

(2005) 11 PAT CK 0004

In the Patna High Court

Case No : MJC No. 1282 of 2004 with CWJC No. 6944 of 2004

Raj Kumari Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2006) 2 PLJR 193

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Chandra Shekhar Pd. Sinha, Brij Mohan Kr. Singh and Atul Kumar Pandey, for the Appellant; J.P. Kishore (in 1282) and Dr. Kumar Amitesh (in 6944), for the Respondent

Judgement

Barin Ghosh, J.—Both the writ petition as well as contempt application are disposed of by this order. In the revisional survey operation the subject land comprised in khata No. 548, khesra Nos. 526, 527, 543, 544, 549 and 550 comprising of a total of 8.65 Acres of land situate in village Pandey Patti, P.S. Buxar, District-Buxar was recorded as Un-aabad Sarbasadharan. The father of the petitioner in Title Suit No. 73 of 1974 filed before the Court of Second Additional Munsif, Buxar contended that he is the owner of the said land and acquired the same from the ex-landlord by virtue of a settlement obtained by him in 1945 and since then he is in khaas possession thereof. In the said suit the State of Bihar, through the Collector of the District-Buxar, was the principal defendant. The said suit was instituted under Order I Rule VIII of the Code of Civil Procedure. On contest, the said suit was decreed in favour of the father of the petitioner and the court declared that the father of the petitioner as owner of the land in question is in possession thereof and the said entry in the revisional survey was an incorrect and wrong entry. The court also passed an order of permanent injunction restraining the defendants from interfering with the land in question. This decree was passed on 27th May, 1977. None of the members of the public, who were also bound by the said decree, challenged the same by

preferring an appeal. The State of Bihar, however, filed an appeal against the said decree, but beyond time. On that ground the appeal, so preferred by the State of Bihar, was dismissed. The State of Bihar then filed a Second Appeal before this court. The appeal so filed was a defective appeal. Despite opportunity given by this court to remove the defect, the State of Bihar failed to remove such defect and in consequence thereof the Second Appeal stood dismissed by an order dated 1st July, 1987 passed by this court. The State of Bihar did not take up the matter before the Hon'ble Supreme Court and, accordingly, permitted the decree passed by the Munsif in rem to reach its finality. Despite such decree having been passed by a competent court of law the State of Bihar and its Officers did not accept the father of the petitioner as owner of the land in question, and, accordingly, did not settle the rent payable by the father of the petitioner to the State as such owner of the land in question. This caused the father of the petitioner to approach this court in its constitutional writ jurisdiction. In C.W.J.C. No. 9540 of 1989 the father of the petitioner sought for cancellation of the decision of the Circle Officer as confirmed by the Deputy Commissioner, Land Reforms, that the father of the petitioner is not entitled to have Jamabandi and a direction upon the State and its Officers to consider the claim of the father of the petitioner to treat him as a tenant under the State in respect of the land in question. This Court allowed the writ petition and quashed the decisions of the Circle Officer as well as of Deputy Commissioner, Land Reforms, rejecting the claim of the father of the petitioner to settle Jamabandi. The court directed the Deputy Commissioner, Land Reforms, to dispose of the application of Jamabandi as was filed by the father of the petitioner in accordance with law. This order was passed on 3rd April, 1992. Subsequent thereto the State accepted the father of the petitioner as tenant of the State in respect of the land in question and upon correction of Jamabandi accepted payment of rent to the tune of Rs. 55,167/-. This happened on 20th October, 2003. After the order was passed by the writ court, in the year 1992 the State of Bihar through the Collector, Buxar district filed a suit against the heirs of the father of the petitioner and therein contended that the subject land belongs to the State and the defendants are wrongfully interfering with the right, title and interest of the State in the subject land. In the suit a prayer has been made to declare that the petitioner cannot get the benefit of the decree passed by the Munsif in the said title suit.

2. In the meantime, a suit was instituted by a person claiming title to the land in question. That suit has not yet been decreed. The petitioner is a defendant in the said suit. An attempt was made by the petitioner to have the said suit settled and compromised with the plaintiff in the said suit. The State of Bihar stood in the way of such compromise. As a result the plaintiff in the said suit applied for deletion of the name of State of Bihar from the array of defendants in the said suit and the said application was allowed and the order allowing the application has been confirmed by this court. Subsequently, the State of Bihar applied for amalgamation of the suit instituted by the State of Bihar with the other suit and the District Judge, as it appears, without any just reason, by his order dated

18th December, 2003 amalgamated the said two suits.

3. Subsequent thereto when the petitioner was about to start construction of her house on the land in question, the Circle Officer prepared a report dated 4th February, 2004 and therein stated that the subject land belongs to the State of Bihar and the State of Bihar has instituted a suit in respect thereof and, accordingly, appropriate steps are required to be taken. Considering the said report, on 4th February, 2004 the Sub-divisional Officer passed an order u/s 144 of the Code of Criminal Procedure restraining the petitioner from stepping on to the land in question.

4. In the writ petition the petitioner is seeking quashing of the suit instituted by the State as well as the order of the District Judge dated 18th December, 2003 amalgamating the suit instituted by the State, namely, the Title Suit No. 103 of 1992 with the other suit, namely the Title Suit No. 103 of 1992 and also compensation for vexation and harassment. In the contempt application the petitioner is contending that the order dated 4th February, 2004 is in the teeth of the judgment of the Munsif, which has now reached finality.

5. There is no dispute at all that the order dated 4th February, 2004 as passed by the Sub-divisional Officer is the outcome of a deliberate contemptuous act. I personally feel that if the petitioner had taken appropriate steps, for having committed such contempt the Sub-divisional Officer should have been appropriately dealt with. However, inasmuch as the contempt is that of the Munsif, the petitioner ought to have had approached the Munsif first and the Munsif ought to have requested the High Court to initiate contempt proceeding against the Sub-divisional Officer. That having not been done and contempt being a technical matter it would not be appropriate on my part to deal with the contemner, i.e., the Sub-divisional Officer in the contempt application.

6. However, the nature of grievance having been highlighted in the writ petition I have every jurisdiction to give appropriate relief to the petitioner by moulding the reliefs. Once a competent court of law has declared that the petitioner's predecessor in interest is the owner and is in possession of the land in question, until such time the said declaration is altered by yet another competent court of law, no one, how so high he may be, can call in question the said pronouncement of the court. Because the Sub-divisional Officer has power to issue an order u/s 144 of the Code of Criminal Procedure, he cannot misuse such power and try to do something which is impermissible. In such view of the matter, I quash the order of the Subdivisional Officer dated 4th February, 2004 and make it clear that until such time the petitioner is restrained by a competent court of law, the petitioner shall be entitled to use the land in the manner she wants to use the same including to construct house and neither the State nor any of its Officer shall in any way interfere with such user of the land by the petitioners. The State and its Officers are restrained from stepping on to the land in question claiming that the land belongs to the State until such time a competent court of law declares the State to be the owner of the land in question.

7. it would not be appropriate on my part to state, sitting in writ jurisdiction, that the suit instituted by the State is a harassing or abusive suit. It would also not be appropriate on my part to state, sitting in writ jurisdiction, that the suit as instituted by the State is an incompetent suit. The Court before whom the suit is pending, is more than competent to declare that the said suit is not only an incompetent suit but is also a harassing and vexatious suit. Accordingly, if it is so held by the said court, it is more than competent to award appropriate compensation to the petitioner for initiation of such suit and as such I leave the matter to be decided by the said court.

8. The claim that has been put forward in the suit instituted by the said private individual has no similarity with the claim put forward in the suit filed by the State of Bihar. The State of Bihar is claiming that the said land belongs to it. In the suit instituted by the private individual, it is his contention that the land or a part thereof belong to the public. When that suit was being compromised and the State prevented such compromise to be effected and, accordingly, it became necessary to delete the State and such deletion was made, the State should not have prayed for amalgamation of those two suits. The very prayer itself was an abuse of process of law. In such view of the matter, I have no other option but to quash the order passed by the District Judge on 18th December, 2003 directing amalgamation of Title Suit No. 75 of 1992 and Title Suit No. 103 of 1992 and, accordingly, those two suits stand delinked from now onwards. They should be decided separately in accordance with law. This disposes of the writ petition as well as the contempt application.