
(2013) 07 PAT CK 0018
In the Patna High Court
Case No : CWJC No. 1762 of 2007

Pulin Bihari Das and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 PLJR 548

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Raghib Ahsan and Najeeb Ahmad, for the Appellant; Shatrughna Pandey for the Respondent Nos. 1 to 3, Md. Helala Ahmad and Anjum Akhtar for the Respondents No. 4 to 6, for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J.—Heard the parties. The petitioners have approached this Court under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 27.12.2001 (Annexure-2) passed by the respondent Anchaladhikari, Balrampur (District Katihar), in Case No. 3 of 2001-02 in a proceeding under Section 48-D of the Bihar Tenancy Act, 1885 (in short "B.T. Act"), whereby and whereunder claims raised on behalf of the respondent Nos. 4 to 6 with respect to the lands bearing khata No. 26 appertaining to plot No. 755 area 33 decimals, plot No. 756 area 1 acre 60 decimals and plot No. 761 area 47 decimals, as also with respect to the lands bearing khata No. 27 appertaining to plot No. 754 area 1.01 acres, total area being 3.41 acres situate at Mauza-Ahuta (in "short lands in dispute") have been allowed and they have been declared raiyat with respect to the lands in dispute in terms of Section 48-D of the B.T. Act. The appeal preferred by the petitioners before the respondent Sub-Divisional Officer, Barsoi in Case No. 2 of 2004-05 has also been rejected by the impugned appellate order dated 22.7.2006 (Annexure-1). Hence, the present writ petition.

2. Learned Senior Counsel appearing on behalf of the petitioners submits that though the petitioners or their ancestors purchased the lands in dispute through different registered sale deeds in the years 1972 and 1974, and though they became the rightful owner of the lands in dispute, yet when the impugned proceeding u/s 48-D of the B.T. Act was initiated at the behest of the respondent Nos. 4 to 6, neither they were impleaded as party respondents nor they were given any opportunity of hearing by the respondent Anchaladhikari, and entire proceeding was carried out behind the back of the petitioners. It is further submitted that the respondent Nos. 4 to 6 have not correctly disclosed the name of the actual raiyat of the lands in dispute, while filing their applications u/s 48-D of the B.T. Act. According to him, for raising a claim u/s 48-D of the B.T. Act, an application is required to be filed in the prescribed form "C" by the applicant disclosing all the relevant facts with respect to the lands so claimed before the Anchaladhikari concerned and only thereafter the matter can proceed further for determination of the claims u/s 48-D of the B.T. Act, but that has not been done in the present case. It is next submitted that the appellate authority has also not considered these material facts and non-compliance of mandatory provisions of law, and has arbitrarily rejected the appeal filed by the petitioners.

3. Learned counsel appearing on behalf of the respondent Nos. 4 to 6 has opposed the prayer made in the present writ application and has tried to support the impugned orders. It is contended that in the proceeding u/s 48-D of the B.T. Act, general notice was issued, but since no objection was filed by any person regarding the claims raised on behalf of the respondent Nos. 4 to 6, therefore, finally by the impugned order dated 27.12.2001 (Annexure-2) the claims raised on behalf of the respondent Nos. 4 to 6 have been allowed, which has been affirmed by the appellate authority vide impugned order dated 22.7.2006 (Annexure-1). However, to a query made by this Court, learned counsel appearing on behalf of the respondent Nos. 4 to 6 was fair enough to concede that the application filed on behalf of the respondent Nos. 4 to 6 was not in the prescribed form-"C" and the petitioners were not impleaded as party respondents in that proceeding.

4. After having heard the parties, and on consideration of the materials available on the record, this Court is of the opinion that entire matter requires reconsideration and fresh decision by the original authority.

5. Section 48-D of the B.T. Act provides that if an occupancy under-raiyat over a plot of land files an application in the prescribed manner, then he shall be entitled to acquire the right of a raiyat with respect to that plot of land subject to payments to be made by him as prescribed by the State Government to the land-holder. It further provides that if the application u/s 48-D of the B.T. Act of an occupancy under-raiyat is allowed, then the right of the land-holder shall extinguish with respect to that plot of land and thereafter, an occupancy under-raiyat shall become a raiyat for all purposes with respect to that plot. The provisions u/s 48-D of the B.T. Act are benevolent in nature for the occupancy

under-raiyat, but it is very harsh and detrimental in nature so far the landholders are concerned. Therefore, for passing an order against the landholder u/s 48-D of the B.T. Act, the procedure prescribed under the B.T. Act and rules made thereunder must be followed, since it takes away all the valuable rights of a landholder in land so claimed.

6. For determination of the right of an occupancy under-raiyat u/s 48-D of the B.T. Act, the provisions under Sections 48-C and 48-D of the B.T. Act are required to be read conjointly, since Section 48-C of the B.T. Act provides as to how an under-raiyat shall become an occupancy under-raiyat after his continuous possession for more than 12 years over a plot of land. However, there are certain riders u/s 48-C of the B.T. Act. For implementation of Section 48-D of the B.T. Act a rule has also been framed by the State Government, which is known as the Bihar Tenancy (Amendment) Rules, 1992. Rule 1A prescribes that an application u/s 48-D of the B.T. Act has to be filed in the prescribed form "C" disclosing all the relevant facts with respect to the lands under dispute as also the full details of the raiyat. Thereafter, the Anchaladhikari is required to give reasonable opportunity of hearing to the parties and to adduce evidence in support of their claims, and only thereafter, he is required to pass an order either accepting the claim or rejecting such claim of an occupancy under-raiyat u/s 48D of the B.T. Act. If procedure prescribed is not followed by the Anchaladhikari, then that may vitiate the entire proceeding and the order passed may not withstand the test of law.

7. Coming to the present case, this Court finds that the claim of the petitioners that they purchased the lands in question as far back as in 1972 and 1974 has not been disputed by the respondents. Further, from perusal of the entire order sheet of the respondent Anchaladhikari as contained in Annexure-2, this Court does not find that the petition by the respondent Nos. 4 to 6 was filed in the prescribed Form "C". The impugned order passed by the respondent Anchaladhikari also appears to be very cryptic and non-speaking one. The mandates of Section 48-D of the B.T. Act and Rules framed thereunder have not been complied with before allowing the claims raised on behalf of the respondent Nos. 4 to 6 with respect to the lands in dispute.

8. For the reasons recorded above, the impugned original order dated 27.12.2001 (Annexure-2) passed in Case No. 3 of 2001-02 by the respondent Anchaladhikari, Balrampur, and the impugned appellate order dated 22.7.2006 (Annexure-1) passed in Case No. 2 of 2004-05 by the respondent Sub-Divisional Officer, Barsoi, are hereby set aside and the matter is remitted back to the respondent Anchaladhikari, Balrampur, for deciding the matter afresh strictly in accordance with law by giving opportunity of hearing to both the parties.

9. In order to expedite the matter, the petitioners as also respondent Nos. 4 to 6 are hereby directed to appear before the respondent Anchaladhikari, Balrampur, within a maximum period of two months from today with a certified copy of the present order, whereafter the respondent Anchaladhikari, Balrampur, shall fix a

firm date for proceeding in the matter afresh and he shall make all endeavours to conclude the proceeding at an early date, preferably within a period of six months from the first date of appearance of the parties.

10. It is clarified that the respondent Nos. 4 to 6 shall be at liberty to file a fresh application in the prescribed form "C" disclosing all the details with respect to the lands in dispute as also the land holder.

11. In the result, the writ petition succeeds to the extent indicted above. The parties are left to bear their own costs. Till the matter is finally decided afresh by the respondent Anchaladhikari, Balrampur, in view of this order of remand, status quo, as existing today over the lands in dispute, shall be maintained by the parties.