

(2019) 09 PAT CK 0088

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10039 Of 2017

Rameshwar Singh

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act,
1961 — Section 10(3), 15(1), 30
Constitution Of India, 1950 — Article 26, 32, 136, 226

Citation : (2019) 09 PAT CK 0088

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Indu Bhushan, Sajid Salim Khan

Final Decision : Dismissed

Judgement

1. An order dated 29.11.1999, passed by Additional Collector, Ceiling, Katihar in Farzi Bhumi Abhilekh No. 01 of 1996-97, has been put to challenge by the petitioners in the present writ application filed on 18.07.2017, apparently, nearly 18 years after passing of the said order. As would be evident from the very opening paragraph of the writ petition, it is their case that they did not have any notice about the proceedings in which the impugned order has been passed and, fraudulently, a notice sent to the wife of Late Pawan Kumar Singh, resident of village Mahishal in the district of Katihar, according to the petitioners, the impugned order was passed behind their back.

2. Before I proceed to take note of the relevant facts stated in the respective pleadings of the parties, I must notice certain admitted facts which are as under :-

(i) The petitioners are sons of Late Kartik Singh

(ii) Kartik Singh was brother-in-law (bahnoi) of one Pawan Kumar Singh.

(iii) Pawan Kumar Singh had executed a sale deed in favour of Kartik Singh in

respect of lands which had become the subject-matter of the aforesaid Farzi Bhumi Abhilekh proceeding.

(iv) There was a ceiling proceeding initiated against Kartik Singh giving rise of Ceiling Case No. 04 of 1985-86, which was dropped finding no surplus land held by Kartik Singh.

(v) It was on the report of the Circle Officer that Pawan Kumar Singh had executed farzi sale deed to defeat the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act') in favour of his brother-in-law Kartik Singh that Farzi Bhumi Abhilekh Case No. 01 of 1996-97 was instituted, leading to passing of the impugned order dated 29.11.1999.

(vi) Consequent upon the impugned order dated 29.11.1999, a gazette notification, as contemplated under Section 15(1) of the Act, was issued on 30.11.1999.

3. The petitioners in the present writ application have asserted complete ignorance about Farzi Bhumi Abhilekh proceeding, till they learnt about it recently when the revenue authorities refused to issue them rent receipts. Immediately thereafter, they are said to have taken steps for obtaining copies of the impugned order and other documents, whereafter they have filed the present writ application. This is how the petitioners have attempted to explain the delay of 18 years in approaching this Court directly without taking recourse to alternative statutory remedy under the Act, as, according to them, the impugned order is per se illegal having been passed in breach of the principles of natural justice.

4. A counter affidavit has been filed on behalf of the State of Bihar denying the stand of the petitioners that they did not have any knowledge about Farzi Bhumi Abhilekh proceeding. It has been averred in paragraph-12 that a notice bearing No. 359 dated 07.09.1999 had been issued to the father of the petitioners Late Kartik Singh, which was received by petitioner no. 1, Rameshwar Singh on 29.08.1999. Tamila report has been submitted by the Anchal Peon stating that the noticee Kartik Singh had died and Rameshwar Singh (petitioner no. 1), who had received the notice, was his son. It has also been specifically stated that petitioner no. 2 Nagendra Nath Singh, another son of Late Kartik Singh, appeared as Karpardaz in Farzi Bhumi Abhilekh proceeding on 15.09.1999, 03.11.1999 and 26.11.1999. It has, thus, been stated that it is incorrect to say that the petitioners had no knowledge and were not given any opportunity of hearing in the said Farzi Bhumi Abhilekh proceeding. It has been averred in paragraph-13 that petitioners' father was bahnoi of the actual land holder Pawan Kumar Singh who had executed farzi sale deed in favour of Kartik Singh to save his landed property from acquisition under the Act.

5. It has also been stated that the petitioners, instead of approaching this Court, could have availed the alternative statutory remedy by filing objection petition

under Section 10(3) of the Act or appeal under Section 30 of the Act.

6. The plea of the petitioners that they did not have any knowledge of Farzi Bhumi Abhilekh proceeding and the order passed thereon, has thus been disputed by the State of Bihar in the counter affidavit. The State respondents have brought on record receipt of notice in Form LC-28 by petitioner no. 1. The said document bears the signature of petitioner no. 1 marked on 29.08.1999. Attendance was filed in the said Farzi Bhumi Abhilekh proceeding by petitioner no. 2, as is evident from Annexures-A, B and C to the counter affidavit. The signatures of petitioners available on Annexures-A, B and C resemble with their signatures on the Vakalatnama filed in the present case as well as the one available on the affidavit portion.

7. A reply has been filed on behalf of the petitioners to the counter affidavit of the State of Bihar. A new plea is being taken now in the reply that though it was within the knowledge of the Additional Collector, Land Ceiling, Katihar that the landlord Pawan Kumar Singh had died, the impugned order was passed without getting substituted the legal heirs of Pawan Kumar Singh. It is not being disputed now, after filing of the counter affidavit, that petitioner no. 1 received notice and petitioner no. 2 had filed attendance in the ceiling proceeding. It is now being claimed that they ought to have been substituted in the Farzi Bhumi Abhilekh proceeding after the death of Kartik Singh.

8. The stand of the petitioners that they did not have any knowledge about the Farzi Bhumi Abhilekh proceeding, the impugned order dated 29.11.1999 and subsequent gazette notification dated 30.11.1999, is thus evidently false. It has been repeatedly held in judicial pronouncements that jurisdiction under Articles 32 and 26 of the Constitution is extraordinary, equitable and discretionary, and, therefore, it is obligatory for a person to approach the Court under Article 226 of the Constitution with clean hands and put forward all the facts before the Court without concealing or suppressing anything. In absence of candid disclosure of relevant material facts, a person approaching this Court is guilty of misleading the Court and, in such circumstance, his petition will be liable to be dismissed at the threshold, without even going into the merits of the case.

9. The supreme Court in case of Dalip Singh vs. State of Uttar Pradesh & Ors. reported in (2010) 2 SCC 114 has reiterated that a litigant, who attempts to pollute the stream of justice or who touches the pure foundation of justice with tainted hands, is not entitled to any relief in a proceeding under Articles 32, 226 or 136 of the Constitution of India. The Supreme Court remarked that a new creed of litigants has cropped up who shamelessly resort to falsehood and unethical means to achieve their goals. It is in order to meet the challenge of new creed of litigants that the Courts have, from time to time, evolved new rules.

10. In case of Ritesh Tewari and another vs. State of Uttar Pradesh & Ors. reported in (2010) 10 SCC 677 the Supreme Court echoing the same view has held that the power under Article 226 of the Constitution is discretionary and

supervisory in nature which is not issued merely because it is lawful to do so. A Court of equity, when exercising its equitable jurisdiction, is required to act so as to prevent perpetration of a legal fraud.

11. In case of Amar Singh vs. Union of India & Ors. reported in (2011) 7 SCC 69 the Supreme Court has re-enforced the legal view that a litigant cannot prevaricate and take inconsistent positions.

12. In case of V. Chandrasekaran and another vs. Administrative Officer & Ors. reported in (2012) 12 SCC 133 the Supreme Court, while noticing the law laid down in case of Dalip Singh (supra), has clearly observed that a judicial process cannot become an instrument of abuse or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction only in furtherance of justice. A petition or an affidavit containing misleading and/or inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of the process of the Court.

13. Since the petitioners have made false statement on oath to seek the reliefs in equitable jurisdiction under Article 226 of this Court by feigning ignorance of Farzi Bhumi Abhilekh proceeding, I am of the definite view that this writ application does not merit consideration. The petitioners did have knowledge about the said proceeding and they had participated too. Their conduct of approaching this Court nearly 18 years after passing of the impugned order and publication of a gazette notification on feigned ignorance, is highly reprehensible.

14. Keeping in mind the above noted facts and taking into account the pronouncements of the Apex Court, as noted above, this writ application deserves to be dismissed as frivolous. It is ordered accordingly.

15. The writ application stands dismissed.