964 cannot override or curtail the circular of 1963. In my view, therefore, the settlement as made in favour of the petitioner's late father was valid and binding on the State and the same could not have been cancelled much less even without a notice to the party concerned.

5. I may mention the cavalier fashion in which the district authorities have dealt with a valuable right of a citizen. They did not even think it necessary to issue notice or initiate a proceeding for cancellation. Further, the State having suffered the settlement for over thirty years cannot now turn around and say that the settlement was bad at the initial stage itself. Even if such a power is assumed to be with the State the power has to be exercised within a reasonable time and in

a reasonable manner. In the present case, neither the time is reasonable nor the manner is reasonable. It has taken thirty years for the State to be awakened and that too action having been taken without notice cannot be sustained in law. I am, therefore, left with no option but to set aside the order of the Collector, Samastipur as recorded on the Jamabandi (Annexure-11) of the father of the petitioner which is the order dated 23.9.1989 of the Additional Collector pursuant to orders of the Collector and allow this writ application. The settlement and the consequent Jamabandi in favour of petitioner's late father would, accordingly, revive and would continue in force till it is set aside or modified by any competent Court or competent authority.