
(2014) 02 PAT CK 0125

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23637 of 2013

Ram Naresh Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-02-2014

Acts Referred:

Citation : (2014) 2 BBCJ 100

Hon'ble Judges : Mr. Navaniti Prasad Singh, J.

Bench : Single Bench

Advocate : M/s Sanjay Singh, Sr. Advocate and B.J. Jha, Advocate, for the Petitioners; Mr. Prabhat Bharti, A.C. to G.P, for the Respondents

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral)—By this writ petition, petitioners challenge the order passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur dated 08.10.2013 as contained in Annexure 2 in BLDR Appeal No. 337 of 2012 (State of Bihar v. Ram Naresh Singh & Ors.). Amendment application has been filed being I.A. No. 830 of 2014, by which petitioners have brought on record the subsequent orders directing them to vacate, demolish and remove their houses pursuant to order of the Divisional Commissioner. A counter affidavit has been filed by the State taking stand that the order of the D.C.L.R. has merely been set aside. Divisional Commissioner has not decided the rights of the parties. Amendment application aforesaid is allowed. Let it be treated as a part of the main writ petition.

2. Heard the parties and with their consent this writ petition is being disposed of at this stage itself.

3. Petitioners have small holdings and are residing in houses built by them. Circle Officer (respondent no.4) filed an application before the D.C.L.R. under the Bihar Land Dispute Resolution Act, 2009 (for short "the Resolution Act"), inter-alia, alleging that these petitioners have encroached upon government land and as

such they should be ordered to vacate the same. Petitioners were noticed. Petitioners appeared and produced before the D.C.L.R. reports and copies of recent revisional survey, wherein these plots were specifically shown in possession of the petitioners. A public road was shown else where in the neighbourhood. What the Circle Officer mischievously was trying to do, was relying upon the original revisional survey showing that there existed a road, which as per new revisional survey was occupied by the petitioners.

4. The stand of the petitioners was that the old cadastral survey was of and about the year 1893. Thereafter, in 1934 because of earth quake, the topography of the area changed. Roads were re-laid and upon revisional survey being done, it was clearly found that the petitioners had been settled these lands by the ex-landlords and road had been shifted. Noticing this mischief and also the dispute with regard to right, title and interest in land, the D.C.L.R., by an elaborate order, refused to entertain the application of Circle Officer and dismissed the matter. This was in Case No. 29 of 2011-12 by order dated 10.04.2012. State being aggrieved appealed before the Divisional Commissioner, who set aside the said order dated 10.04.2012. This is what has brought the petitioners to this Court.

5. As noticed above, during the pendency of the writ petition, the petitioners were asked to vacate the land pursuant to some assurance given before the Legislature specially on the ground that even though this writ petition was pending, this Court had not granted stay. These facts, as noticed above, were brought on record by amendment application, which, as aforesaid, has been allowed.

6. Mr. Sanjay Singh, learned senior counsel appearing in support of the writ petition submits, with reference to provisions of the Resolution Act, 2009, firstly that the State cannot move an application seeking adjudication in the matter. He submits that if any one is occupying Government land, then the appropriate Statute to deal with it would be Public Land Encroachment Act and not the Resolution Act. He submits that in the facts of this case, it is not alleged that the petitioners had unauthorizedly encroached upon the Government land, for case of the State as put forward by Circle Officer himself was that the plots in the revisional survey showed petitioners the occupiers shifting public road. This is a fact noticed in the new revisional survey. What virtually the Circle Officer seeks to challenge is the correctness of the revisional survey and that too after almost 50 years thereof. This act cannot be used to circumvent these facts.

7. Secondly, it is submitted that that the D.C.L.R., noticing the controversy, was right in holding that the plea of the State involved determination of right, title and interest in property. He referred to section 4(5) of the Resolution Act, which clearly inhibits the authorities under this Act to decide a dispute, which involves complex question of right, title and interest and rightly so because that is the jurisdiction of the civil court. Thus, once the D.C.L.R. so found then the Divisional Commissioner ought not to have entertained the appeal.

8. State has filed a counter affidavit, wherein what it has said is that the Divisional Commissioner had rightly acted. He has merely set aside the order of the D.C.L.R. What State in the counter affidavit tends to submit is that the matter is still to be adjudicated again by the D.C.L.R., but unfortunately that is not true situation because now petitioners are faced with notices as contained in Annexure "3" series to the amendment application asking them to vacate the land by demolishing and removing their houses in view of the Divisional Commissioner's order. It is unfortunate that State seeks to play snakes and ladder with this Court.

9. Having considered the matter, the writ petition must be allowed and the order of the Divisional Commissioner dated 08.10.2013, as contained in Annexure 2 as aforesaid, has to be set aside and the order passed by the D.C.L.R. has to be restored and sustained.

10. From the facts noted above, it would be seen that in effect what the Circle Officer wanted the D.C.L.R. to do is to declare the new revisional survey, which was made in the year 1960 or thereabout i.e. 50 years back and which survey was done by the State itself, as void as against the State. It was clearly a fraud that was being played by the Circle Officer and unfortunately the Divisional Commissioner fell in trap. Whether revisional survey was correct or not, was open to challenge at the relevant time. If at all the State had any problems as it involved serious disputed question of title, the civil court was the appropriate authority, but apparently State was aware that the petitioners had been in possession of that land for over 60-70 years if not more and it would have been impossible for the State to approach civil court at this late juncture and as such they could not invoke the provision of Public Land Encroachment Act because the survey entries were in favour of the petitioners and, thus, this subterfuge was adopted. That is a fraud upon the Statute and the statutory right. Government and its employees are not expected to act in such a manner. Thus, I have no hesitation in setting aside the order of the Divisional Commissioner restoring the order of the D.C.L.R.

11. The writ petition is, accordingly, allowed and Annexure 2 is quashed.