
(2010) 04 PAT CK 0036

In the Patna High Court

Shanti Devi and Bhushan Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Bihar and Orissa Municipal Survey Act, 1920 — Section 9

Citation : (2010) 04 PAT CK 0036

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the petitioners. No one appears for the State.

2. The petitioners pray to set aside the order dated 14.12.1998 and 27.6.1990 passed by respondent Nos. 2 and 3 respectively while exercising their appellate and original jurisdiction under the Bihar and Orissa Municipal Survey Act, 1955.

3. The petitioner No. 1, who is the mother of petitioner No. 2, claims to have purchased 16 dhurs of land of plot No. 1132 (new), 6203 (old), Khata No. 960, Tauzi No. 4100 situated at Mohalla-Ramshilla, District- Gaya by registered sale deed dated 5.6.1965 from Smt. Rani Bhueshwari Kunwar, the ex-landlord of Amawan Estate after paying full consideration amount and came into possession over the land in question since then. After purchase, she claims to have constructed a three storeyed Pucca house and has been living there with her family members. The names of the petitioners were also mutated in the Gaya Municipality and they are paying Municipal tax to the Corporation under receipt. In the survey proceedings under the Bihar and Orissa Municipal Survey Act, 1955, the said land was recorded in the name of "Anabad Bihar Sarkar" showing the possession of the petitioners. The petitioners filed objection u/s 9 of the Act before the Assistant Survey Officer, Gaya being Objection Case No. 482 of 1989, but the same was rejected by order dated 27.6.1990. Although the attendance

was filed on behalf of the petitioners at the time of hearing but learned Counsel for the petitioners was not present.

4. Thereafter the petitioners filed Appeal Case No. 479 of 1990 before the Superintendent of Survey, Gaya but the same could not be heard for a long time and ultimately on 28.11.1996 notices were directed to be issued to both sides for hearing of the matter. Again in the absence of any Survey Superintendent being appointed, the matter was not heard for a long period and the parties also stopped appearing. Hence, a fresh notice was issued on 23.10.1998. Finally on 14.12.1998 after taking note of the fact that from the service report it appears that the husband of the appellant had used indecent language against the service peon and refused to receive the notice and copy of the same was pasted on her house, since the appellant was not appearing the appeal was dismissed.

5. Learned Counsel for the petitioners submits that grave injury has been caused to the petitioners due to the action of the respondent-authorities. It is contended that the petitioners have appeared at all stages but the matters have been dismissed at both the stages without hearing the counsel for the petitioners. Particularly with respect to the appeal, learned Counsel submits that after filing the appeal, the petitioners continued to appear on all dates initially but thereafter no Superintendent of Survey was appointed and the matter remained pending. Ultimately, it is alleged that notices have been issued but there was no proper service of notice upon the petitioners and no opportunity was afforded to them to argue the appeal filed by petitioner No. 1 and thus dismissal of the appeal is on account of laches on the part of the authorities of the State in not taking up of the appeal after filing of the same, there; being no Superintendent of Survey appointed to look into the same. It is submitted that in the said circumstances, it was the obligation of the respondents to ensure that the notice of hearing of the appeal was duly served upon the appellant before considering the matter.

6. Learned Counsel for the petitioners also submits that there is substantial merit in the case of the petitioners as in exactly identical matter, being Appeal No. 1864/1993 in the case of another person who had similarly purchased adjacent land in the year 1965 from the same vendor and built house over it, the appeal filed by the State of Bihar against the order of the Assistant Superintendent of Survey had been dismissed by order dated 13.4.1994 (Annexure-7) holding that the said person had been able to show that he had valid claim over his land. Learned Counsel urges that the same position obtains with respect to the petitioner and if the order is not set aside, then the order of the appellate authority would cause serious injury to the petitioners.

6. On a consideration of the entire order-sheet of Appeal Case No. 479/1990, this Court finds sufficient force in the submissions of learned Counsel for the petitioners. It is evident that the petitioners were regularly pursuing the appeal after filing the same and only subsequently on account of strike by the employees and thereafter the retirement of the Superintendent of Survey, Gaya,

no other Officer being appointed in his place, the petitioners stopped pursuing the matter in the expectation that notice of hearing of appeal shall be served upon them before the same is taken up.

7. In the aforesaid facts and circumstances, the appellate authority, namely, Superintendent of Survey ought not to have dismissed the appeal of the petitioners but ought to have taken further steps to ensure due service of notice of hearing of the appeal on the petitioners before proceeding in the matter.

8. Hence, the order dated 14.12.1998 of the Superintendent of Survey, Gaya, Aurangabad, Nawadah and Jehanabad is set aside and the matter is remanded to him to consider and dispose of the same in accordance with law after hearing the appellant of that case. It is made clear that no further notice shall be issued to the appellant and she shall be required to appear before the Superintendent of Survey, Gaya on or before 10.5.2010 along with a copy of this order whereupon the appellate authority shall consider the matter and fix a date for the same and proceed to dispose of the matter expeditiously within a period of two months from the said date.

9. The writ application is, accordingly, allowed with the above directions.