
(2013) 03 PAT CK 0063
In the Patna High Court
Case No : CWJC No. 819 of 2007

Raja Nand Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(g), 4(h)

Citation : (2013) 2 PLJR 685

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad and Shashi Nath Jha, for the Appellant; S.P. Parasan in 819 for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—In both these writ petitions the challenge is to the order of the Collector of the district wherein in State Appeal he has set aside the order of D.C.L.R., Madhubani, in purported exercise of power u/s 4(h) of the Bihar Land Reforms Act. In both the cases the land, in question, is a Pokhar. The petitioners claim on basis of various documents that those lands were settled to them by the Zamindar much prior to 1946. The petitioners had been paying rent to them. They had in due time constructed Pokhar (Pond) on those lands. They continued in possession since long before the vesting of Zamindari by virtue of Bihar Land Reforms Act and have continued up to date. The mischief started when recently one of the Revenue Karamacharies approached the authority to believe that this Pokhar is a Sairat and treating them to be Government Sairats as such. Then it is pursuant to this that proceeding u/s 4(g)/4(h) was initiated by the D.C.L.R. for annulment of the settlement and taking over possession. The petitioners appeared and filed various documents to show that they had been in possession upon settlement being made by the then Zamindar. They are paying due rent. They continued in possession since before vesting up to date. Thus no action either u/s 4(g) or 4(h) be taken. In the case of Ajay Kumar Jha, apart from other

papers, he relied on the cadastral survey entry in which itself it is clearly entered that on the land, in question, there is a Pokhar, which is in possession of the petitioners's ancestor. This entry is over a century old. The respondent D.C.L.R. having considered the evidence that has been brought on record came to a finding that even though the land, in question was Gair Mazarua Aam, it had been settled-by the ex-landlord long before vesting of Zamindari and the petitioners came in possession and continued in possession. Upon these facts, learned D.C.L.R. refused to entertain in the matter and dropped the proceedings. State took the matter in appeal to the District Collector. It appears that before the District Collector proceeding proceeded ex parte. The Collector examined the matter and held that as the petitioners have failed to produce the Zamindari return filed by the ex-landlord recognizing the possession of the petitioners, the petitioners were not in position to establish their right. Accordingly, he allowed the State Appeal and set aside the Zamindari (sic--zamabandi?) created in favour of the petitioners after the vesting of Zamindari.

2. Learned counsel for the petitioners submits firstly that before action could be taken in terms of Section 4(h) of the Act, it must be shown by objective finding that there had been transfer or a settlement by the ex-landlord after the date specified in the year 1946. There is no such finding at all by the Collector nor has there been any allegation by any authority at any stage that the settlement was after the specified date in 1946 or that the petitioners had come upon the land forcefully after the vesting of Zamindari and thus were trace pass (sio--tresspassers?). The next submission is that the Collector has not doubted the genuineness or authenticity of the documents as produced by the petitioners. He has not doubted continued possession of the petitioners since long before the vesting of Zamindari. Upon this it is submitted that there was no cause for the Collector of the district to interfere.

3. Having considered the matter, in my view, even as per counter affidavit no dispute has been raised with regard to authenticity or correctness of the documents produced by the petitioners rather to the contrary in the case of Ajay Kumar Jha, the State has itself filed cadastral survey, which clearly shows more than century back that the ancestors of Ajay Kumar Jha were in possession of Pokhar on the said land in dispute. In the case of Raja Nand Jha, the counter affidavit virtually states that as the petitioner had failed to produce the Zamindari return, their plea could not be accepted. In my view, these are not objective findings before the action could be taken in terms of Section 4(g). The first objective finding that has to be given by the Collector is that there has been a settlement by the ex-landlord and that settlement has been done after specified date in the year 1946. In absence of these two findings, the Collector has no jurisdiction in the matter unless he came to a finding that the petitioners have forcefully entered upon the land in question after the specified date in 1946 or without any valid statements (sio--settlement?) and are mere trace pass (sio--tresspassers?), then he could take action in terms of Section 4(g). No such case has been set up by the State. Thus, in my view, in both the cases the orders of

the and the (sic) District Collector in both the cases allowing the State Appeal cannot be justified in fact and in law.

4. In the result, the order dated 26.10.2006 passed by the Collector, Madhubani in 4(h) Appeal No. 71/2005-06 and the order dated 26.10.2006 passed by the Collector, Madhubani in 4(h) Appeal No. 72/2006-06 are hereby set aside. The writ petitions are allowed.