

(1960) 05 PAT CK 0015
In the Patna High Court
Case No : Misc. Judl. Case No. 177 of 1959

Rasik Bihari Lal and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-05-1960

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4
Constitution of India, 1950 — Article 226

Citation : AIR 1961 Patna 91

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Parmanand Sharan Sinha, for the Appellant; G.P. Shahi, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the question at issue is whether the building located on Survey plot No. 3761, Khata No. 410, in Mouza Halsi, P. S. Sikandra District Monghyr, is primarily used as a cutchery for the collection of rent of the estate within the meaning of Section 4 (a) of the Bihar Land Reforms Act, which reads as follows :

"4. Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under Sub-section (1) of Section 3, or Sub-section (1) or (2) of Section 3-A the following consequences shall ensue, namely :

(a) such estate or tenure including the interest of the proprietor or tenure holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars, mela and ferries and all other sainiti interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats

or under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure holder shall cease to have any Interests in such estate or tenure, other than the interest expressly saved by or under the provisions of this Act."

On behalf of the petitioners an affidavit has been filed that the entire amount of collection of rent of filed tenants was only Rs. 3000 on the date of vesting of the Zamindari, and the building is used for residential purposes and not for the collection of rent. It is also alleged that the mother of the petitioner lives in the house throughout the year, and in paragraph 14 it is alleged that the house in question contains two rooms on the other varandah, four rooms inside the inner court-yard, one big grain stock room, one Puja ghat, one kitchen and one latrine; just adjacent to this main building there is an earthen room for keeping cattle and inside the court-yard there is a Tulsi Chawra."

There is no counter-affidavit filed on behalf of the respondents controverting the allegations made in the petition. We have also gone through the order of the Anchal Adhikari, Sikandra the Additional Collector of Monghyr and of the Commissioner of Bhagalpur in Miscellaneous Appeal No. 31 of 1958-59. In our opinion the facts alleged by the petitioners, which are not controverted by the respondents in this case, prima facie establish that the building in question is not primarily used as a cutchery for the collection of rent of the estate within the meaning of Section 4(a) of the Bihar Land Reforms Act. A question of this description is not a question of pure fact, but is a question of jurisdictional fact as pointed out by this Bench in Kunj Behari Yadav Vs. Basdeo Yadav and Others, .

In other words, the condition imposed by Section 4(a) is a condition upon which the jurisdiction of the Collector to take possession of the building will depend, and the Revenue authorities cannot wrongly decide the question of fact and give themselves jurisdiction to take possession of the building. The view expressed in Chandreshwari Prasad Narain Deo and Others Vs. State of Bihar and Another, has been followed by another Bench of this High Court in Ram Kumari Devi v. State of Bihar AIR 1957 Pat 94 where it was pointed out that the determination of a question arising u/s 4 (a) of the Bihar Land Reforms Act with regard to the character of a building, namely, whether it is used primarily for the collection of rent, is a question of jurisdictional fact.

2. For these reasons we hold that the respondents in this case have no jurisdiction to take possession of the buildings under the provisions of Section 4(a) read with Section 4 (g) of the Bihar Land Reforms Act. We, therefore, hold that the petitioners are entitled to the grant of a writ in the nature of certiorari for quashing the order of the Additional Collector of Monghyr and the Commissioner of Bhagalpur. The petitioners are also entitled to a writ in the nature of mandamus commanding the respondents not to interfere with the possession of the petitioners over the house in question. We accordingly allow this application with costs. Hearing fee, Rs. 100/-.