(1967) 09 PAT CK 0009

In the Patna High Court

Case No : C.W.J.C. No. 436 of 1966

Sheo Prasad Mahto APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 15-09-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 14

Citation : (1968) 16 BLJR 404

Hon'ble Judges : R.L. Narasimham, C.J;K.B.N. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.L. Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution against the order of the Circle Officer, Majorganj (Annexure C), which was approved by the, Sub-divisional Officer of Sitamarhi, directing the settlement of Basbitta Hat with opposite party No. 3 Ganandeo Singh, who is the Mukhiya of Basbitta Gram Panchayat, for the year 1966-67 on a jama of Rs. 1,000/-.

2. The Basbitta Bazar in Majorganj Thana of Sitamarhi subdivision is held regularly in survey plot Nos. 708 and, 710 appertaining to Touzi No. 3244. There is controversy between the parties as to whether the Hat extends also over two other plots, namely, 281 and 283, of village Maspasirpal. But it is unnecessary to consider this dispute here. There were several casharer landlords of the said touzi, of whom one Jhingoor Mahto was one. The petitioner. Sheo Prasad Mahto claims to be another co-sharer landlord having one-fifth share in the proprietary interest of the intermediaries. In 1961 the Basbitta Hat was settled by the authorities with Sri Jhingoor Mahto for a period of three years in pursuance of Section 7-C of the Bihar Land Reforms Act (hereinafter referred to as the Act) read with Rule 7-P of the Bihar Land Reforms Rules 1951(herein-after referred to as the Rules). The settlement with Jhingoor Mahto was later on extended upto

the 31st March, 1966, on a reserve lama of Rs. 1,000/-. When the question of settlement for 1966-67 came up before the authorities, the Anchal Adhikari Majorganj, published a notice to the effect that the Hat will be settled by public auction on the 21st February, 1966. An objection was filed by the ex-proprietors on the ground that the settlement of the Hat should not be made by public auction but that it should be made with one of them as required by the Act. This petition was, however, rejected and then the Hat was settled for 1966-67 with the Mukhiya of the Gram Panchayat for Rs. 1,000/-. Opposite party No. 2 is alleged to be a lessee of the Mukhiya.

3. The main question for consideration here is whether the authorities were bound to give first preference to any one of the ex-intermediaries in making the settlement of the Hat for the year l,96667. For a consideration of this question it is necessary to refer to certain provisions of the Act and the Rules. Section 7-C of the Act says that whenever it is intended to settle at any time after the first day of January; 1960, any hat or bazar or mela, on any land which, belonged to the exintermediaries, the prescribed authority shall, subject to the rule made in this behalf in the first instance invite application for the purpose from the outgoing intermediary or his heirs whose names have, been registered in the office of the Collector. The Explanation to that, Section says that if there are two or more such intermediaries or heirs, the prescribed authority may settle the Hat with such of them as appear to be most suitable. Sub-section (2) of Section 7-C expressly says that the prescribed authority may settle the Hat with any other person only if any of the ex-intermediaries either fails to apply for settlement or refuses to take the settlement in accordance with the conditions and terms offered to him. The scheme of this Section is very clear. In Section 7-B the Legislature expressly stated that the right to hold Hat on the lands of the intermediaries shall vest in the State but by way of concession to these ex-intermediaries Section 7-C gave them the right of first refusal. The authorities were required to register their names and offer the settlement of the Hat to them in the first instance and the right to settle with any other person arises only when the ex-intermediaries do not take such'' settlement. It is true that Section 7-C says that the settlement shall be made in accordance with the rules made under the Act but no provision in the Rules can take away the right of the ex-intermediary to claim first preference as regards the settlement of the Hat. The Rules should be so construed as to effectuate the primary purpose for which Section 7-C was insetted.

4. The relevant rules are found in Rules 7-K to 7-U. The arrangement of these rules is not very satisfactory as will be seen presently. Rules 7-L, 7-M, 7-N and 7-0 deal with the procedure to be followed for maintenance of a register of the ex-intermediaries and their heirs for the purpose of settlement of the Hat. Rule 7-P consists of two parts. Sub-rule (1) says that the prescribed authority shall first issue notice in Form P (2) to the outgoing intermediaries who are prepared to forego compensation, whether they are willing to take settlement of the Hat on executing a lease in the Form prescribed in F6rm P(3) for a period which shall be

not less than three years and not more than fifteen years. Form P(2) requires that authority to fix the annual reserve jama of the Hat at a certain figure while giving the notice. The rule dealing with the fixation of reserve Jama is 7U which says that normally that Jama shall be the aver age of the Jama at which the Hat was settled during the three preceding years. But Sub-rule (ii) of Rule 70 gives discretion to the Collector, subject to the approval by the Commissioner, to adopt any other,mode of fixing the reserve Jama in case of difficulty. The Court in M.J.C. No. 659 of 1964 disposed of on 6th April, 1966 held that by virtue of Sub-rule (ii) of Rule 7U the reserve Jama may be ascertained by public auction in some cases. Thus, having fiixed the reserve Jama in accordance with Rule 7U the authority makes the offer to the ex-intermediary to take the settlement, if he is willing to forego compensation. If, however, he is not willing to forego compensation, sub rule (ii) of Rule 7P comes into effect and he has to execute a lease in Form P(4). These forms P(3) and P(4) deal with the leases to be executed by those intermedaries who agree to forego compensation and those who do not agree to forego compensation respectively, The reply of the intermediaries is required to be in the form of sealed tenders and after considering the replies given by them the Collector is required by Rule 7R to make the settlement with one or more of the intermediaries. Where settlement is made jointly with more than one intermediary that rule authorises the Collector to extend the period of settlement within the limits namely, three to fifteen years, specified in Rule 7P. If the Collector, however, considers that the settlement should not be made with the ex-intermediaries, he is required to report the matter to the Commissioner for orders of the Government. Rule 7-T says that if the ex-intermediaries do not take settlement, then preference shall be given to co-operative Societies and to the Gram Panchayats of the area in which the Hat is situated. It is only when these authorities also do not take settlement that the holding of a public auction for settlement is permitted by the Rules.

5. Mr. Sarwar Ali for the Government quite properly did not challenge the right of the ex-intermediaries to first preference in obtaining settlement of the Hat. But he urged that this right was exhausted when settlement was taken for the first time. Thereafter the ex-intemediary, according to him, has no preferential claim arid his position was that of any member of general public who may bid at the open auction.

6. This is the crucial question for consideration here. Section 7C in terms applies where it is intended to settle the Hat at any time after the first day of January 1960. Rules 7P to 7U also do not say that the preferential right of the ex-intermediary is limited to the first settlement only. Under normal rules of statutory construction embodied in Section 16 of the Bihar and Orissa General Clauses Act following Section 14, pi the General Clauses Act, 1897, statutory power once conferred by an act can be exercised from time to time whenever occasion arises and it is not exhausted by one act of exercise. The normal rule of construction, therefore, specially the words "at any time" occurring in Section 7C

of the Act would be that the preferential right of the ex-intermediary is not lost after settlement is taken once for a limited period but it may continue from time to time, subject of course to the other conditions prescribed in the Rules. But. at the same time, I am impressed with the argument of Mr. Sarwar Ali that the preferential right cannot continue for ever somewhat like a truncated form of permanent settlement. Some limit will have to be fixed as regards the period during which the preferential right of the ex-intermediary could be exercised. The context of Rule 7-P itself gives an indication on this subject. As already pointed out, in the two sub-rules of that rule two categories of ex-intermediaries are referred to, namely, (1) those who are willing to forego compensation, and (2) those who are not willing to forego compensation. Hence, at the time of making the offer the intermediaries must be in a position to exercise this option of foregoing compensation. This option cannot possibly be exercised after the compensation is completely paid and all proceedings in respect of the same under the Land Reforms Act are finally closed. Apparently, Rule 7R, deals with the stage when the proceedings for determining the compensation payable to the ex-intermediary and its final payment to him is still pending. It is conceded by counsel for both sides that even now the proceedings for payment of compensation to the ex-intermediaries of this touzi is pending and that it is also pending in respect of most of the ex-intermediaries of the State of Bihar. The rule making authorities seem to have thought that several years are likely to elapse before the compensation proceedings could be finally terminated and during this period the ex-intermediaries should get some concession as regards settlement of the Hat by getting first preference.

7. It may also be urged that the outer limit of fifteen years prescribed for settlement in Sub-rule (1) of Rule 7P affords a useful guide. That is to say, the ex-intermediary may claim settlement for a total period not exceeding fifteen years, Whether in the form of one settlement or successive settlements, otherwise this period fixed in Rule 7P(i) cannot be enforced. It is, however, unnecessary to decide this question, because here the first settlement of the ex-intermeliary was made only in 1961. Difficulties may possibly arise after 1976 if even till then the proceedings for payment of compensation to the ex-intermediaries continue to remain pending.

8. Hence, though I agree with the learned Counsel for the Government that the right of first preference cannot be claimed by the ex-intermediaries for an indefinite period, nevertheless as admittedly compensation proceedings are still pending they are entitled to claim first preference for the settlement of 1966-67. The holding of auction by the authorities by itself may not be irregular if the primary intention is to estimate the reserve Jama and then make the first offer of settlement to any one of the ex-intermediaries as pointed out in Miscellaneous Judicial Case No. 659 of 1964 but settlement with either the co-operative Society or the Gram Panchayat or any other person cannot be made unless the ex-intermediary refuses to take settlement.

9. For these reasons, the petition is allowed and the order of the Circle Officer, Majorganj (Annexure C), which was approved by the Sub-divisional Officer of Sitamarhi, is, quashed. For settlement of the year 1967-68 also the competent authorities must follow: the principles laid dawn in this judgment. The petitioner is entitled to costs. Hearing fee Rs. 100/- payable by respondents 2, and 3

K.B.N. Singh, J.

10. I agree.

