
(2014) 08 PAT CK 0038

In the Patna High Court

Case No : LPA No. 28 of 2014 in CWJC No. 16583 of 2013

Rajesh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2015) 3 PLJR 12

Hon'ble Judges : I.A. Ansari, J;S.P. Singh, J

Bench : Division Bench

Advocate : Rajesh Kumar, Advocate for the Appellant; Arvind Kumar, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

S.P. Singh, J.

1. Respondent No. 6 of C.W.J.C. No. 16583 of 2013 has filed the instant appeal against the order, dated 5.12.2013, passed by a learned Single Judge of this Court, whereby writ petition, filed by respondent Nos. 6 and 7 herein, has been allowed and order, dated 20.3.2012, of the Deputy Collector, Land Reforms, Sadar, Patna, in Land Dispute Resolution Case No. 93 of 2011-12, directing demolition of shops, belonging to the writ petitioners, has been set aside. The case of the writ petitioners before the learned Single Judge was that the Deputy Collector, Land Reforms, could not have directed demolition of their shops without hearing them, and much less without making them a party, in the Land Dispute Resolution Case No. 93 of 2011-12 filed by the appellant herein.

2. The learned Single Judge accepted the contention of the writ petitioners and quashed the order of Deputy Collector, Land Reforms, so far as it affected their rights with liberty to respondent No. 6 in the writ petition (i.e., the appellant herein) to move the Deputy Collector, Land Reforms, for re-hearing of the case after adding them as parties in the aforesaid case.

3. The case of the writ petitioners was, in brief, thus: The writ petitioners, along

with their sister, jointly purchased a piece of land measuring 7 1/2 decimals bearing Survey Plot Nos. 1457 and 1459 bearing Khata Nos. 342 and 326 respectively appertaining to Tauzi No. 5123, Thana No. 2 situated in Mauza-Mainpura, P.S.-Patliputra, District-Patna. After mutation, they built a house and 4 (four) shops on it. The house was built on the south of the pucca drain, which was constructed through their land, and the said 4 (four) shops were built on north of the said drain in the year 1984. Respondent No. 6 (i.e., the appellant herein) purchased a house, on 3.7.2010, on north of the said shops. Respondent No. 6 (i.e., the appellant herein), soon after purchase of the property, started raising some dispute with respect to the purchased property of the petitioners and their sister. As the writ petitioners and their sister did not relent, respondent No. 6 (i.e., the appellant herein) filed, on 14.12.2011, Land Dispute Resolution Case No. 93 of 2011-12, before the Deputy Collector, Land Reforms, wherein the sister of the writ petitioners only was made a party. The Deputy Collector Land Reforms, vide its order, dated 20.3.2012, directed for demolition of the said four shops, though, according to the writ petitioners, out of the said four shops, three shops belong to the writ petitioners. Being aggrieved, the writ petitioners challenged the said order in the writ petition aforementioned.

4. The further case of the writ petitioners was that they, along with their sister, Pramila Singh, had jointly purchased the said piece of land in 1982 and they jointly constructed four shops, in the year 1984, which were partitioned in the year 1994 and 3, out of 4 shops, under demolition, fell in their share, whereas one of the shops fell in the share of their sister, Pramila Singh. However, the appellant purchased his property, in the year 2010, with open eyes as against his neighbours and the said shops, which had been in existence for over a decade. Furthermore, the appellant herein (i.e., respondent No. 6 in the writ petition) could not have made a claim to any portion of the land on which the shops existed without making the writ petitioners party respondents before the Deputy Collector, Land Reforms. The writ petitioners contended that the case, filed by the appellant before the Deputy Collector, Land Reforms, was, thus, not maintainable.

5. The learned Single Judge accepted the submissions of the writ petitioners that they were necessary parties to the proceedings before the Deputy Collector, Land Reforms, but no notice was issued to them and thus, the order, passed in their absence, would not bind them and the order passed in Land Dispute Resolution Case No. 93 of 2011-2012, cannot operate against them.

6. The appellant reiterates before us his submissions made before the learned Single Judge and contends that it was for Pramila Singh to have made a request before the Deputy Collector, Land Reforms, to add the writ petitioners as party. He further submits that the writ petitioners have made construction in excess of the area purchased by them.

7. It is evident from the materials on record that the writ petitioners, along with their sister, Pramila Singh, had purchased a piece of land in the year 1982 and

jointly constructed a house and four shops in the year 1984. The appellant claims that some portion of the shops abutted on his land. The Deputy Collector, Land Reforms, accepted the contention of the appellant and directed demolition of the four shops built by the writ petitioners and their sister. The writ petitioners claim that on partition, in the year 1994, three, out of the four shops, came in their share and possession; whereas one shop went into the share of their sister, Pramila Singh. It is not in dispute that the land was jointly purchased by the writ petitioners and their sister and construction of the house and shops were also made jointly.

8. In the circumstances indicated above, the appellant could not have validly agitated his claim, in respect of any portion of the land on which shops existed, without making the writ petitioners party before the Deputy Collector, Land Reforms. Thus, the impugned order, passed by the Deputy Collector Land Reforms, in Land Dispute Resolution Case No. 93 of 2011-12, directing demolition of aforesaid shops is not sustainable in law for non-joinder of necessary parties.

9. It is trite that no order to the detriment of a person, more so, one, who may be visited by civil consequences, can be passed, without affording him an opportunity of hearing, which was exactly the case of the writ petitioners before the learned Single Judge.

10. Situated thus, we do not find any infirmity, factual or legal, in the order of learned Single Judge setting aside the order, dated 20.3.2012, passed by the Deputy Collector, Land Reforms, in Land Dispute Resolution Case No. 93 of 2011-12, in so far as it affected the rights of the writ petitioners. The appeal is dismissed with liberty, as granted to the appellant herein, by the learned Single Judge to move the Deputy Collector, Land Reforms, for rehearing of the case after adding the writ petitioners as parties.

I.A. Ansari, J.

I agree.