

(1983) 05 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2814 of 1982

Sharda Prasad Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-1983

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1984 Patna 65 : (1984) 32 BLJR 282 : (1984) PLJR 106

Hon'ble Judges : P.S. Sahay, J; Krishna Ballabh Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Ram Suresh Roy, Nagendra Rai, Umeshwar Prasad, N.K. Agrawal, M.K. Sinha, S.N. Sharma, D.P. Choudhary and Dronacharya, for the Appellant; K.P. Verma, General and R.P. Sinha "Rajesh", Jr. Counsel to A.G., for the Respondent

Final Decision : Allowed

Judgement

P.S. Sahay, J.—The petitioners have moved this Court for quashing the order of the Deputy Commissioner, Dumka, dated 13-7-1982. as contained in Annexure-10, passed as an appellate Court in a proceeding u/s 4(g) of the Bihar Land Reforms Act (hereinafter referred to as the Act) setting aside the order of the Deputy Collector, Land Reforms, Sahebganj, dated 17-8-1970, as contained in Annexure-9.

2. Before coming to the points which have been raised in this application it will be necessary to refer same material facts. The lands in dispute relate to plot No. 159 situated in Mauza Hajipur Bisbrampur in the district of Samthat Parganas having an area of 387 bighas 16 kathas and 8 dhurs of land. This was recorded as Simoltala Jhil in a private rent settlement of the year 1912 as Gair Mazrua Malik. A copy of the record of rights prepared in the year 1912 has been filed and marked Annexure-8. The lands aforesaid belonged to the Grants Estate whose proprietors generally lived in England and the properties were managed through

Manager. Shiv Sagar Rai, ancestor of the petitioners, filed an application in form-A before the Manager for the purpose of settlement of raiyati land sometimes in the year 1919 which was accepted by the landlord and a Kabuliat was executed which was duly registered for agriculture purposes and rent was fixed at the rate of Re. 1/- and 8 Annas per bigha with specific boundaries. Portions of the Tand were fit for cultivation and some portions were under water and according to the terms and conditions mentioned in the Kabuliat the entire land had to be made fit for cultivation within fifteen years. After rating settlement rabi and kharif crops were grown On the embankments and fish were taken out from the remaining portion which was under water. A photostat copy of the Kabuliat dated 24-3-1919 has been filed and marked Annexure-1. Several rent suits were filed by the ex-landlords in which it was held that the petitioners who were raiyats had acquired the statuts of occupancy raiyat and a judgment of the rent suits have been filed and marked Annexure-2 series. There was rent reduction in the year 1939 under Regulation 1 of 1939 and the rent of the land in question was reduced from Rs. 581/11 annas and 9 paise to Rs. 456/12 annas and 3 paise. Sometimes in the year 1946 there was a proposal for acquiring the land and the Government through the Subdivisional Officer, Sahibganj, wanted to ascertain the status of the petitioners and a letter was sent in this connection on 5-8-1946 to the Manager of the landlords which is Annexure-3 to which a reply was sent on 7-8-1946, Annexure-4, stating therein that the petitioner No. 1 was a permanent tenant in respect of the land in question having acquired full tenancy rights on the lands including the Jalker. In the year 1951 a portion of the land was infested with deep rooted jungles and tractor was obtained from the District Agricultural Officer, Bhagalpur, for clearing the same which would be evident from Annexure-5. After the Act came into force the ex-landlord submitted return showing the petitioners as raiyat of the holding in question

3. A proceeding u/s 4 (h) of the Act was initiated which gave rise to Miscellaneous Case No. 14 of 1954-55 which was ultimately dropped by the Revenue Sub-divisional Officer on 13-12-1955 who also ordered for starting a proceeding against the Circle Inspector for submitting a false report Thereafter, there were proceedings under Sections 144 and 107 of the Code of Criminal Procedure which were also decided in favour of the petitioners. After the vesting, the petitioners are paying rent to the State had obtaining receipts. Again in the year 1963 another proceeding u/s 4 (h) of the Act was started which gave rise to Miscellaneous Case No. 1 of 1963-64 and the matter was decided in favour of the petitioners A copy of this order has been filed and marked as Annexure-6. It was also held that the petitioners had acquired the occupancy right over the land. The petitioners were also noticed wider the Bihar Paddy Levy Order which are Exts. H to O The Circle Officer wanted permission from petitioner No. 1 for shooting birds and a copy of the letter has been filed and marked Annexure-6/1, which was refused. This, according to the petitioners, infuriated the Circle Officer. Thereafter, the petitioners partitioned the lands in question which was accepted by the Subdivisional Officer on 20-2-1964 in Case No. 30 of 1962-63 u/s 19 of

the Santbal Parganas Tenancy Act. On a false report dated 19-2-1966 submitted by the Anchal Adhikari again another Miscellaneous Case No. 10 of 1965-66 was started for setting aside the settlement of Simaltala Jhil. On 21-2-1966 order was passed by the learned Subdivisional Officer, Sahibganj, for setting aside the settlement of Simaltala Jhil u/s 4 (g) of the Act. Three witnesses were examined on behalf of the State and five on behalf of the petitioners who all supported the raiyati settlement of the petitioners. Petitioner No. 1 was also examined as 3 witness and a copy of his evidence has been filed as Annexure-7 giving the details of the aforesaid settlement and possession over the land. The Land Reforms Deputy Collector, respondent no. 3, after hearing the parties and after going through the materials dropped the proceeding in favour of the petitioners holding that they were raiyats and had acquired the occupancy right over the lands in question. A copy of the order of respondent No. 3 dated 17-8-1970 has been filed and marked as Annexure-9. Against the aforesaid order the State of Bihar preferred an appeal and the learned Deputy Commissioner, Dumka, by his order dated 13-7-1982, as contained in Annexure 10, has set aside the order and has further directed the petitioners to give up possession. Being aggrieved by the aforesaid order the petitioners have moved this Court under writ jurisdiction.

4. Counter-affidavit has been filed on behalf of the respondents in which it has been stated that it has not been proved by the petitioners that the lease was given for agricultural purposes and it could not have been done because it was mentioned as gair mazruiya malik Jhil. It is also stated in para 6 that the previous order passed u/s 4 (g) of the Act by an Officer below the rank of the Collector and, therefore, it was not the order of the proper authority. Reliance has also been placed on the recitals in the Kabuliati in order to show that the settlement of the Jhil with the land-cum-water was not for agricultural purposes. Reply to the counter-affidavit has also been filed on behalf of the petitioners challenging the order of the Deputy Commissioner on various grounds and assertion has been made that the petition on behalf of the ancestors of the petitioners was filed for raiyati settlement and in support of that Annexure 11 has been filed. The order of the Rent Reduction Officer has also been filed which is Annexure 12. After the partition the rent was apportioned and a copy of the same has been filed and marked Annexure 13.

5. Mr. Balbhadra Prasad Singh, appearing on behalf of the petitioners, has contended that the proceeding under the Act had been decided twice earlier; One on 13-12-1955 and again by Annexure 6 in 1964 and, therefore, the fresh order will operate as res judicata and a clog on the jurisdiction of the authorities, irrespective of the fact that earlier decision was right or wrong. He has, further, contended that even if the matter was still at large, from the nature of the document and for the purpose the lease-hold property has been utilised, it was a lease for agricultural purposes and the petitioners have acquired the status of an occupancy raiyat over those lands. Learned Advocate General, appearing on behalf of the State, has stated that there was a previous enquiry u/s 4 (to) of the Act but subsequently there was an enquiry u/s 4 (g) of the Act and it was

completely within the jurisdiction of the authorities to pass the orders u/s 4 (g) of the Act. He has further contended that u/s 4 (h) of the Act there is no provision to decide the right of occupancy and the previous proceeding was only for a limited purpose whether the transfer has been made in order to defeat the provisions of the Act. In short, his submission is that the Jalkar will vest u/s 4 (a) of the Act and cannot be saved and the order passed by the Deputy Commissioner was completely valid and legal. Lastly, he has contended that from the map, which has been prepared by the Department, it was clear that some portions have been reclaimed and the rest were under water and, therefore, the matter should be remanded in order to determine the extent of area which have been reclaimed and this, according to him, the petitioners can retain but not those portions which were under water.

6. First of all, I would like to consider the first contention of Mr. Balbhadra Prasad Singh to ascertain whether the previous orders passed by the authorities will operate as *res judicata*. Now it is well settled that the principle of *res judicata* extends to revenue matters and writ proceeding also. In that background it has to be seen whether the impugned order can be assailed on that ground. The previous proceedings were u/s 4 (h) of the Act and the impugned order, was for a proceeding u/s 4 (g) of the Act, though in the counter-affidavit it is stated that the previous proceedings were u/s 4 (g) of the Act. The contention of the learned Advocate General is that the lands in question, a major portion of which is jalkar, automatically vests u/s 4 (a) of the Act. After the vesting u/s 3 the consequences which follows are all mentioned in Section 4 (a) of the Act which may be usefully quoted:

"4(a). Such estate or tenure including the interests of tene proprietor or tenure-holder in any building or part of 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 sairati 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 tene interests or raiyats or under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-bolder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act"

Under Section 4 (f) the Collector shall be deemed to have taken charge of such estate and tenure and all interests vested in the State under this section. Sections 4 (g) and 4 (h) of the Act which are relevant for the purpose of this case are quoted hereunder :

"4 (g). Where by reason of the vesting of any estate or tenure or any part thereof in the State under the provision of this Act, the Collector is of opinion that the State is entitled to the direct possession of any property he shall, by an

order in writing served in the prescribed manner on the person in possession of such property, require him to deliver possession thereof to the State or show cause, if any, against the order within a time to be specified therein and if such person fails to deliver possession or show cause or if the Collector rejects any cause shown by such person after giving him a reasonable opportunity of being heard, the Collector shall for reasons to be recorded, take or cause to be taken such steps or use or cause to be used such force as, in his opinion, may be necessary for securing compliance with the order or preventing a breach of the peace :

Provided that if the order under Clause (g) is passed by an officer below the rank of the Collector of a district, an appeal shall, if preferred within sixty days of the order, lie to the Collector of the district, and the Collector shall dispose of the appeal in accordance with the prescribed procedure.

4 (h). The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made (at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:

Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the pre-scribed procedure :

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

The proceedings under Sections 4 (g) and 4 (h) of the Act are all judicial proceedings as mentioned in Section 38 of the Act. From the order dated 17-4-1963, Annexure-6, the previous proceeding under the same provision was dropped on 23-11-1955 and the other which was started in 1963 was dropped by Annexure-6. The operative portion of the aforesaid order may be usefully quoted :

"There is nothing on the record to show that this Jheel was permanently settled with Shri S. P. Roy by the ex-landlord, but there is no doubt about the fact that Shri Roy has remained in possession of this Jheel ever since 1325 B. S. He has, therefore, acquired occupancy right over it The proceeding is therefore, dropped."

The learned Advocate General has submitted that this finding could not be given in a proceeding u/s 4 (h) of the Act. Be that as it may, the fact remains that the State did not prefer any appeal or revision and the matter became final. Now the question for consideration is whether the matter can be reopened u/s 4 (g) of the Act, since the matter had already been decided between the parties. The learned Deputy Commissioner, in his order, has observed as follows:

"The respondent in the present proceeding acquired the disputed property which was nothing but an encumbrance and it did vest in the State of Bihar u/s 4 (a). No enquiry u/s 4 (h) of the Bihar L. R. Act was necessary as settlement of the right of fishery is mere encumbrance within the meaning of Section 4 (a) of the Act. Thus, the order passed in Case No. 1 of 1963-64 of the Court of D. C. L. R. and Rev. Misc. Case No. 14 of 1954-55 of the Court of learned S. D. O., Sahibganj are not impediment for proceeding u/s 4 (g) of the Bihar L. R. Act as proceeding u/s 4 (h) were unnecessary and inappropriate in the circumstance of the case vide 1963 BLJR 835. Previous unsuccessful proceeding u/s 4 (to), Bihar Land Reforms Act is not binding and it is of no consequence in deciding the present proceeding."

In the counter-affidavit filed on behalf of the State in para 6 it has been stated :

"..... Since the previous order u/s 4 (g) of the Bihar Land Reforms Act was passed by an officer below the rank of a Collector the provision of Section 4 (21) (sic) of the Act is applicable in the case and no illegality has been committed in filing an appeal or passing the order by the Collector in appeal."

7. After hearing the learned counsel appearing for the parties, in my opinion, the contention raised on behalf of the petitioners has to be accepted. In the previous proceeding also all matters available to the State could have been agitated and the authority exercising the power of the Collector under the Act could have decided the matter finally between the parties and, as I have said, all the previous orders had become final because the State had not preferred any appeal or revision. After the adverse order was passed if the State really thought that other provisions of the Act will be applicable then why the delay of three years in starting a fresh proceeding u/s 4 (g) of the Act. There is no doubt that the two provisions, Sections 4 (g) and 4 (h), have different connotations but at the same time it cannot be said that they are not overlapping, to a great extent. The substance of Clause (g) is that after the vesting of the estate if the Collector is of the opinion that the State is entitled to possession then a notice will be given to deliver possession thereof. Clause (h) empowers the Collector to enquire in respect of any transfer including the settlement or lease and it gives him certain powers if he finds the settlement to have been effected any time after the first of January, 1946. Thus, it is clear that the enquiry initiated either under Clause (g) or under Clause (h) is exercised by the concerned authority who is a Collector under the Act and the orders are appealable under the provisions of the Act. The authority deciding the proceeding u/s 4 (h) of the Act could have taken recourse to Section 4 (g) also if that provision was applicable to the instant case.

In the case of Sardamoni Debi Vs. State of Bihar and Others, a similar point arose for consideration relating to the settlement of a tank and a proceeding was started which was finally decided on 20-1-1967 holding that it had not vested in the State of Bihar. Again the matter was sought to be reopened by the Additional Collector on 3-4-1967 and it was held that the same could not be reopened and the order of the Additional Collector was set aside. In the case of Bidyut Kumar Ganguli v. State of Bihar, 1980 BBCJ (HC) 476: AIR 1981 NOC 69 to which I was also a party, a proceeding u/s 4 (h) of the Act was sought to be started again and again though the matter had been finally decided and the State never preferred an appeal after the adverse order was passed against them. It has been held that all the orders were appealable and since no appeal was preferred by the State and, therefore, the order became final which applies equally to the private individual and State and in that view of the matter, the State was not competent to reopen the matter and the order initiating the proceeding was set aside which amounted to be the abuse of the process of the Court I may also refer to a decision in the case of Choudhary Sahu (Dead) by Lrs Vs. State of Bihar, where it has been held that if the State does not prefer an appeal it becomes final so far as the State is concerned. There is another aspect of the matter which cannot be lost sight of, State having not preferred any appeal, if again allowed to reopen the matter, this will amount to doing a thing indirectly which cannot be done directly. This, in my opinion, is completely prohibited and is not permissible under the law as held in the case of Jagir Singh Vs. Ranbir Singh and Another, .

8. Now I propose to consider the case laws relied upon by Mr. Singh in support of his contention that fresh proceeding will operate as res judicata as also clog on the jurisdiction. Reliance has been placed in the case of State of U.P. Vs. Nawab Hussain, where a Sub-Inspector of Police was dismissed by a D. I. G. and against that he filed a writ application for quashing on the ground that the I. G. was the proper authority and that application was dismissed. Thereafter he filed a suit and ultimately matter came to the Supreme Court on the appeal filed by the State of Uttar Pradesh and it was held that since the matter has been decided in the writ application the suit was barred by the principles of constructive res judicata. It has been further held that it was the cause of action which gives rise to an action, and that is why it is necessary for the Courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot, therefore, survive the judgment or give rise to another cause of action on the same facts. This is what is known as the general principles of res judicata. In the case of Daryao and Others Vs. The State of U.P. and Others, it has been held that the rule of res judicata is not merely an adequate rule but is based on public policy and it is in the interest of public at large that a finality should attach to the binding decision pronounced by the Courts of competent jurisdiction and it is also in the public interest that individual should not be vexed twice over the same kind of litigation. In the case of Raj Lakshmi Dasi and Others Vs. Banamali Sen and

Others, the same principles have been reiterated and it has been held that if a land acquisition proceeding was finally decided by the Court having jurisdiction to try it that decision, will operate as *res judicata* and estop the others claiming under the said persons from re-agitating that matter again and again. I may refer to another important decision on this point in the case of *State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others*, where the question of *res judicata* was being discussed and it has been held that even a wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher Tribunals or other procedure like review which the law provides. The matter relating to status of a tenant was in controversy under the Hyderabad Tenancy Act and it was held by all the Courts up to the High Court that the raiyats were occupancy raiyats. Another proceeding was started on the ground that the land had vested under the amended Act which was challenged by the tenants and it was held that the issue as to the acquiring by the tenant all the right of an occupant directly and substantially fell for determination in the earlier case and hence the Euamdar cannot re-agitate the same question in subsequent proceeding relating to the Enams under the Hyderabad Abolition Act. The contention of Mr. Singh that the proceeding u/s 4 (h) of the Act having been successfully terminated in favour of the petitioners the same matter could not be re-agitated by simply changing the nature of the proceeding u/s 4 (g) of the Act cannot be said to be without substance.

9. There is another decision of the Privy Council reported in the case of AIR 1936 46 (Privy Council) , relied upon by the learned counsel appearing on behalf of the petitioners in which it has been held that in view of the previous decision of the State in the year 1917 between the parties it was not open to the respondents to challenge the validity of the Grants of 1919 and 1920 in view of the principles of *res judicata*, because of the fact that the matter had already been decided between the parties earlier. The last decision on which reliance has been placed is a Full Bench decision of the Calcutta High Court in the case of *Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Haldar*, which was a case under the Bengal Tenancy Act and a suit for interest was decided in 1915. Subsequently, another suit was filed agitating the same matter. Chief Justice Rankin, C. J. speaking for the Bench held as follows :

"The question whether decision is correct or erroneous has no bearing upon the question whether it operates or does not operate as *res judicata*. For this purpose, it is not true that a point of law is always open to a party. Section 11 of the Code of Civil Procedure, says nothing about the cause of action, a phrase which always requires careful handling. Nor does the section say anything about the point or points of law or pure points of law. What is made conclusive between the parties is the decision of the Court and the reasoning of the Court is not necessarily the same thing as its decision. The object of the doctrine of *res judicata* is not to fasten upon parties special principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend, and to prevent this ascertainment from

becoming nugatory by precluding the parties from re-opening or re-contesting that which has been finally decided."

10. On a careful consideration of the authorities and after hearing the submissions of the learned counsel appearing for the parties, I am of the opinion that it is not open to the State to re-open the matter again and again as it had been decided earlier in 1955 and 1963. The points which have been decided in the case, which have been referred to above, leave no manner of doubt that the principles of constructive res judicata will apply to the facts of the instant case and the subsequent proceedings u/s 4 (g) of the Act must be held to be barred by the same principle. The petitioners having succeeded on the first point, it is not at all necessary to refer to the second contention of Mr. Singh who has argued that the petitioners have acquired the status of an occupancy raiyat having remained in possession for a number of years. But I would like to refer to the decisions relied upon, in this connection, and they are : Raj Kumari Baishnabi Vs. Mirja Samsuddin and Others, ; Jado Singh and Another Vs. Bishunath Lal Kanedia Marwari and Another, ; Henry Hill and Co. (Turkaulia) Ltd. and Another Vs. Sheoraj Rai and Others, ; and Jaigobind Singh Vs. Bhawani Singh, equivalent to Bholanath Mahto and Others Vs. Niru Mahton and Others, .

11. The learned Advocate General, on the other hand, has submitted that after the expiry of the lease the status of the petitioners was that of a trespasser and the payment of rent was not conclusive proof of raiyati settlement, it may be a mere circumstance and simply continuous possession was not enough to prove such rights and I may refer to the decisions relied upon and they are: Bhola Mian Vs. Sri. S.M. Islam and Others, ; Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, ; Gurucharan Singh Vs. Kamla Singh and Others, ; Ram Ran Bijai Singh and Others Vs. Behari Singh alias Bagandha Singh, ; Jageshwar Sikhar v. Yubrajin Bai-dehi Kuer (1970 BUR 325); Bhutnath Chatterjee Vs. The State of Bihar and Others, ; Smt. Maheshwari Devi and Others Vs. State of Bihar and Others, ; and Thakur Busudeo Rai v. State of Bihar 1965 BLJR 150. I have referred to these case laws because detailed arguments were made by the learned counsel appearing on behalf of the parties but in view of the fact T have held that the matter had been agitated and decided between the parties and the State Government never moved against those orders it became final and now it is not open to the State Government to start a fresh proceedings and it will be hit by the principles of constructive res judicata. It is no doubt true that the petitioners would have been well advised to move this Court against the order initiating the proceeding but simply because they took part in the proceeding that will not make any difference.

12. On a careful consideration of the points, which have been raised in this application, I am of the opinion that the petitioners have made out a case for interference by this Court under Articles 226 and 227 of the Constitution of India. I, therefore, direct that let a writ of certiorari be issued quashing the order of the Deputy Commissioner dated 13-7-1982 as contained in Annexure-10. But in view

of the facts and circumstances of this case, however, there shall be no order as to costs.

K.B. Sinha. J.

I agree.