
(1996) 12 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3330 of 1987

Shree Kirti Vardhan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-12-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 37

Citation : AIR 1998 Patna 23

Hon'ble Judges : Bisheshwar Prasad Singh, J

Bench : Single Bench

Advocate : Ravi Shankar Prasad and Bajaj Priya, for the Appellant; Raghib Ahsan, S.C. (Ceiling) and K.A. Siddique, J.C to R. Ahsan, S.C., for the Respondent

Final Decision : Allowed

Judgement

Bisheshwar Prasad Singh, J.—Heard counsel for the parties.

2. The petitioner herein is aggrieved by the order passed by the Collector, Annexure-6, dated 20th July, 1982 and the appellate order passed by the Commissioner, Annexure-7, dated 20th March, 1984 as also the revisional order passed by the Addl. Member, Board of Revenue, Annexure-1 dated 6-12-1986 rejecting his application u/s 37 of the Act for exempting his lands which were illegally declared surplus in Ceiling Case No. 20/73-74, which was a ceiling case started against a different person not in any manner connected with the petitioner.

3. The case of the petitioner is that his father has taken a settlement of certain lands from the ex-landlord before the vesting of the estate of the intermediary in the State of Bihar. Thereafter, mutation proceedings were taken and the name of his father was mutated in the revenue record. Register-II, the list of raiyats prepared by the State of Bihar also recognised the petitioner's father as the tenant of the lands in question. Thus the petitioner's father was the recorded raiyat of the lands in question.

4. Surprisingly, Ceiling Case Nos. 20 and 21 of 1973-74 started against two brothers who were strangers to the petitioner's father, and it appears that by mistake or by inadvertence, the lands which were recorded in the name of petitioner's father were also shown to be within the holding of the landholder in Ceiling Case No. 20 of 1973-74. Naturally, the landholder did not claim these lands, which really belonged to the petitioner's father, and only claimed lands which belonged to him. The ceiling case was accordingly decided and the D.C.L.R. who disposed of the said case by his order. Annexure-2 observed that since no one had come to claim lands, which really belonged to the petitioner's father, the same were declared surplus and acquired by the State as surplus land.

5. The petitioner who is a retired Excise Commissioner, is residing at Allahabad and he came to know of these developments from his Munsif. On coming to know these facts, he filed an application u/s 37 of the Act and requested the Collector to exclude his lands from acquisition. The Collector by his order Annexure-6, dated 20th July, 1982 rejected the application holding that there was no evidence to show that the petitioner or his father were raiyats of the lands in question. This is rather surprising in view of the claim of the petitioner that his father is the recorded tenant of the lands in question and his father's name appears in Register-II maintained by the State of Bihar. It is by now well-settled that if a land is recorded in the name of a raiyat, before any action is taken in relation to such land, notice must be given to the recorded raiyat. This is not a case where the petitioner's father had taken a settlement and had not got his name mutated in the revenue record. In fact, even after vesting of the estate, the State of Bihar recognised the petitioner's father as the tenant of the lands in question. Under these circumstances, it was clearly an error on the part of the authorities under the Act to include the said lands in the holding of any other person. In these circumstances, the Collector does not appear to be justified in rejecting the application u/s 37 of the Act on the ground that there was no evidence to support the claim of the petitioner. In the case of a recorded tenant there can be nothing more substantial than the revenue record itself, which records names of the tenants in Register-II maintained by the State itself.

6. The appeal preferred by the petitioner was dismissed by the Commissioner by his order Annexure-7 dated 20th March, 1984 on the flimsy ground that since the petitioner is a resident of Allahabad, the matter appeared to be suspicious. This does not appear to be a good ground for dismissal of the appeal. Unfortunately the revision preferred by the petitioner before the Add. Member, Board of Revenue was dismissed by order Annexure-I dated 6-12-1986 only on the ground of limitation, since the revision was filed about 20 days late.

7. Having regard to the facts and circumstances of the case, I have no doubt that the Collector has committed a grave error in ignoring to look into the relevant records, such as revenue record and Register-II in which the petitioner's father has been recorded as a raiyat. If the revenue record justified the claim of the petitioner, the lands could not be acquired as surplus land without notice to the

petitioner.

8. In these circumstances, the impugned orders Annexures-1, 6 and 7 are quashed. The matter is remitted to the Collector who will hear the application u/s 37 of the Act afresh and pass an order in the light of the observations contained in this judgment. The petitioner will appear before the Collector with a certified copy of this order within a month and thereafter the Collector will proceed to pass appropriate order in accordance with law within reasonable time. Till such time, the Collector does not pass an order, the interim order of stay granted by this Court by order dated 20-8-1987 shall operate.

9. This writ petition is allowed to the extent indicated above.