
(2007) 05 PAT CK 0140
In the Patna High Court
Case No : CWJC No. 1691 of 1988

Ramzan Ali Ansari and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Citation : (2007) PLJR 351

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Alok Kumar Sinha and Kaushal Kumar, for the Appellant; Rajesh Kr., for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Alok Kumar Sinha, counsel for the petitioners. No one appears on behalf of respondent No. 3(a). This writ petition arises from a proceeding under the Bihar Privileged Persons Homestead Tenancy Act and the petitioners who are the land-holders seek to challenge the order, dated 5/11.1.1988 passed by the Circle Officer, Dehri in P.P.C. Case No. 3 of 1987-88 directing for the grant of Parcha to Gurucharan Ram who was originally impleaded as respondent No. 3, Gurucharan Ram died during the pendency of the writ petition and was substituted by his heirs and legal representatives.

2. The dispute relates to five decimals out of plot No. 320 with a total area of 17 decimals under khata No. 58, situate in village Manjhiyaon, P.S. Dehri (Dari Hat) in the district of Rohtas. A copy of the order sheet of the proceeding is enclosed as Annexure 3 from which it appears that Gurucharan Ram made an application before the Circle Officer claiming that he was living on the disputed land after constructing a house and prayed for grant of Parcha in respect of the land in question. The Circle Officer noted the contents of the petition in his order, dated 28.8.1987 and directed for issuance of a notice to petitioner No. 1 as also a public notice.

3. On 17.10.1987 a certificate was produced from the Mukhiya of village Chalbila Parhar Panchayat in which it was stated that Gurucharan Ram was a resident of village Manjhiyaon and he was living on the disputed land for a long time. On that date the Circle Officer fixed 5.11.1987 for local inspection. The next order, dated 5/10.11.1987 indicates that he was unable to make the spot inspection on the fixed date and the next date for spot inspection was fixed on 25.11.1987. The next and the final order is, dated 5/11.1.1988. This indicates that no inspection could be held on 25.11.1987 either and the spot inspection was held on 5.1.1988. At the time of inspection the reports given by the Mukhiya, Karmchari and Circle Inspector were found to be correct. It was, accordingly, directed to issue Parcha to Gurucharan Ram on the basis of the reports of the Karmchari and the Circle Inspector. In pursuance of the order, the Parcha was issued in favour of Gurucharan Ram a copy of which is at Annexure 4.

4. The order sheet clearly indicates that the proceeding was held in complete disregard of the mandatory provisions of law. Rule 5 of the Bihar Privileged Persons Homestead Tenancy Rules requires that a notice in Form "F" must be given to the land holder indicating the date on which the local enquiry would be made. The rule further stipulates that the enquiring officer would make a record of the evidences produced before him. On submission of the report the Collector under the Act is required to pass an order after hearing the parties on all points arising out of the application.

5. By a number of decisions it is now well settled that the compliance with the provisions of rule 5 is mandatory and any omission to follow the rule would render the final order illegal and untenable. For the benefit of the revenue authority the provisions of rule 5 are quoted below:--

"5.(1) The Collector shall either himself make local inquiry or have such inquiry made by any responsible officer not below the rank of a Circle Inspector or Welfare Inspector and satisfy himself as to the correctness or otherwise of the contents of such applications.

(2) The "enquiring officer shall issue a notice in Form F to all the interested parties intimating the date on which the inquiry shall be made and directing parties to produce all the evidence in their possession in support of or against the application.

(3) The enquiring officer shall make a record of the evidence produced before him and, if he is not the Collector, submit his report to the Collector.

(4) The Collector shall after hearing the parties on all points arising out of the application pass such order as to him seems to be just and proper.

(5) The Collector shall prepare a record of homestead held by privileged tenant in Form G. The main record shall be maintained in the office of the Collector and a copy of the record bearing the signature and seal of the Collector shall be made over to the landlord and the privileged tenant."

6. It is evident that the final order granting Parcha to Gurucharan Ram was passed without following the aforesaid rule. The grant of Parcha must, therefore, be held to be illegal on this score alone.

7. It may be added that this court by order dated 28.7.1999 called for the original record of the proceeding. The record did not come to the court and finally the Collector of the district was directed to show cause why appropriate action may not be taken against him. A show cause was filed on behalf of the Collector on 16.2.2006 in which it is admitted that the record of the proceeding is no longer available in the circle office. In that regard it was stated that one Jainarain Singh was the custodian of the record but at the time of his retirement he did not hand over this particular record to his successor in office. Despite demands he did not furnish the record of the proceeding and finally a criminal case had to be instituted against him. What is more relevant for the present is the statement made in the show cause as to the ground reality on date in respect of the disputed land.

8. In para 11 (d) of the show cause it is stated that on the disputed land there was a room made of country tiles and one of its walls had fallen down. No one was living in that room. On the same plot a Pucca house of the Khatiyani raiyat, the petitioners was standing. It was also found that the family of Gurucharan Ram was residing in another Pucca house constructed at a distance of a few meters from the disputed land.

9. In light of what is stated above, the impugned order and the Parcha granted on that basis cannot be sustained. The impugned order, dated 5/11.1.1988 passed in P.P.C. Case No. 3 of 1987-88 and the Parcha granted to Gurucharan Ram on that basis are quashed. In the result, this writ petition is allowed but with no order as to costs.