
(2003) 02 JH CK 0079
In the Jharkhand High Court
Case No : CWJC No. 3401 of 1995 (R)

Ram Sagar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2(1)
Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 156

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : A.N. Deo, for the Appellant; Manjul Prasad and S.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. A.N. Deo, learned counsel for the Petitioner, Mr. Manjul Prasad, who states that he is appearing in this case for the State-respondents after having obtained consent of Mr. Pradip Modi, learned Government Pleader No. 1; and Mr. S.K. Sharma, learned counsel for respondent Nos. 3 and 4.

2. The petitioner prays for issuance of a writ of mandamus commanding the respondents to explain and show cause as to why action was taken by the respondent No. 2 under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to for the sake of brevity as the said Act) and- as to why purchas were granted to the respondent No. 3 and 4 from out of the raiyati land of the petitioner. The petitioner has also prayed that the said purchas be quashed and/or cancelled inasmuch as according to the petitioner, the respondent No. 2 (Circle Officer) had no jurisdiction to grant purchas in respect of tile petitioner's raiyati land in favour of the respondent Nos. 3 and 4, who, according to the petitioner, are not privileged persons within the meaning of Section 2(1) of the said Act. The petitioner further makes a grievance that the respondent No. 2 has resorted to a peculiar action inasmuch as while granting

purchas to the respondent Nos. 3 and 4, he has, by reason of the impugned order dated 17.5.1994 as contained at Annexure 3, has ordered "reduction" of the land to the extent of 0.21 decimals from 1.28 acres of land which the petitioner had purchased way back in the year 1945.

3. Let it be recorded that this writ application was admitted on 15.11.1996 and personal service was effected upon the respondent Nos. 3 and 4 as is apparent from the note of the office dated 20.6.1996. Even thereafter no counter-affidavit has been filed either by the State-respondents or by the private respondents Nos. 3 and 4. Consequently, this Court had no option but to proceed with the matter on the basis of the pleadings made in the writ application. However, opportunity was given to Mr. S.K. Sharma, who represented the respondent Nos. 3 and 4 to present their case.

4. The facts as stated in the writ application and which are relevant to be noted are that on 8.7.1945 the petitioner's father (Late Choudhary Nirmal Prasad Singh) purchased 1.28 acres of land situated on Khata No. 38 appertaining to Plot Nos. 380, 390, 642 and 643. The photocopy of the certified copy of the registered sale deed No. 441 has been marked Annexure 4 to the writ application.

5. The petitioner has stated that after the aforementioned purchase in the year 1945, his father came in cultivating possession and after his death, the petitioner inherited the property and he is in possession and also cultivating the land, which according to the petitioner is his only source of livelihood.

6. The petitioner has also stated that after the death of his father, he constructed a store room ("Bhandar") and also had a well constructed for purposes of irrigation.

7. The petitioner has stated that some time in the year 1979-1980 a Basgit Case No. 2/79-80 was instituted without any notice or knowledge to the petitioner and in that case, the respondent No. 2 (Circle Officer) with ulterior motives-settled 0.10-1/2 decimals of land out of Plot Nos. 380 and 390 favouring Amjad Mian (respondent No. 3). He similarly settled 0.10-1/2 decimals from the same plots favouring Bibi Sukri (respondent No. 4). According to the petitioner, these two settlements made through is-suance of Basgit Purchas were out of the raiyati land belonging to the petitioner and it had the effect of upsetting the right, title and interest which the petitioner and his father had acquired on the basis of a registered sale deed through which the property had passed unto them in accordance with law. Mr. A.N. Deo, learned counsel for the petitioner submits that his title to the aforementioned land had been perfected not only through execution of a registered deed of sale but also by being in continuous possession of the land to the knowledge of everybody. He further submits that such a right acquired could not have been upset or infringed by a Revenue Officer and that too of the rank of a Circle Officer. The petitioner has stated that the fact relating to the settlement of land in the aforesaid manner came to his knowledge in the year 1994 when on the basis of the aforesaid Basgit Purchas, the respondents

came to dispossess him from the land and the house occupied by him and wanted to take possession not only of the land but also of the house. The petitioner resisted and went to the office of the Circle Officer and filed an application for certified copy of the orders passed in Basgit Case No. 2/79-80 on 22.8.1994 but that application was rejected on 24.8.1994 stating that the records were not in custody of the Assistant incharge. Thereafter the petitioner filed an application before the Circle Officer and requested him to measure the land through a Government Amin. Upon receipt of the aforementioned application for measurement of the land, the Circle Officer registered "Amin Appointment Case No. 49/93-94" and by an order dated 17.5.1994 ordered that rent receipts will be issued for the reduced area after reducing the area proportionately against the settlements of 0.21 decimals made in favour of respondent Nos. 3 and 4. In the same order, the respondent No. 2 stated that the raiyati land belonging to the petitioner had been settled in favour of the respondent Nos. 3 and 4 by issuing Basgit Purchas under the provisions of the said Act. A photocopy of the order dated 17.5.1994 is Annexure 3. This Court has carefully gone through and perused the contents of Annexure 3 and certain important features of the said order does require to be taken note of. They are as follows :--

(a) The Circle Officer admits at the very opening sentences that the applicant (meaning thereby the petitioner) had purchased 1.28 acres of land on the Plots and Khatas mentioned above by a registered deed of sale dated 9.7.1945 vide Registration Deed No. 441.

(b) He further states at paragraph 2 of the said order that the Halka Karmachari had submitted a report stating that the land in question was recorded in the name of the Great Grand Father of the respondent Nos. 3 and 4, i.e., Rijua Jolha in the survey, who had sold the land to Choudhary Nirmal Singh (father of the petitioner) and thereafter rent receipts had been issued.

(c) The Circle Officer further states at paragraph 3 of his order that at the time of execution of the sale deed the father of Amjad Mian was in possession of the land in question and that the purchaser Choudhary Nirmal Prasad Singh had never got possession of the land from him.

(d) The Circle Officer further states that Jamabandi was continuing in the name of Nirmal Prasad Singh and therefore receipts were being Issued for the entire area of 1.28 acres in his name.

8. On the basis of the aforesaid four statements, the Circle Officer comes to the conclusion after having taken into consideration the report of the Halka Karmachari as also another report which appears to have been prepared by himself and after perusing documents, he passed an order that the Jamabandi in relation to 1.28 acres running in the name of Choudhary Nirmal Prasad Singh should be reduced to the extent of 0.21 decimals of land and he ordered the issuance of Basgit Purc/ios in favour of the respondents Nos. 3 and 4.

9. This Court does not understand as to how and on what basis did the Halka Karmachari make a report that from the time of execution of the sale deed the Petitioner was never given possession of the land and that possession remained with Amjad Mian. The order of the Circle Officer does not indicate as to whether the petitioners were given any opportunity of hearing at the time when the so called inquiry was conducted either by the Halka Karmachari or by the Circle Officer himself.

10. It appears that this matter has been handled by the Circle Officer in an extremely slipshod manner and whoever the Circle Officer was at that time had apparently exhibited an extreme irresponsibility in relation to his duties. This Circle Officer appears to be totally ignorant of the law of the land inasmuch as the deed - of sale which was registered way back as early as in the year 1945 did confer a valid right, title and interest upon the petitioner. It continued for so many years and after about 40 (forty) years, these Revenue Officers came to the conclusion and that too on the basis of one sided unilateral inquiries, that the petitioner was never in possession! The sale deed was never annulled nor was it ever challenged in a competent Court of civil jurisdiction and that being the position, these Revenue Officers cannot be allowed to upset a valid acquisition of title. The entire case therefore appears to be not only arbitrary but also lopsided and resorted to for oblique reasons. Consequently, the impugned order dated 17.5.1994 as contained at Annexure 3 is set aside and quashed.

11. The Writ Application is allowed. However, there shall be no order as to costs.