
(2007) 05 PAT CK 0117
In the Patna High Court
Case No : CWJC No. 15346 of 2006

Radha Krishna Jha and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Citation : (2008) 1 PLJR 477

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Pd. Singh, J.—Heard. The petitioners' brother (respondent No. 17) donated 4.80 acres of land in 1958 to the Bhoodan Yagya Committee. Recently, the Additional Collector apparently made allotments in favour of respondent Nos. 4 to 16 and by a communication dated 8.11.2001 sent the matter to the Anchal Adhikari for mutation of name of those respondents 4 to 16 as there was adequate confirmation of land already available. On the basis of this proceeding being Bhoodan Case No. 2 of 2002-03 was registered by the Anchal Adhikari. The mutation in favour of respondents 4 to 16 was rejected vide order dated 1.7.2002 in the said proceedings apparently on the ground that the said respondent could not produce confirmation paper in respect of the said donation to Bhoodan Committee.

2. Being aggrieved by the said action a revision application being Revision No. 12/2002 was filed by the said respondents before the Additional Collector, Supaul. This revision application was allowed and the Anchal Adhikari was directed to mutate the name of those respondents. The petitioners, who are the brothers of the land holder, who made the donation to Bhoodan Committee, on coming to know of this order, filed a miscellaneous case, which was registered as Misc. Case No. 23/03. There the petitioners challenged the jurisdiction of the Additional Collector to entertain revision application against the order of the Anchal Adhikari. They also challenged that their brother (respondent No. 17) had

no authority to donate the land, in question, as that land did not belong to him exclusively. It was a land of the family and could not be donated except with the consent of all family members who had inheritable rights in it. The Divisional Commissioner rejected the application of the petitioners. The result is that the order of Additional Collector directing mutation in favour of respondents No. 4 to 16 attained finality. It is these two last orders that are under challenge.

3. Having heard learned counsel for the petitioners and considering the matter I am not inclined to interfere in the matter for two reasons. Firstly, once the Additional Collector had forwarded the matter to the Anchal Adhikari clearly stating that the donation to the Bhoodan Committee had been confirmed and the Committee had decided to distribute the land and accordingly issued parchas to the private respondents 4 to 16 then it was not open to the Anchal Adhikari to ask those respondents to produce orders with regard to confirmation. Confirmation is a proceeding in which those private respondents have nothing to do. Once a superior officer communicated that confirmation had been obtained then for the Anchal Adhikari, who is a junior/subordinate officer, it was not open to question it. I, therefore, find that the order of the Anchal Adhikari on the face of it was wrong and was unsustainable. The petitioners are correct in saying that no revision as preferred by the private-respondents lay from such an order and as such the order of the Additional Collector though may be a correct order, was by a wrong authority. That may be so it is equally wrong in view of this Court that the petitioner attempted to upset the order before the Divisional Commissioner because no power vested in the Divisional Commissioner. In any view of the matter it would have been that the wrong order of the Anchal Adhikari has been set right by the Additional Collector. The same has not been interfered by the Divisional Commissioner. If this court were to interfere with the order of the Additional Collector and the Commissioner of the Division then setting aside those orders would revive the order of Anchal Adhikari, which, as stated above, was itself a wrong order.

4. It is well settled that if by setting aside the order, wrong order would revive, the court would not interfere in such matter because substantial justice has to be done not justice in technical sense. If this court interferes in such matter then, injustice would be revived by virtue of a wrong order of Anchal Adhikari, if revived. It is on this principle that this court is not interfering in the matter.

5. The second ground by which this court is not inclined to interfere is that the petitioners indirectly seek to challenge the authority of his brother (respondent No. 17) to make the donation to Bhoodan as made in 1958. Petitioners do not seek to deny the donation but challenges the legality thereof. This matter cannot be interfered and or decided by authorities either under Bhoodan Yagya Act or under the provision of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 and that being so, this Court would not exercise its jurisdiction in the matter of deciding disputed question of right, title or interest in property. If the petitioners are aggrieved by the donation as made by their brother allegedly

illegally and without authority, it is open for the petitioners to move the Civil Court of competent jurisdiction for a declaration to avoid such a donation. Unless the petitioners succeed in getting the said donation declared illegal and without authority the action of the respondents cannot be questioned as their action is based on a valid donation and that too made as far as back in 1958.

6. It is, therefore, open to the petitioners to challenge the donation as made by their brother (respondent No. 17) in accordance with law before the court of competent jurisdiction. In that view of the matter I find no merit in this application and the same is dismissed.