
(2015) 07 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8313 of 1995

Ram Janki and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2015) 07 PAT CK 0044

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Advocate : Rajendra Prasad, Senior Advocate, Ritesh Kr., Pramod Kr. and Bimal Kr. Datta, for the Appellant

Final Decision : Allowed

Judgement

N.P. Singh, J.—This writ petition is directed against the order of the Collector, Siwan dated 28.08.1995 (Annexure 3) and the follow up action being sought to be taken thereunder. Let it be noted that the order of the Collector aforesaid was not an order passed in any proceeding, statutory or otherwise but was an order passed while sitting in Janta Darbar.

2. Heard learned counsel for the petitioners, State and the Bhoodan Yagna Committee. No one is present on behalf of the private respondents who have been noticed and had appeared.

3. The case of the petitioners is that the lands in question admeasuring about 3.96 acres appertaining to Plot No. 609, Khata No. 75 in Village - Barka Manjha, Revenue Thana No. 48 in the district of Siwan was originally recorded as Ghair Mazarua Malik in revisional survey khatian belonging to the Hathua Estate, the Zamindar. It was settled with petitioner No. 1 in the year, 1939 by the ex landlord on payment of Nazrana of Rs. 500/-, receipt whereof is Annexure 1. After vesting of zamindari, petitioner, being in cultivating possession, it is alleged that Jamabandi was created in the name of petitioner No. 1 and rent started to

be paid to the State of Bihar which has been paid upto date. All of a sudden, it came to the knowledge of the petitioners that on 22.08.1995, some mischievous persons moved the Collector -cum- District Magistrate, Siwan stating that they were landless persons and, pointing to petitioners' land aforesaid, stated that the said land was land given to Bhoodan Yagna Committee by the ex landlord and those lands should be distributed to them. Without any enquiry or without drawing up any proceedings, Collector straightway directed that the Parchas be issued to those private respondents in this case who have been noticed. It is at that stage that petitioners moved this Court in this writ petition.

4. It is submitted that the lands are not lands donated by the ex landlord to the Bhoodan Yagna Committee. Even otherwise, the lands having been settled with the petitioners long before vesting of zamindari, the ex landlord was incompetent to donate the land to the Bhoodan Yagna Committee. It is further submitted that even otherwise, if any land is sought to be donated to the Bhoodan Yagna Committee then under the provisions of the Bihar Yagna Act 1954, first in terms of Sections 10 and 11, there has to be a statutory enquiry in respect of the said land after inviting objections and then the Danpatra is to be confirmed. The objectors, at that stage, would have had opportunity to show that Danpatra was invalid in law. It is stated that no proceedings were ever initiated in respect of the said lands. It is then submitted that once Danpatra is confirmed and if there are found encroachers thereon then again the Act prescribes, as contemplated under Sections 16 to 22A of the Act, for determining their rights after objections and then passing orders for the eviction. It is stated that none of this was ever done. Reliance has been placed on the case of Bishan Das and Others Vs. The State of Punjab and Others, AIR 1961 SC 1570 : (1962) 2 SCR 69 .

5. In spite of notice and appearance of Bhoodan Yagna Committee, the State of Bihar and the private respondents to whom Parchas were intended to be granted, there is no counter affidavit in the 20 years of this writ petition remaining pending.

6. Having considered the matter, in my view, the writ petition has to succeed. As noted above, learned counsel for the petitioners is correct in stating that first any land that is purported to be donated under the Act through a Danpatra is supposed to be enquired into after objections and then Danpatra is to be confirmed. If subsequently, it is found that there are encroachers thereon then again, there is statutory provisions and procedures by which, after due enquiries, orders for eviction have to be passed. Thus, both for confirmation of Danpatra and for eviction of trespassers, law lays down a procedure. Article 300A of the Constitution is clear. It provides that no one shall be deprived of his property except by authority of law and procedure established by law. It is not alleged that petitioners were perfecting their possession when this happened. No one is disputing that, for decades, petitioners were on the land. If at all, they were civil trespassers. Even if that be so, they can only be removed in accordance with law and the procedure established by law. I cannot do better than quote from the

case of Bishan Das (supra), the warning and the anxiety shown by the Court in this regard:

"(12) Learned Counsel for the respondents has drawn our attention to the statement of Ramji Das made in 1925, and the order of the Revenue Minister dated December 13, 1954, and has contended that Ramji Das himself admitted that he was a mere trustee. Be that so; but that does not give the State or its executive officers the right to take the law into their own hands and remove the trustee by an executive order. We must, therefore, repeal the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order."

7. Thus being the position, I have no option but to allow this writ petition restraining the State or the Bhoodan Yagna Committee from disturbing the settled possession of the petitioners except under authority of law and under procedure established by law. Consequently, the Parchas issued to the private respondents would stand cancelled.