
(2006) 04 PAT CK 0051
In the Patna High Court
Case No : C.W.J.C. No. 4376 of 2005

Rajendra Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Citation : (2006) 04 PAT CK 0051

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This petition under Article 226 of the Constitution challenges an order, dated 20.3.2005 passed by the Collector, Siwan in Revision No. 01 of 2003-04. By the impugned order the Collector cancelled the Parcha granted to Lutawan Sah, the father of the present petitioner under the provisions of the Bihar Priviledged Persons Homestead Tenancy Act in respect of 10 dhurs of land of plot No. 7029 under khata No. 1303 situate at village Titara, Anchal Mairwa in the district of Siwan.

2. The case has many unusual features but the undeniable facts may be stated as follows. Lutawan Sah made an application for grant of Parcha for the disputed land that was registered as P.P.H. Case No. 49 of 1974-75 before the Circle Officer, Mairwa. The orders passed in the proceeding and the enquiry report by the Halka Karmchari and the Circle Inspector are brought on record as Annexure "A" to the counter affidavit filed by respondent No. 6. The enquiry report makes interesting reading and the relevant portion from it is reproduced below:

BHUTPURVA BHUSWAMI SE TO MULAKAT NAHI HUI. SAWIKAR NAHIN KARTE HAIN KI SRI LUTAWAN SAH PAAR PRIST PAR ABHILIKHIT VAS BHUMI PAR RAH RAHE HAIN PARANTU ASTHANIYE JAANCH PARTAL TATHA SRI LUTAWAN SAH KE DWARA UPASTHAPIT RASIDON / DASTAWEZON KO DEKHNE TATHA UN KE DWARA PESH KITE GAI GAWAHON (JIN KA NAAM AUR PATA UPANT DIYE GAI HAIN) KE BEYAN SE ASPAST HAI KI WE IS VASBHUMI PAR ARSE SE RAH RAHE HAIN. IN KA IS VAS BHUMI SE KOE SAMBANDH NAHIN HAI. AB ANUPATTAH RUPIYA DAS PAISE SOLLAH MALGUZARI KE ROOP MAIN UN KE

DWARA DEY HAI.

UPARYUKT TATHYON KE ADHAR PAR MAIN SIFARISH KARTA BOON MERA KHEYAL HAI KI SRI LUTAWAN SAH KO PARTHIT PARCHA DE DIYA JAI. DENE KA PRASHAN HI NAHIN OOTHTA AUR SAMBANDHIT BHOOSWAMI KO OON KE DWARA DE MALGUZARI SE CHOOT DENE AUR OON KI CHATI PURTI KARNE KI KARWAI KI JAI.

3. On the basis of this report the Circle Officer passed the order stating that the applicant was in occupation (Dakhaldar) of the disputed land for the past twenty years and he was a privileged tenant. He should be given parcha of the land.

4. The observation that the applicant was a privileged tenant or his occupation of the land was with the consent and approval of the land holder and he was not there as a trespasser or squatter is neither supported by the enquiry report nor by any other material.

5. The enquiry itself was made plainly in violation of Rule 5 of the Bihar Privileged Persons Homestead Tenancy Rules.

6. From the records of the proceeding in which Lutawan Sah was granted Parcha it is evident that:

(a) No notice in Form "F" was issued to the parties as required by Sub-rule (2) of Rule 5.

(b) No record was maintained of the evidence produced in course of the enquiry.

(c) There was no enquiry as to whether or not Lutawan Sah was in possession of any other homestead.

(d) There was absolutely no material to support the finding that Lutawan Sah was a privileged person.

(e) There was no finding that Lutawan Sah was living on the disputed land with the consent and approval of the land holder and was not a squatter or trespasser and was consequently covered by the definition of privileged tenant within the meaning of the Act.

7. It is well settled that the failure to hold an enquiry following the provisions of Rule 5 and the failure to record the findings as indicated above makes the entire proceeding vitiated and a Parcha granted in such a proceeding is quite unsustainable. See (i) Hiralal Vishwakarma v. Vishwanath Sah 1978 P.L.J.R. 398, (ii) Bhagrashan Rai v. State of Bihar and Ors. 1979 B.L.J.R. 136 and (iii) Rajeshwar Prasad and Others Vs. State of Bihar and Others, .

8. Be that as it may the Parcha in respect of the disputed land was granted to Lutawan Sah in the year, 1975 and according to the petitioner the matter became final since the order granting Parcha was not challenged before the civil court or by filing a writ petition before this Court. (At that time there was no provision for appeal or revision in the Act itself).

9. On 13.12.1990 respondent No. 6 claiming to be the original tenant and land holder of the land in question made an application (Case No. 1 of 1990-91) before the Circle Officer, Mairwa for cancelling the parcha granted to Lutawan Sah. The matter was once again enquired by Halka Karmchari and the Circle Inspector and on the basis of the enquiry report and after hearing the parties the Circle Officer passed the final order on 19.1.1991 cancelling the parcha earlier given to Lutawan Sah. In that order the Circle Officer found and held that the disputed land was not being used by the parcha holder for any homestead purpose. He had his own pucca house in which he lived along with his family members just across the road from the disputed land and that he was a wealthy person. On 2.2.1991 the Subdivisional Officer on his visit to Mairwa directed the Circle Officer to put a stay on his order, dated 19.1.1991 and to send the record of the case to the Dy. Collector Land Reforms who was the appellate authority. The Dy. Collector Land Reforms on 12.4.1991 passed an order that the Circle Officer had no power to rescind the order passed by his predecessor in office. The matter was referred to the Govt. Pleader and vide letter, dated 23.3.1993 he gave his opinion that the order of the Circle Officer passed on 19.1.1991 cancelling the Parcha granted to Lutawan Sah was a valid order. It was in that jumbled-up situation that respondent No. 6 filed a petition before the Collector, Siwan u/s 21 of the Act on which the impugned order was passed canceling the parcha given to Lutawan Sah, the father of the present petitioner.

10. From the impugned order it appears that the matter was hotly contested before the Collector. He heard the parties at length and in course of the proceeding also made a spot inspection. The findings of inspection are recorded in para 11 of the impugned order which is as follows:

On the 20th of March, 2005 the Collector visited village Titra of Anchal Mairwa and saw plot No. 7029 as well as plot No. 7032 which are just opposite to each other across the road just 100 feet away from the National Highway passing through village Titra.

(b) It is absolutely correct that the parcha dhari has built 5 pucca shop on plot No. 7029.

(c) Further that at the time of inspection two of the fine shops were actually rented out and in one shop there is a Kirana Store paying a rent of Rs. 200 and in another there is a tailor shop paying a rent of Rs. 150.

(d) That both the tenants have been running their establishment for more than six months.

(e) Just opposite these five shops is the house of Lutawan Sah which is a pucca house.

(f) From the enquiry it was clear that the owners were rich persons although Lutawan Sah is since deceased his son Rajendra Sah now runs the establishment.

11. In the light of the above findings the Collector analysed the provisions of the

Act and relying upon a number of decisions of this Court held that the land under the Parcha was granted to the Parcha holder for homestead purpose and by letting it out to others on commercial basis he violated not only the provisions of the Act but its very object and purpose. He accordingly gave direction for cancelling the Parcha.

12. Mr. S.S. Dwivedi, Senior Advocate appearing on behalf of the petitioner strongly assailed the Collector's order mainly on two grounds. He first submitted that the parcha granted to the petitioner's father had attained finality long before the revisional power of the Collector u/s 21 of the Act was brought on the statute book on 25.9.1989. The order granting parcha, therefore, could not be questioned or examined u/s 21 and hence, the order of the Collector was completely without jurisdiction. In support of the submission he relied upon a bench decision of this Court in *Om Prakash Singh Vs. The State of Bihar and Others*, .

13. He also submitted that a privileged tenant could be ejected only on grounds enumerated in Section 8 of the Act. The petitioner had done nothing in derogation of the provisions of Section 8 and, thus, the impugned order was violative of its provisions.

14. Both the submissions made on behalf of the petitioner appear to me to be highly spacious and I am unable to accept them for a moment. Rather than the jurisdiction of the Collector I am more concerned about the conduct of the Parcha holder(s). From the records of Case No. 49 of 1974-75 it is evident that the parcha was granted to Lutawan Sah illegally and the Collector's findings on spot verification revealed as to what use the land is put by the parcha holder(s). It is, thus, evident to me that both the induction of Lutawan Sah on the land and the use to which he put the land amount to a fraud upon the Act and the subversion of its very object and purpose. It is well settled that even if the order impugned is held to be bad or illegal the writ court may decline to exercise its discretion and let the order stand because its setting aside would lead to a situation that is equally illegal. In this case if the Collector's order is set aside it would restore a situation that is not only illegal but plainly subversive of the Act.

15. There is also no substance in the submission based on Section 8 of the Act. Mr. . Dwivedi submitted that Clause (a) of Sub-section (1) of Section 8 provides that the privileged tenant could only be evicted on the ground that he had used the holding or any part of it in a manner which rendered the holding unfit for the purposes of the tenancy. He contended that subletting did not render the holding unfit for tenancy. The submission is completely misconceived. The expression "tenancy" used in Section 8(1)(a) plainly means homestead tenancy which is the sole object and purpose of the Act. This position would also be evident from Section 10 of the Act that allows a privileged tenant to to sublet his holding to any privileged person to use it for residential purposes.

16. Moreover the issue is concluded by a bench decision of this Court in

Bishwanath Singh Vs. State of Bihar and Others, . In the case of Bishwanath Singh the establishment of a wood business by the parcha holder was held to be violative of the provisions of the Act. Here the parcha holder has constructed shops and has let those out to earn rental. I cannot conceive of a greater abuse of the provisions of the Bihar Privileged persons Homestead Tenancy Act. Thus, viewed from any angle the petitioner has no right to stay on the land.

17. I, thus, find no merit in this writ petition. It is dismissed with costs quantified at Rs. 5.000/- payable to the Bihar State Legal Services Authority. A receipt showing payment of the costs to the Authority must be filed within one month from today failing which the Collector is directed realise it from the petitioner as arrears of land revenues.