
(2015) 12 PAT CK 0085

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4359 of 1994

Ram Tapeswar Das

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Citation : (2016) 2 BBCJ 342

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Amrit Abhijat, Advocate, for the Petitioner; Mr. Anjani Kumar, AAG 6, Mr. Raj Nandan Prasad, SC9, Mr. Ashok Kr. Prasad, Mr. Murli Manohar Singh, Mr. Saujay Kr. Sharma and Mr. Yogendra Kumar, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. Jyoti Saran, J.(Oral)—Heard Mr. Amrit Abhijat, learned counsel for the petitioner, learned counsel for the State and Mr. Yogeshwar Kumar, learned counsel appearing for the private respondents.

2. The petitioner in this writ petition filed under article 226 of the Constitution of India has prayed to set aside the order of settlement passed by the respondent-Settlement Officer in Settlement Case No. 5 of 1992-93 in so far as it orders for settlement of the plot of the petitioner bearing Plot Nos. 136 and 137 of Khata No. 107 at village Mohanpur Math P.S. Harlakhi in the district of Madhubani. It is not in dispute rather is an admitted position that by virtue of the settlement order issued in favour of 50 persons, a portion of the land so claimed by the petitioner stands occupied and the beneficiaries have registered appearance through a counsel Mr. Yogendra Kumar.

3. Mr. Amrit Abhijat learned counsel for the petitioner has submitted that the matter relates to the district of Madhubani and the petitioner is the Mahant of the public trust registered under the Bihar Hindu Religious Trust Act, 1950 and is

owner of the several plots of land in and across the State. He submits that the present dispute relates to Plot No. 136 and 137 of Khata No. 107 in Mauza Mohanpur in the district of Madhubani and whereas Plot No. 136 admeasures 3 acres and 58 decimals of which settlement orders has been passed in respect of 2 acres and 24 decimals, therefrom, Plot No. 137 admeasures 2 acres 3 decimals and 1 acre and 93 decimals there from have been utilized by the respondents for the settlement in question. Mr. Amrit Abhijat learned counsel for the petitioner with reference to the proceedings present at Annexures- 1 and 2 submitted that a ceiling proceeding was initiated against the trust under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Ceiling Act") giving rise to Land Ceiling (Surplus) Case No. 17 of 1973-74 but the said proceeding was dropped by the Sub Divisional Officer vide order passed on 31.3.1981 placed at Annexure-1 inter alia on grounds that the land possessed by the petitioner trust was found to be the below the ceiling limit. He next refers to the district gazette dated 1.2.1982 to submit that Schedule-II of the Gazette confirms that the respondents being satisfied that the petitioner owned 22 acres and 3 decimals of land dropped the proceedings. Plot No 136 admeasuring 3 acres and 58 decimals is mentioned in the Schedule. Schedule III of the said Gazette lists such of the plots which was donated by the trust. To support the claim of the petitioner over Plot No. 137, learned counsel has relied upon a copy of the continuous Khatian placed at Annexure-6 to the supplementary affidavit and with reference thereto it is contended by Mr. Abhijat that the action of the respondents is engulfed with illegality inasmuch as they first have been initiated proceedings for cancellation of the Jamabandi of the petitioner giving rise to Jamabandi Cancellation Case No. 1 of 1992-93 and though the Circle Officer vide order passed on 2.12.1992 (Annexure-2) did recommend for cancellation thereof, but there is nothing on record of the proceedings to show whether the recommendation was acted upon. He submits that the respondents proceeding on the premise that the Jamabandi of the petitioner stood cancelled, has further perpetuated the illegality to initiate Settlement Case No. 5 of 1992-93 and where under they have proceeded to settle 2 acres and 24 decimals from Plot No. 136 and 1 acre 93 decimals from Plot No. 137 of the petitioner in favour of the private respondents without any notice or opportunity of hearing to the petitioner either at the stage of cancellation of Jamabandi or at the stage of passing of the order in the settlement proceeding.

4. The argument of Mr. Abhijat has been contested by the learned counsel for the State as well as learned counsel for the respondents with reference to paragraph 12 and 13 of the supplementary counter affidavit to submit that the recommendation was acted upon and the jamabandi of the petitioner was cancelled by the District Magistrate on 29.12.1992 whereby the Jamabandi No. 227 running in the name of Mahant Ram Sharan Das in respect of Plot Nos. 136 of khata No. 107 having an area of 3.84 acres was cancelled.

5. Mr. Yogendra Kumar appearing for the private respondents has contested the

argument of Mr. Amrit Abhijat to submit that the settlement was made under the provisions of the Bihar Privileged Person Homestead Tenancy Act, 1947 (hereinafter referred to as "Act of 1947") and which also provides a remedy for an aggrieved person against settlement but the alternative remedy has not been exhausted by the petitioner. He further submits that following the order of settlement passed as back as in 1993 that the beneficiaries have made their constructions on the plots so allotted and any interference with their possession at such belated stage would run counter to the object of the "Act of 1947" was enacted. Learned counsel for the State and private respondent however have not been able to demonstrate that the petitioner was given a hearing in the settlement matter.

6. This writ petition was filed in 1994 and vide order passed on 7.3.1995 it is in consideration of the nature of dispute that the State counsel was directed to keep the records of the Land Ceiling (Surplus) Case No. 17 of 1973-74 and Settlement Case No. 5 of 1992-93 in readiness. This Court considering the implication of the order passed in Jamabandi Case No. 1 of 1992-93, directed the State counsel to produce the said record as well. It is also considering the nature of the dispute that Mr. Anjani Kumar learned AAG 6 was also requested by this Court to assist the Court in addition to the learned State counsel but the effort of Mr. Kumar has not resulted in any improvement in the situation for the records have not been traced. The matter thus has to be decided on the basis of materials on record.

7. I have heard learned counsel for the parties and I have perused the records as present in the pleadings of the proceedings.

8. The two plots in dispute are Plot Nos. 136 and 137 in Mauza Mohanpur in the district of Madhubani. Plot No. 136 admeasures 3 acres 58 decimals of which the settlement order makes use of 2 acres 24 decimals and Plot No. 137 admeasures 2 acres 3 decimals of which the settlement order makes use of 1 acre 93 decimals. The settlement order is a consequence to the order passed in Jamabandi Cancellation arising from Misc. Case No. 1 of 1992-93. The recommendation made by the Circle Officer present at Annexure-R to the counter affidavit of the private respondent merely records that no document was produced by Mahant Ram Sharan Das in support of his title and possession over the plots in question. Whereas Plot No. 136 has been recorded as orchard, Plot No. 137 was recorded as Pokhar. Again whereas the right claimed by the petitioner over Plot No. 136 stands supported with the documents present at Annexures-1 and 2 which relate to the Land Ceiling Proceedings in Ceiling Surplus Case No. 17 of 1973-74, Plot No. 137 is being claimed by the petitioner on the basis of purchase made in 1988. The recommendation of the Circle Officer reflects that neither the source of title of the vendor to Plot No. 137 could be established by the petitioner and even when the petitioner was claiming a settlement in year 1352 fasli from the previous Jamindar but again no document could be produced in respect of such settlement. In fact, in so far as Plot No. 137

is concerned, other than the continuous Khatiyani there is nothing on record to support the claim of the petitioner.

8A. In the circumstances, the grievance so raised by the petitioner in so far as it relates to Plot No. 137 is concerned and a challenge to the settlement order passed in Settlement Case No. 5 of 1992-93 to that extent, in absence of supporting documents supporting his right, title and possession over the plot no. 137 cannot be upheld and to that extent the relief stands disposed of.

9. Coming to Plot No. 136, in view of the documents present at Annexures-1 and 2 which are orders passed by the Sub Divisional Officer as the Collector under the "Ceiling Act" dropping the Ceiling proceeding initiated against the petitioner which amongst other plots, also includes Plot No. 136 admeasuring 3 acres and 58 decimals, it is clear that the Jamabandi cancellation proceedings in Misc. Case No. 1 of 1992-93 and the Settlement Case No. 5 of 1992-93 in so far as it relates to Plot No. 136 is clearly without jurisdiction, illegal and unsustainable in law for in view of the uncontested position where the statutory authorities themselves admit to the title of the petitioner over Plot No. 136, there neither lay any occasion for him to establish the same nor was there any authority in law in the respondents to pass a settlement order in respect of plot No. 136.

10. In the circumstances discussed, the order passed by the District Magistrate in Jamabandi Cancellation case bearing Misc. Case No. 1 of 1992-93 as well as the order passed in Settlement Case No. 5 of 1992-93 in so far as it relates to Plot No. 136 of Khata No. 107 to the extent of 3 acres and 58 decimals claimed by the petitioner, is wholly illegal and unsustainable in law and to that extent the orders stands set aside and the orders passed in the Jamabandi Cancellation Case No. 1 of 1992-93 and Settlement Case no. 5 of 1992-93 stand modified to that extent.

The writ petition is allowed in part to the aforementioned extent.