

(1990) 05 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 4764 of 1982

Reyasat Ali Khan and Another

APPELLANT

Vs

Bhagalpur Municipality and Others

RESPONDENT

Date of Decision : 07-05-1990

Acts Referred:

Bihar and Orissa Municipal Survey Act, 1920 — Section 15A
Bihar and Orissa Municipal Survey Rules — Rule 15

Citation : (1991) 1 BLJR 612 : (1991) 1 PLJR 633

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—This writ application has been filed by the petitioners for quashing the order dated 17/26.12.1980 passed by the Settlement Officer, Bhagalpur (respondent No. 3) in Appeal Case No. 575 of 1979 directing respondent No. 2 to record the name of "Anabad Sarvasadharan" in regard to Order 0.24 hectare of land of Municipal Khasra No. 1647/2693 appertaining to Municipal Survey Khata No. 1943 of Bhagalpur under the provisions of the Bihar and Orissa Municipal Survey Act, 1920 (hereinafter referred to as the Act.)

2. The relevant facts are short.

3. Hashmat Ali Khan and Basharat Ali Khan (respondent No. 4) filed an objection before the Assistant Superintendent of Municipal Survey, Camp Bhagalpur (respondent No. 2) impleading the petitioners as opposite party, in regard to one bigha of land of Khasra No. 2693 appertaining to Khata No. 1943. In support of their objection, they relied upon a registered deed of Buzidawa dated 27.2.1979 executed by Hassan Ali in favour of respondent No. 4 in regard to four kathas of land bearing holding No. 66 which was earlier numbered as holding No. 63 in the Municipal registers. Earlier holding number for the same was 39 which stood recorded as house and parti in the name of Ismat Ali Khan. It was also claimed that the disputed plot is part of their plot No. 1645. They further asserted to the

effect that the writ petitioners had no document in connection with the land in question.

4. The writ petitioners claimed that Khasra No. 18080, area 2 kathas 17 dhurs in the municipal survey of the year 1903 stood recorded in the name of Tasdique Ali and Sharafat Ali and since the land was vacant (parti), no holding number was mentioned. Their ancestors had not transferred the land in question. The applicants do not possess any document in regard to the lands in question.

5. The Assistant Superintendent-cum-Assistant Settlement Officer, Bhagalpur (respondent No. 2) made a local inspection. During inspection he found M.S. plot No. 2693 as vacant. By an order dated 19.8.1979, as contained in annexure-2, he rejected the objection holding that the State of Bihar has not claimed to record its name as "Anabad Sarvasadharan."

6. Basharat Ali Khan (respondent No. 4) went up in appeal which was registered as Appeal Case No. 575 of 1979. The said appeal was dismissed by respondent No. 3 by his order dated 26.12.1980 as contained in Annexure-1 directing that the land in question be entered in the name of "Anabad Sarvasadharn" and its nature as vacant Imambara. While doing so, he also rejected the claim of the writ petitioners.

7. Mrs. Sheema Ali Khan, learned counsel for the petitioners, submitted as follows:

(i) The order of the appellate authority, as contained in Annexure-1, is without jurisdiction as no appeal lies against the order as contained in annexure-2.

(ii) The lis before respondent No. 3 being only confined as to whether the objection of the respondent No. 4 was illegally disallowed by respondent No. 2, respondent No. 3 has committed an apparent error of law in directing recording the Khata as "Anabad Sarvasadharan" in absence of any objection by the state of Bihar

8. Section 15-A of the Act runs as follows:

15-A. Power to make rules-The State Government may, by rule made after previous publication, provide for-

(a) all matters by this Act required or expressly or impliedly authorized to be prescribed;

(b) any other matter in respect of which in the opinion of the State Government, sufficient provision has not been made in this Act for carrying out the purpose thereof.

9. In exercise of the powers conferred by Section 15-A of the Act, the Government of Bihar and Orissa framed rules to carry out the object of the Act by publishing a notification being No. 3790-M, dated 24.4.1921 through the Ministry of Local Self, Government. Rule 15 of the Bihar and Orissa Municipal

Survey Rules runs as follows:

15(1) Every appeal against the order of an Assistant Superintendent of Survey,-

(a) disposing of an objection under Rule 9, and

(b) imposing a fine under the Act, if presented within one month of the date of the order appealed against, shall lie to the Superintendent.

(2) An appeal against the order of the Superintendent of Survey disposing of an objection under Rule 9 shall lie to the Collector, or if the Collector is the Superintendent of Survey, to the Commissioner. The appeal shall be presented within one month of the date of the orders appealed against.

10. From the provisions extracted above, it is clear that an appeal was provided against the order of the Assistant Superintendent of Survey (respondent No. 2). Thus, there is no merit in the submission of Mrs. Khan that the appellate order (Annexure-1) was without jurisdiction.

11. Coming to the next submission of Mrs. Khan as to whether the appellate authority was correct in directing recording of the entry as "Anabad Sarvasadharan" I am of the view that the primary function of the survey authority was to find as to who was in possession of the land. During local inspection respondent No. 2 found the land in question as old vacant. In the said view of the matter, respondent No. 3 had not committed illegality in directing recording as such.

12. These apart, since the entry in the municipal survey does not create any title, I am also not inclined to exercise my discretion. The petitioners, if so advised, may move the appropriate civil court of competent jurisdiction for declaration of their title etc., where their title in regard to the land in question and their possession can be adequately gone into.

13. For the reasons aforementioned, I do not find any merit in this application. It is accordingly dismissed but without cost.