
(1999) 11 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 5082 of 1988

Raudi Sah

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-11-1999

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Rules, 1948 — Rule 5(1), 5(2)

Citation : (2000) 1 BLJR 603

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Kumar Katriar, J.—This writ petition has been preferred by the landlord and is directed against the order passed on 14-9-1983 by the Anchal Adhikari, Triveniganj, (Annexure-1), whereby the application of respondent No. 3 herein (Rajeshwar Sah) under the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act"), has been allowed, and Parchas have been directed to be issued in favour of the latter.

2. The facts of this case make an interesting reading. Respondent No. 3 herein (Rajeshwar Sah) had filed an application dated 5-4-1983 (Annexure-2) under the Act, before the Anchal Adhikari, Triveniganj, praying therein that he has constructed his house on Plot No. 5082, appertaining to Khata No. 240, covering an area of 8 decimals, and fully described in his application, and that he may be declared to be a privileged person and privileged tenant with respect to the said land within the meaning of the Act. The Halka Karmachari examined the application (Annexure-2), and submitted his report dated 5-4-1983 (Annexure-3), wherein he stated that respondent No. 3 herein has been living in his house constructed on the land in question for more than twelve years. He is a landless person, and he may be declared to be a privileged person within the meaning of the Act. As is manifest on the very face of it, the application (Annexure-2) is dated 5-4-1983, and the enquiry report (Annexure-3), is of the

same date, and is based only on a perusal of the application (Annexure-2), without a local inspection. The Anchal Adhikari passed the impugned order dated 14-9-1983 (Annexure-1) whereby he accepted the report of the Halka Karmachari, and directed for issuance of Parcha in favour of respondent No. 3 herein.

2.1. It appears that the petitioner herein moved the Anchal Adhikari Triveniganj, raising grievance with respect to the validity of the aforesaid order dated 14-9-1983 (Annexure-1), and the latter chose to reconsider the matter. It appears that he referred the whole matter once again for inquiry. Accordingly, the Halka Karmachari submitted his report dated 16-1-1987 (Annexure-6), whereby he expressed doubts about the correctness of the claim of respondent No. 3 herein. The same was thereafter placed before the Circle Inspector, who submitted his report dated 8-4-1987 (Annexure-7), whereby he stated that respondent No. 3 is not a privileged person with respect to the land in question. This report was accepted by the Anchal Adhikari by his order dated 18-4-1987 (Annexure-8), and he ordered for recall of the order contained in Annexure-1 cancelling the Parcha.

2.2. It appears from the averments made in Paragraph 3(ix) of the writ petition that aggrieved by the aforesaid order dated 18-4-1987 (Annexure-8), respondent No. 3 herein moved the same authority, namely, Anchal Adhikari, Triveniganj, who allowed the application saying that once the aforesaid order dated 14-9-1983 was passed the Anchal Adhikari had no jurisdiction to pass the order dated 18-4-1987 (Annexure-8), and recalled the earlier order dated 14-9-1983 (Annexure-1). He, therefore, set aside the order dated 18-4-1987 (Annexure-8), and restored the aforesaid order dated 14-9-1983 (Annexure-1), vide order dated 21-5-1988. Learned Counsel for the petitioner informs this Court that the Anchal Adhikari passed the said order dated 21-5-1988 at the behest of the local SDO, because respondent No. 3 had really moved the latter.

3. Learned Counsel for the petitioner lucidly submitted that inspite of the confusing situation created by the parties and the respondent-authorities, the substance of the matter is that the aforesaid order dated 14-9-1983 (Annexure-1) operates against the petitioner. In his submission, the same is based in violation of Rules 5(1) and 5(2) of the 1948 Rules. It is manifest from a plain reading of the aforesaid inquiry report dated 5-4-1983 (Annexure-3), submitted by the Halka Karmachari that he did not make a local inspection, and he had submitted his report on the basis of a perusal of the aforesaid application dated 5-4-1983 (Annexure-2) only. He further submits that such an enquiry, as contemplated by Rule 5(1) of the Rules can be submitted only by the Circle Inspector or Welfare Inspector. He further submitted that the petitioner herein was not noticed at any stage of the proceeding until the order dated 14-9-1983 (Annexure-1) was passed. He invited my attention to paragraph 3(iii) of the writ petition which states that the petitioner was never noticed. He relies on a Division Bench judgment of this Court reported in 1978 PLJR 398, Hiralal

Vishwakarma v. V.N. Shah.

4. Mr. K.P. Yadav, learned S.C. has made his own submissions in opposition.

5. Having considered the rival submissions, I am of the view that this writ petition has to be allowed. A bare perusal of facts set out hereinabove makes it abundantly clear that the respondent-authorities have made a mockery of the proceeding before them. Law is well settled that, an appeal lies before a higher authority, and a review lies before the same authority. The limitations of a review petition are well known. In the first place, the aforesaid order dated 14-9-1983 (Annexure-1) has been passed in the teeth of the mandatory provisions engrafted in Rules 5(1) and 5(2) of the Rules. Learned Counsel for the petitioner has rightly relied on the aforesaid Division Bench judgment of this Court. The later order dated 18-4-1987 (Annexure-8) and order dated 21-5-1988, were wholly without jurisdiction. Such orders could have been passed only in appeal. I have, therefore, no hesitation in holding that the entire proceeding before the Anchal Adhikari was void ab initio.

6. In the result, this writ petition is allowed, and the impugned order dated 14-9-1983 (Annexure-1), is hereby set aside.