
(2005) 02 PAT CK 0126
In the Patna High Court
Case No : CWJC No. 5202 of 2001

Shyama Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2(i), 2(j)

Citation : (2005) 2 PLJR 41

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard Learned Counsel for the petitioner, Learned Counsel appearing for respondent No. 4 and Learned Counsel appearing for the State. This application has been filed by the petitioner for quashing the order dated 27.8.1992, passed by the Circle Officer, Simri in Basgit Purcha Case No. 55/91-92 and also the order dated 24.2.2001, passed by the Collector, Buxar in Case No. 2/95. By his order the Collector has affirmed the order passed by the Circle Officer, whereby respondent No. 4 was held to be the privileged tenant with respect to land of Khata No. 111, Plot No. 152 measuring three and a half decimals of Mauja Sahiar, and has issued Purcha in his favour under the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act").

2. The concurrent findings of both the courts have been challenged by the petitioner in the present application on the ground that even though respondent No. 4 is a privileged person, he is not a privileged tenant u/s 2(i) of the Act, as such no purcha should have been issued in favour of a trespasser, in support of the submissions, reliance has been placed on the decision in the case of Bishwanath Singh vs. The State of Bihar and others, reported in 1981 BLJR 356 and in the case of Ragho Singh and Others Vs. State of Bihar and Others, . In the case of Ragho Singh and others vs. The State of Bihar while deciding who is a

privileged tenant, the word Landlord was defined in these words,

"The word "landlord" has been used in a wide sense, so as to include even a person who is not a proprietor or the like, but is himself a tenant, and under him there is another person, who is holding some land as a tenant. But that apart, it is well established that a tenancy can be created by acts indicating the establishing or relation of landlord and tenant. This may be expressed, implied, or gathered from conduct, or circumstances of the parties. Where the opposite party was in possession of the house with the implied consent of the petitioners, the petitioners would be the landlords of opposite party within the meaning of Section 3(4) of the Bihar Tenancy Act read with Section 2(1) of the Act 4 of 1948."

In the case of Bishwanath Singh vs. The State of Bihar it has been held that

"Two conditions are contemplated which must exist as a condition precedent before a person can be called a "privileged tenant" within the meaning of the Act. Where the relationship of landlord and tenant exists without any arrangement for payment of rent as such, " for example, in cases where the person happens to be an artisan like a carpenter, potter etc. and is allowed to occupy a house on consideration of his rendering service to the raiyat of the landlord concerned, there being always an implied contract on the part of the tenants to compensate the landlord for the use and occupation of the land."

3. In the present case, counter affidavit has been filed by respondent No. 4, wherein it has been stated that he was residing over the land as tenant for more than 30 years. The said land was purchased by the petitioner in the year 1991 from the original tenant. After the purchase, the petitioner wanted to evict respondent No. 4 from the house. Considering his threatened ejectment, he filed an application for issuing a purcha with respect to the lands in his occupation and possession under the provisions of the Act. The case of the petitioner is that he purchased 21 decimals of Plot No. 152 of Khata No. 111 in Mauja Sahiar from Anurag Dayal Singh soon after purchase respondent No. 4 trespassed in two kaccha room over the disputed land. Respondent No. 4 has his homestead land in same mauja in some other plot, even then he applied for issuance of Basgit purcha. Respondent No. 4 is not a privileged tenant as he was not residing over the land with the consent of the petitioner but he was a trespasser, no purcha under the provisions of the Act should have been issued by the authorities in favour of a trespasser or a squatter. It has also been submitted that as respondent No. 4 was forcibly living in the land of the petitioner, the people of the locality intervened in the matter and it was decided that the petitioner will purchase 8 decimals of land in the name of respondent No. 4 who in turn will execute deed of disclaimer in favour of the petitioner for three and a half decimals of land. Both the sale deeds dated 12.4.1992 for 8 decimals of land and the deed of disclaimer dated 12.4.1992 were registered on the same date. It was agreed that respondent No. 4 will construct his residential house on 8 decimals of land and vacate the land in dispute. Respondent No. 4 subsequently changed his

mind and filed Basgit Purcha Case No. 54/91-92 on concealment of the fact that he already having homestead in the same Mauja and 8 decimals of land in his name which he acquired in exchange of the 3x1/2 decimals of land of the petitioner.

4. On consideration of the rival submissions of the petitioner and the orders and the documents on record of the case, I find that respondent No. 4 had clearly denied the execution of disclaimer by him and also refused his claim over 8 decimals of land which is said to have been purchased by the petitioner for respondent No. 4. The Circle Officer after holding an enquiry came to the conclusion that respondent No. 4 is having his house on three and a half decimals of land. The Circle Officer passed an order of issuance of purcha for three decimals of land only.

5. Admittedly, it is not the case of the petitioner that respondent No. 4 is not a privileged person as defined u/s 2(i) of the Act. The petitioner has challenged the order on the ground that respondent No. 4 is not a privileged tenant as such not entitled for issuance of Basgit Purcha. As decided in the case of Ragho Singh and others vs. The State of Bihar it has been held that tenancy can be created by acts indicating the establishment of relation of landlord or tenant. This may be expressed, implied, or gathered from conduct, or from the circumstances of the parties. Where the opposite party was in possession of the house with the implied consent of the petitioner, the petitioner would be the landlords of the opposite party. In the present case, respondent No. 4 has claimed to be in possession under the original land holder with his consent. When the land was purchased by the petitioner he was in possession of the land. Just to evict him from this land the petitioner has purchased 8 decimals of land through the sale deed and offered this land to respondent No. 4 in exchange of three and a half decimals of land over which he was residing by constructing a thatched house. Respondent No. 4 has stated that he has no another land for his homestead except three and a half decimals with respect to which a purcha was issued in his favour. The conduct of the parties, the circumstances and the continuation of respondent No. 4 over the land under the original land holder and subsequently under the petitioner is sufficient to indicate that there was implied relationship of landlord and tenant in between the petitioner and respondent No. 4. It is not disputed by the petitioner that respondent No. 4 is a privileged person. The circumstances show that respondent No. 4 was a privileged tenant under the petitioner. The case of respondent No. 4 is fully covered under the definition of privileged person u/s 2(i) as well as privileged tenant u/s 2(j) of the Act. I do not find any illegality either in the order dated 24.2.2001, passed by the Collector, Buxar in Case No. 2 of 1995 or the order dated 27.8.1332, passed by the Circle Officer, Simri in Basgit Purcha Case No. 55/91-92. Accordingly, the writ application is dismissed.