

(1977) 02 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1143 of 1973

Ramjiban Shah and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 17-02-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1977 Patna 269

Hon'ble Judges : K.B.N. Singh, C.J;S.K. Choudhuri, J

Bench : Division Bench

Advocate : B.C. Ghose and Anish Chandra Sinha, for the Appellant; S. Shamshul Hassan, (S.C. No. 1) and Nazmul Hoda, for the Respondent

Final Decision : Allowed

Judgement

1. In this writ application, the petitioners have prayed for quashing two orders of the Circle Officer, Deoghar (Respondent No. 2), dated the 8th June, 1973 (Annexure "3/A") and dated the 15th June, 1973 (Annexure 5). Petitioner No. 1, Ramjiban Singh, is the father of the other petitioner, Arun Kumar Shah. Facts necessary for the disposal of this writ application may be shortly stated.

2. Petitioner No. 1, Ramjiban Shah claims to have purchased 9 kathas 4 dhurs of land (by Rohini Measurement) on the 30th January, 1931, for a consideration of Rs. 1,100/- and the rent payable for the same to the Cutcherry of the Rohini landlords was Rs. 21.75 only. Petitioner No. 1 built a hall and some rooms on the said land and then let them out to different persons for residential purposes. Those buildings and the land were recorded as Holding No. 26 of Ward No. 6 of the Deoghar Municipality. The petitioner's case is that on the 6th June, 1967, by an amicable partition between petitioner No. 1. his wife and petitioner No. 2, properties belonging to the joint family were partitioned under a partition deed, as a result of which Holding No. 26. aforesaid, was allotted to Petitioner No. 2, along with other properties. It may be stated here that this Holding No. 26 was subsequently changed into Holding Nos. 27 and 28. Before this partition, the said

hall, built by Petitioner No. 1, was let out to one Maheshwar Roy, who started a cinema business in the same. After the said partition, by a deed of lease dated the 18th Nov. 1969, Petitioner No. 2 let out the said hall to one Shankar Prasad Roy, who is running a cinema business in the said hall. Petitioner No. 2 claims to have got his name mutated in the Municipal Records in respect of the holding in question by an order dated the 25th July, 1968 (Annexure "1"). It is also asserted that the deed of partition was accepted by the Income Tax Officer, Deoghar. u/s 171 of the Income Tax Act, by an order in respect of the Assessment Year 1967-68 (Annexure "2"). Petitioner No. 2 then applied for mutation of his name in the office of the Circle Officer, Deoghar, and his name was ordered to be mutated in respect of the land in question, by an order dated the 26th July, 1971 (Annexure "3").

3. The grievance of the petitioners in this writ application is that this order of mutation (Annexure 3) was cancelled by the Circle Officer, Deoghar, by an order dated the 8th June, 1973, after about two years, without even giving petitioner No. 2 any opportunity of being heard. A copy of the order dated the 8th June, 1973 has been filed as Annex. "3/A". It is further stated that on the 9th Mar. 1973, the Karmachari of the area had submitted a report to the Circle Officer, Deoghar, for fixation of rent for Jamabandi No. 3123, on which the cinema hall and some rooms stand. A copy of the said report of the Karmachari has been filed as Annexure 4. On the basis of that report, the Circle Officer, by an order dated the 15th June, 1973, fixed rent payable in respect of Jamabandi No. 3123, to be Rs. 18,900/-, in place of Rs. 21.75 paise. This order (Annexure "5") has also been impugned in this writ application.

4. This writ application was admitted on the 18th September, 1973 and the operation of the order contained in Annexure "5" was stayed.

5. A counter-affidavit has been filed on behalf of the respondents, in which it is stated that the land is situated in highly commercial area of Deoghar Town and Petitioner No. 1 had constructed a Cinema House, named Shree Krishna Talkies, with over 20 rooms exclusively for shops, and that the partition has been effected to defeat the Government orders in respect of the ceiling of land and buildings and to get benefits in Income Tax, sales-tax, etc. It is also asserted in the counter-affidavit that Petitioner No. 2 applied for mutation in respect of Jamabandis No.s. 3112, 3123 and 2990 of Mouza Shyamganj on the 13th August, 1970, and simply an order of mutation was passed on the 26th July, 1971, but no correction slip was issued up to the 8th June, 1973, when it was found that the partition deed was a sham document, nor any correction was made in Register II, i. e., the Jamabandi Register, and the Jamabandi stood as before and no rent receipt was granted in the name of petitioner No. 2. It is also asserted that till the correction was made the order of mutation had not become final. After it was detected that the partition deed was a sham transaction, the order of mutation was cancelled in respect of all the three Jamabandis, including Jamabandi No. 3123, with which we are concerned in this case. It is further

stated that as the land was being used for commercial purposes for running a cinema and shops whatever might be the original intention of the owners at the time of the construction of the hall and the shops, the nature of the land is admittedly not Raiyati. It is further contended that it could not be transferred in view of Section 27 of the Sonthal Parganas Settlement Regulation, 1872 (Regulation No. III of 1872) which is now Section 20 of the Sonthan Parganas Tenancy (Supplementary Provisions) Act, 1949 (Act XIV of 1949). Certain allegations have also been made that Basouri tenancy can be created only by two modes, i. e. by acquisition of the land by the landlord u/s 25A of the Sonthal Parganas Rent Regulation, 1886 (Regulation II of 1886), and by subsequent leasing out the land to any person or by making Basouri settlement of Khas Parti land. Reliance has, in this connection, been placed on the decision of this Court in the case of Bhola Ram Lieri and Others Vs. Peari Devi and Others, . In the latter case, the tenant holds land as a lessee of the landlord. It is asserted that after vesting of the zamindari, the State of Bihar stepped into the shoes of the landlords and the rent has been fixed according to Government orders contained in Memo No. A/G. M. 1047/62-6378 dated the 27th August, 1962, duly approved by another Government order contained in Letter No. A/G. M.-1065/64-9274-R dated the 12th Dec. 1964. On these averments, it is asserted that the petitioners have no case.

6. Mr. B. C. Ghose, learned counsel appearing on behalf of the petitioners, has contended that the order dated the 8th June, 1973 (Annexure "3/A"), revising or recalling the earlier order of mutation in favour of petitioner No. 2, dated the 26th July, 1971 (Annexure "3"), has been passed without any opportunity to the petitioners of being heard and the principles of natural justice have been violated. In the counter-affidavit filed on behalf of the respondents there is no denial of this assertion and the learned Standing Counsel appearing on behalf of the State also could not show us that any hearing was given to the petitioners before the impugned order was passed. Respondent No. 2 should have given notice to petitioner No. 2 at least before passing the impugned order contained in Annexure "3/A", and, on this ground alone the order contained in Annexure "3/A" cannot be sustained and is quashed, with liberty to Respondent No. 2 to proceed in the matter in accordance with law, after giving necessary notice to the petitioners.

7. So far as the order contained in Annexure "5" is concerned it appears that it has been passed after the order contained in Annexure "3/A" against Petitioner "No. 2" was passed. In view of the fact that we have quashed the order contained in Annexure "3/A" with liberty to the Circle Officer to proceed in the matter in accordance with law, after notice to the petitioners, we consider it expedient to quash the order contained in Annexure "5" as well. It is, however, made clear that in case the Circle Officer comes to the conclusion that the mutation in favour of Petitioner No. 2, Arun Kumar Shah was wrongly allowed, as per Annexure "3" it will be open to him to reassess rent in accordance with law against Petitioner No. 1, Ramjiban Shah. In case, however, he comes to the conclusion that the

mutation order in favour of Petitioner No. 2 cannot be recalled, it will also be open to him to reassess rent against Petitioner No. 2, afresh, in accordance with law.

8. This writ application is accordingly allowed and the orders contained in Annexures "3/A" and "5" are quashed. In the circumstances of the case, there will be no order as to cost.