

(1956) 10 PAT CK 0004

In the Patna High Court

Case No : Misc. Judicial Case No. 253 of 1954

Ragho Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-10-1956

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2, 2(1), 5(1), 8(5)
Bihar Privileged Persons Homestead Tenancy Rules, 1948 — Rule 3, 5
Bihar Tenancy Act, 1885 — Section 3(4)
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1957 Patna 163 : (1957) 5 BLJR 445

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Kailash Rai, B.K. Sharma and L.S. Sinha, for the Appellant;
Bhagirathi Prasad Singh and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—In this application, under Articles 226 and 227 of the Constitution of India, the petitioners have asked for a writ to quash the order dated 30-4-1954, passed by the Sub-Divisional Magistrate, Arrah, u/s 8(5) of The Bihar Privileged Persons Homestead Tenancy Act, 1947, being Bihar Act IV of 1948, as amended by the Bihar Act 42 of 1951, hereinafter referred to as "the Act". Opposite party have shown cause and, opposite party 4 has also filed a counter-affidavit

2. On 15-10-1953, the Sub-Divisional Officer received a petition from Deonarin Chamar. opposite party 4, to the effect that he was a Harilan & he and his family were being harassed in several ways, they were being threatened, and there was a likelihood of their being evicted from their house, by the petitioners. On receipt of this application, the Sub-Divisional Officer Issued a notice to the petitioners to show cause why they should not be proceeded against under the Act, and, also under the Bihar Harijan (Removal of Civil Disabilities) Act, 1949, which is Bihar

Act XIX of 1949, and also asked the officer-in-charge, Tarari police station to make an immediate enquiry into the matter and submit his report.

3. On 30-11-1953, after perusal of the show cause petition filed by the petitioners, and, the report of the Officer-in-charge, Tarari Police station, the Sub-Divisional Officer decided to hold a local enquiry personally on 12-12-1953.

4. The Sub-Divisional Officer visited the village Kurmurhi, where the homestead of opposite party 4 was situated, on the appointed date, and recorded a memorandum of his local inspection in his order dated 14-12-1953. He, thereafter, decided, on the same, date, that it was a fit case for action u/s 5 of the Act, and, accordingly, issued notices to both the parties, to adduce their evidence, oral and documentary, in support of their respective claims.

Both the parties examined witnesses. After hearing the parties, the Sub-Divisional Officer passed an order u/s 8(5) of the Act on 30-4-1954, although the date fixed for passing orders was 19-4-1954, and, directed that the petitioners should put opposite party 4 in possession of the four rooms, which they had demolished, and, enclosed within their angan, within a period of two months of the passing of the order.

5. It is against this order that the petitioners have moved this Court under Articles 226 and 227 of the Constitution, and, obtained the rule, under consideration, from the High Court.

6. In support of the rule, Mr. Kailash Rai has contended, in the first place, that the petitioners are not landlords of opposite party 4, in that, they are themselves tenants, and, therefore, there does not exist any relationship of landlord and tenant between the petitioners and opposite party 4 so as to attract the operation of the Act.

7. The petitioners, however, admitted that opposite party 4 was allowed by them to occupy a portion of their fodder house, where opposite party 4 was still living. But, it was contended by them that the possession of opposite party 4 was permissive, and, as such, it could not be considered that the house had been let out on rent, or on lease, or on any contract, to opposite party 4, so as to create the relationship of landlord and tenant between them.

8. This objection, on the ground that the petitioners were not the landlords of opposite party 4, was raised before the Sub-Divisional Officer, and, he has considered and disposed it of by his order dated 14-12-1953, and dealt with it also in his final order passed on 30-4-1954. He held that the word "landlord" also includes even tenants under whom under-tenants hold the land.

In the present case, he found that, from the evidence, it was evident that the occupation of the homestead land by opposite party 4 had been with the implied consent of the petitioners, and, therefore, he held that the petitioners, were in the position of "landlord" vis-a-vis opposite party 4, and, as such, the provisions of the Act were attracted to the present case.

9. That word "landlord"" has not been defined in the Act, but Section 2(1) of the Act provides that "all words and expressions used but not defined in this Act and used in the Bihar Tenancy Act, 1885" shall, in respect of the areas, to which the Bihar Tenancy Act applies, have the meanings assigned to them in the Bihar Tenancy Act.

Section 3(4) of the Bihar Tenancy Act defines landlord" as meaning "a person immediately under whom a tenant holds". From this definition, therefore, it is clear that the word "landlord" has been used in a wide sense, so as to include even a person who is not a proprietor, or the like, but is himself a tenant, and, under him there is another person, who is holding some land as a tenant

10. But that apart, it is well established that a tenancy can be created by acts indicating the establishing of relation of landlord and tenant This may be, expressed, implied, or gathered from conduct, or circumstances of the parties. In the present case, the petitioners admitted that they allowed opposite party 4 to live in the house. The court below has found, on the evidence that opposite party 4 was in possession of the house with the implied consent of the petitioners. The petitioners, therefore, would be the landlords of opposite party 4, within the meaning of Section 3(4) of the Bihar Tenancy Act read with Section 2(1) of the Act.

11. It has, next, been argued that opposite party 4 was not a "privileged tenant"", within the meaning of Section 2(j) of the Act, and, therefore, on, this ground also, the Act was not attracted.

12. The words, "privileged person", and, "privileged tenant", have been defined by Section 2(i) & (j), respectively, of the Act. The Act came into force on 25-2-1948, but subsequently is was amended on 19-12-1951 by the Bihar Act 42 of 1951, and, then again by the Bihar Act 23 of 1952. Old Clause (1) of Section 2 of the Act was amended by the amending Act 1952. Amended Clause (i), and Clause (1) of Section 2 of the Act are in these terms:

"2. In this Act, unless there is anything repugnant in the subject or context.

XX XX XX, (1) "privileged person"" means a person (1) who is not a proprietor, tenure-holder, under-tenure-holder or a mahajan; and

(2) who, besides his homestead holds no other land or holds any such land not exceeding one acre;

(j) "privileged tenant" means a privileged person who holds homestead under another person and is, or but for a special contract, would be li-able to pay rent for such homestead to such person;

XX XX XX"

13. This objection, on the ground that opposite party 4 was not a "privileged tenant", does not seem to have been taken before the Sub-Divisional Officer, because it does not find any mention, either in his order dated 14-12-1953, or,

30-4-1954. From the latter order, however, it appears that the facts, that opposite party 4 was a "privileged tenant", was admitted, and, therefore, there is no discussion, on this point in the impugned order.

14. From the definitions given above, however, it is manifest that a "privileged tenant" means a "privileged person", who holds homestead under another person, and, is, or, but for a special contract, would be liable to pay rent for his homestead to such person. A "privileged person" is a person who is not a proprietor, tenure-holder, under-tenue-holder, or a mahajan, and, who, besides his homestead, holds no other land, or, holds any such land not exceeding one area.

In the present case, it is established, from the evidence on the record, that opposite party 4 was a "privileged person" within the meaning of Section 2 (j) of the Act inasmuch as he was neither a proprietor; tenure-holder, under-tenue-holder, nor, a maha-jan, and, besides the disputed homestead, he held, no other land. The first condition of a "privileged tenant", given in Section 2(j) of the Act is, therefore, satisfied. But the argument of Mr. Ral is that the second condition contemplated by the definition is not satisfied, in that there is, nothing to show that opposite party 4 is, or, but for a special contract, would be, liable to pay rent for such homestead to the petitioner. He, therefore, contends that if the second condition on precedent envisaged in Section 2(j) of the Act is not satisfied, then the person, even if he is "privileged person", cannot be called a "privileged tenant" so as to attract the provisions of the Act. There can be no doubt that the two conditions postulated by Section 2(j) of the Act must co-exist before a person can be called a "privileged tenant" within the meaning of the Act. It is, however, a well established principle of tenancy law that, in general, where the relationship of landlord and tenant exists, without any arrangement for the payment of rent properly so called, there is always an implied contract on the part of the tenant to compensate the landlord for use and occupation of the land.

In such a case, the law implies a promise by the occupier to pay the landlord a reasonable amount for use and occupation. But in Bihar as well as in Bengal, the conditions are special, and, the law implies a contract to pay not compensation, but rent. See Ram Gobind Singh Vs. Shashi Sekhar Prasad Singh, . "Kent" has been defined by Section 2(k) of the Act as meaning

"whatever is lawfully payable or delivered in money or in any other form by a privileged tenant to his landlord on account of the use or occupation of the homestead, held by such tenant".

In view of this position of the law, even if opposite party 4 never paid rent to the petitioners, nor, there was, or is, any contract for payment of any rent in respect of the house in occupation of opposite party 4, it cannot be said that opposite party 4 was, or is, not liable to pay rent for such homestead to the petitioners. The second condition also of Section 2(j) of the Act is, therefore, satisfied. Opposite party 4, as such, is a "privileged tenant" within the meaning of Section

2(f), and, therefore the operation of the Act was attracted.

15. Mr. Rai also challenged that the disputed house was not "homestead" at all. The word "homestead" has been defined in Section 2(d) of the Act as follows:

"2. In this Act, unless there is anything repugnant in the subject or context

XX XX XX (d) "homestead" means any land which is held on lease or used with the consent, express or implied, of the landlord for residential purposes and includes any building erected thereon, together with any Sahan and Bari appurtenant thereto;

XX XX XX"

16. From the above definition, it is evident that the word "homestead" has been given an extended meaning in Section 2(d) of the Act. It is so wide as to include not only any building erected on the land, but also any vacant land used for residential purposes with the consent of the landlord. In the present case, from the application made by opposite party 4 as well as from the evidence adduced on his behalf, which has been placed before us by both the parties, it is clear that the house in occupation of the opposite party 4 was "homestead" within the meaning of the Act. From the evidence of opposite party 4, it appears that the house in his occupation comprised of two rooms on the out side and one dalan and also four rooms inside.

These four inside rooms were alleged to have been demolished by the petitioners, and, opposite party 4 dispossessed therefrom. It is admitted by the petitioners that opposite party 4 was occupying the alleged house with the express consent of the petitioners for residential purposes. In such circumstances, it cannot be said that the house in occupation, of opposite party 4 was not "homestead" within the meaning of Section 2(d) of the Act.

The portion demolished is obviously a part of this homestead. Moreover, the question, whether a particular land is a "homestead" within the meaning of Section 2(d) of the Act, is a question of fact, and, the High Court cannot go into such a question of fact in a proceeding under Article 226 or Article 227 of the Constitution of India See Hargobind Singh v. Rambaran Paswan, AIR" 1954 Pat 534 (B), I would, therefore, overrule this objection also.

17. It was, then, contended that there was no evidence that opposite party 4 had been dispossessed from his homestead, even if he had any. The objection is without any foundation, because it appears from the evidence of opposite party 4, his mother as well as the Chaukidar of the village, who were the three witnesses examined on behalf of opposite party 4, that petitioner No. 1 Ragho Singh demolished the four rooms of opposite party 4 and enclosed this demolished portion in his main house by constructing a boundary wall.

The evidence of the witnesses for opposite party 4 is also supported by the local enquiry of the Sub-Divisional Magistrate, who found, when he visited village on

12-12-1953, that the house had actually been set on fire, and, one room had been completely burnt. It is, therefore, evident from the evidence adduced on behalf of opposite party 4 that the four rooms, which were a part of his homestead, in respect of which an order u/s 8(5), of the Act was passed, were demolished, and, opposite party 4 was dispossessed therefrom.

18. It has, further, been contended that the rules, framed by the State Government, u/s 20 of the Act, which are called the Bihar Privileged Persons Homestead Tenancy Rules, 1948, hereinafter referred to as "the Rules", published in the Bihar Gazette of March 17, 1948, under notification dated the 23rd February, 1948, provide in rule 3 (a) of the Rules that an application to be made by a privileged tenant under Sub-section (1) of Section 5 for the restoration of his possession over the homestead shall be in Form A.

Form A requires, under serial No. 3, that "del-tails of the homestead or part thereof from which ejected, including area and place where situated" should be given. The contention of Mr. Rai is that no such details of the portion of the homestead from which opposite party 4 is alleged to have been ejected have been mentioned in his application. In the present case, it will appear from the application made by opposite, party 4 that he gave the boundaries of the house from which he was threatened to be ejected. If, therefore, the application which was made by opposite party 4 on or about 15-10-1953, be considered to be an application u/s 8(5) of the Act, then, in my opinion, the mention of the boundaries of the homestead, and, of the village in which it was situated, was a sufficient compliance with rule 3 (a) of the rules, and, therefore, the application was not defective on that account.

19. But, rule 3(a) will not apply to an application u/s 8(5) of the Act. Rule 3(a) speaks of an application u/s 5(1) of the Act. Section 5(1) applies to a case where a privileged tenant has been ejected from his homestead within one year before the date of the commencement of the Act, which was 25-2-1948. But to cases of ejectment of a privileged tenant after the Act came into force, Section 8 (5) of the Act applied. Section 8 (5), therefore, applied to the present case. The Rules do not provide, either in Rule 3, or anywhere in, the Rules, any particular form for making an application u/s 8(5) of the Act.

There is good reason why no form is prescribed in the rules. The rules were framed in 1948, whereas Clause (5) was added to Section 8 of the Act in 1951. Therefore, there could not possibly be any prescribed form in the Rules for an application u/s 8(5) of the Act. There is, therefore, no substance in this contention of Mr. Rai, and, accordingly, it must be overruled.

20. It was, then contended that at the date When the aforesaid application was made, opposite party 4 had not been dispossessed, because there was no such allegation in that application, and, as such, the Sub-Divisional Officer, on the basis of that application, has no jurisdiction to order restoration of possession u/s 8(5) of the Act.

21. Section 8 (1) of the Act mentions the grounds on which a privileged tenant shall be liable to ejectment, subject to the provisos mentioned therein. By the amending Act of 1951, Bihar Act 42 of 1951, Sub-section (5) was added to Section 8 of the Act. Clause (5), of S 8 of the Act as it stood before the amendment in 1954, by the Bihar Act 33 of 1954, which came into force on 7-12-1954, was in these terms:

"8(1) XX XX XX (5) If a privileged tenant has been ejected by his landlord from his homestead or any part thereof, otherwise than in accordance with the provision contained in Sub-section (1), then the tenant may apply to the Collector for restoration of his possession over the homestead or part thereof, from which he has been so ejected. On receipt of an application, the Collector shall make such enquiry as he deems fit and may either reject the application or order that the privileged tenant shall be put in possession of the homestead from which he has been so ejected."

22. Clause (5) of Section 8 of the Act, therefore, provides that if a privileged tenant has been ejected by his landlord from his homestead or any part thereof, otherwise than, in accordance with the, provision contained in Sub-section (1) of Section 8 of the Act, then the Collector, on his application, could restore such a privileged tenant to possession over his homestead or part thereof from, which he has been so ejected.

23. It is true that at the date of, and on the application, by the opposite party 4, he had not actually been dispossessed, but he and his family were being threatened, and were likely to be ejected from their homestead. But, immediately thereafter when the Sub-Divisional Officer visited the spot on 12-12-1953, after the application of opposite party 4 on 15-10-1953, he found that the house had actually already been set on fire, and one room had been completely burnt down. When the witnesses of the opposite party came to be examined on 4-1-1954, and 28-1-1954, they stated on oath that the four inner rooms had been demolished by petitioner No. 1 Ragho Singh two or three months before, and, this demolished portion had been enclosed by his main house.

The evidence of these witnesses had been accepted and relied upon by the Court below. There is, therefore, no doubt, on the finding of the learned Sub-Divisional Officer, that on the date when he passed the order u/s 8(5) of the Act, for restoration of possession of opposite party 4, he had been actually ejected by the petitioner. What Section 8(5) of the Act requires is that the privileged tenant should have been ejected from his homestead by his landlord before an Order of restoration of possession in his favour is passed u/s 8(5) of the Act. If, therefore, at the date of the enquiry contemplated by Rule 5 of the Rules, and, also at the date of the order u/s 8(5) of the Act, the privileged tenant is found to have been dispossessed earlier by his landlord from the homestead, the Collector will have jurisdiction to pass an order of restoration to possession of the evicted privileged tenant, u/s 8(5), of the Act, although on the date of the application he had not

actually been ejected.

In the present case, on the finding, based on the evidence, opposite party 4 was dispossessed from a part of his homestead, long before the Impugned order was passed. Therefore, the initial irregularity in taking cognisance of the case u/s 8(5) of the Act will not invalidate the subsequent order passed u/s 8(5) of the Act, when on the finding the court below had the necessary jurisdiction to pass the order complained of.

24. In my opinion, therefore Section 8(5) of the Act applied to the present case, and, therefore; the learned Sub-Divisional Officer was perfectly justified in law in passing the impugned order against the petitioners directing them to put opposite party 4 in possession of the four rooms from which he had been dispossessed, and, which had been enclosed within the angan of the petitioners. There is, therefore, no substance in this contention as well.

25. Finally, it has been contended that in any "case, the Sub-Divisional Magistrate had no jurisdiction to base his decision on the result of his own local inspection. In my opinion, there is no substance in this contention also Rule 5 of the Rules in this connection is important and it may be reproduced below in extenso ;

"5. (1) The Collector shall either himself make local inquiry or have such inquiry made by any responsible officer not below the rank of a Sub-Deputy Collector and satisfy himself as to the correctness or otherwise of the contents of such applications.

(2) The enquiring officer shall issue notice in Form F to all the interested parties intimating the date on which the enquiry shall be made and directing the parties to produce all the evidence in their possession in support of, or against, the application.

(3) The enquiring officer shall make a record of the evidence produced before him and, if he is not the Collector, submit his report to the Collector.

(4) The Collector shall after hearing the parties on all points arising out of the application pass such order as to him seems to be just and proper."

26. According to Rule 5, just quoted above, it will appear that the Sub-Divisional Officer, who was the "Collector" within the meaning of Section 2(b) of the Act, was required to make local enquiry either himself, or, to have it made by any other responsible officer, not below the rank of a Sub-Deputy Collector, in order to satisfy himself as to the correctness or otherwise of the contents of the application made by opposite party 4. The Sub-Divisional Officer, therefore, followed the procedure laid down in Rule 5 of the Rules, and made a local enquiry personally, and recorded his memorandum of local inspection. It was only after his local enquiry, and, when he was satisfied with the correctness of the contents of the application made by opposite party 4, and further when he found as a fact that the petitioners had ousted opposite party 4 from his

homestead, as mentioned in the order dated 14-12-1953, that he decided to take action under the Act, and issued notices accordingly.

After hearing the parties on all the points, the Sub-Divisional Officer passed the impugned order. In such circumstances, it cannot be said that the Sub-Divisional Magistrate had no Jurisdiction to use the result of his local enquiry, when Rule 5 It-self provided, rather enjoined, for such a local . enquiry by the Sub-Divisional Officer. In the present case, however, we find that the Sub-Divisional Officer has not based his decision solely on his local enquiry, but he has used his local inspection in evidence adduced by the parties. What, he has done is that he has used his local inspection in order to determine if petitioner No. 1 Rashed Singh Was telling the truth, when he stated : that he had not enclosed the disputed portion in his boundary wall, because petitioner No. 1 Ragho Singh admitted that he was present during the local inspection of the Sub-Divisional Officer.

In such circumstances, it cannot be said that he has been influenced in his decision by his local enquiry, or, that he has acted illegally in referring to his local inspection in order to understand the evidence of petitioner No. 1

27. For the reasons given above, all the points raised by Mr. Kailash Rai fail.

28. In the result, the rule is discharged as no case has been made out for issuing any writ to quash the impugned order of the Sub-Divisional Officer dated 30-4-1954. The application, accordingly, fails, and, is dismissed with costs; hearing fee Rs. 200/- to be paid by the petitioners to opposite party 4 only.

Ramaswami, C.J.

29. I agree.