

(2012) 03 PAT CK 0135
In the Patna High Court
Case No : CWJC No. 11840 of 2011

Santan Prasad Singh

APPELLANT

Vs

The State of Bihar and Others Respondents

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Citation : (2012) 3 PLJR 572

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Shambhu Sharan Singh and Amarnath Jha, for the Appellant; Ajay, for the Respondent

Judgement

Sheema Ali Khan, J.—Heard Counsel for the petitioner, respondent no. 5 and the State. This case has a chequered history. An encroachment proceeding was initiated in the year 1996-97 on behalf of one Sunil Kumar Singh, who is said to be a Teacher of the Project Girls High School, Madanpur in the district of Aurangabad. Annexure-2 is the record of the encroachment proceeding which indicates that the encroachment case filed on behalf of Sunil Kumar Singh was dropped as he had not given any details regarding the land in question. In the same order, it has been recorded that information was sent to the Headmaster of the Anugrah High School, Madanpur regarding the encroachment proceedings appertaining to Khata No. 179 measuring 0.01 decimal. There was a recommendation of measurement. However, for one reason or the other, the case remained in abeyance. In the meantime, a second encroachment proceeding was initiated vide Annexure-5, numbered as 1 of 2002-03 by the Headmaster of the Project Girls High School, Madanpur in which he had claimed that the petitioner had encroached upon 0.01 decimal of land belonging to the School. Annexure-5 dated 5.9.2002 would disclose that after enquiry, it was found that Santan Singh (petitioner) had taken two rooms (0.01 decimal) on lease from the School. It was found that the objection raised on behalf of the School was without any basis as the school had objected to the opening of a tea-stall in the said premises. The

proceeding was thereafter dropped.

2. The School, on 29.3.2004, issued a notice to the petitioner to stop construction. The petitioner challenged the said order/notice by filing CWJC No. 14064 of 2002. During the pendency of the writ application, a stand was taken on behalf of the State-respondents that the proceeding i.e. Case No. 2 of 1996-97 was still pending. Accordingly, this Court directed that the authorities should take a decision and conclude the Encroachment Case No. 2 of 1996-97. In the said writ application, the respondent no. 5 in the present writ application, filed an intervention application. The intervention application remained undisposed. The intervener thereafter filed a Letter Patent Appeal. The Court refused to intervene with the order and directed that Encroachment Case No. 2 of 1996-97 should be concluded within a period of two months. This order of the Court was challenged by filing a contempt application, MJC No. 4652 of 2010. Before the final orders could be passed in the contempt application, the Division Bench hearing the contempt passed order for removal of the encroachment. The final order is annexed as Annexure-D to the counter affidavit, which indicates that the Division Bench took into account the fact that the Encroachment Case No. 2 of 1996-97 had been disposed of on 20th March, 2011 after a delay of six years. While hearing the contempt application, the petitioner who was Opposite Party No. 5 appeared suo motu in the case. It was submitted on behalf of Opposite Party No. 5 i.e. the petitioner in the present writ application that no notice was issued to him in the contempt proceedings. It was further agitated on his behalf that the order holding that the petitioner was an encroacher was not in accordance with law it was also pointed out by the petitioner that he had already filed this writ application which was pending adjudication. The Division Bench eventually said that the contempt application would be disposed of without any prejudice to the rights of Opposite Party No. 5, which may be decided in the pending writ application i.e. CWJC No. 11840 of 2011.

3. Against this background, this Court will now examine the merits of the claims of the respective parties.

4. The case of the petitioner is that he was settled 0.2 decimals of land by the Ex-Landlord vide Annexure-1. The boundary of the land settled to him was North-RASTA, South-Self, East-Self and West-Parmeshwar Thakur and others. Having settled the lands, the Ex-landlord filed return to the State of Bihar showing that the lands was settled to the petitioner which was BELAGAAN land. A return case was also registered in which it has been shown in the column that the rent is due against the petitioner.

5. The case of respondent no. 5 is that Khata No. 105, Plot No. 179 originally belong to Dev Estate. The lands were gifted in favour of Anugrah High School vide a registered deed of gift no. 3528 dated 25.5.1950. The lands donated were 5.33 acres, appertaining to Khata Nos. 176, 105, Plot Nos. 148, 178 & 179, it is said that Plot No. 179 consist of 0.77 decimals. According to respondent no. 5, the entire lands i.e. 0.77 decimals were gifted to the School. It is also the case of

respondent no. 5 that Anugrah High School handed over the lands in question to the Project Girls High School in exchange of certain other lands. Subsequently, the District Magistrate ordered for construction of the school building on the lands in question.

6. As a result of the order of this Court passed in CWJC No. 14064 of 2002 and LPA No. 650 of 2004, all the encroachment proceedings were reopened and the matter was reheard. The impugned orders are contained in Annexures-11 and 13. The appellate order dated 19.7.2011 indicates that the petitioner was settled 0.2 decimals of land for which Return Case No. 224 of 1953-54 has been filed showing the petitioner to be a settle of the Ex-Landlord. This document has been doubted by the Appellate Court on the ground that the lands in question were the BELAGAAN lands of the Ex-Landlord, whereas in the return case, it has been mentioned that there are certain dues to be paid by the petitioner which according to the District Magistrate, is contradictory with the stand of the petitioner.

7. I may clarify that once the lands are settled and returns filed by the Ex-Landlord or any other persons, or if the lands belong to the State and are the BELAGAAN lands of the State, once they are settled to a third party, the third party would be liable to pay rent to the State of Bihar. Therefore, on this reasoning, I do not find that the order is sustainable to this extent. There is no controversy about the fact that lands appertaining to Khata No. 105, Plot No. 179 and other plots were settled in favour of Anugrah High School. However, the controversy arose in view of the fact that the same Landlord i.e. Dev Estate has also settled the lands in favour of the petitioner and filed returns accordingly. The total land of Plot No. 179 is 0.77 decimals, out of the 0.77 decimals, it is said that the petitioner was leased out 0.1 decimals of land which according to the petitioner, he had returned to the School in question, whereas this fact is contested by the respondent school.

8. this Court finds that the dispute has arisen by virtue of the fact that there is a settlement in favour of the petitioner by the Ex-Landlord as well as in favour of Anugrah High School. If the total land was 0.77 decimals, it is difficult to reconcile the fact that 0.2 decimals of land was settled in favour of the petitioner and 0.77 decimals of lands in favour of Anugrah High School. It may be noted here that the lands are sold and settled by virtue of the entries in the Khatian, however, the lands may either be in excess of what has been mentioned in the Khatian and are sometimes less than the area mentioned in the Khatian. These aspects needs to be resolved and the only manner in which it could be resolved is to measure the entire lands i.e. lands of Plot Nos. 148, 178 and 179 of Khata Nos. 176 and 105 and compare it with the entries in the Khatian as well as the documents of settlement of the petitioner and the registered deed of gift of respondent no. 5. After measurement of all these three plots of land, it should be compared with the documents, perhaps it would be only after the measurement of all the three plots of land that the Circle Officer, Madanpur and the District

Magistrate, Aurangabad would be able to finally decide the issue.

9. I accordingly direct that the Circle Officer, Madanpur may issue notices to the petitioner as well as the respondent no. 5, who would be at liberty to bring their own Amins. The Government Amin will measure the lands in presence of the two parties as indicated above. A joint measurement report of all the three Amins should be produced before the Circle Officer, Madanpur who will forward it to the District Magistrate, Aurangabad for passing final orders in this matter.

10. The parties are directed to produce a copy of this order before the Circle Officer, Madanpur and the District Magistrate, Aurangabad within a period of one month from the date of receipt of a copy of this order.

11. The effect of Annexures-11 and 13 shall remain stayed till a final decision is taken by the District Magistrate, Aurangabad.

12. Till such time, no constructions should be made on the lands in question by either party. This writ application is disposed of with the aforesaid observations and directions.