

(2016) 02 PAT CK 0108

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3279 of 2011

Sitaram

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 21

Citation : (2016) 2 BBCJ 41 : (2016) 2 BLJud 24 : (2016) 2 PLJR 614

Hon'ble Judges : Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Shiv Kumar Dwivedy, Advocate, for the Appellant; Devendra Kr Sinha, AAG 2 and Biresh Kumar Sinha, AC to AAG 2, for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J. (Oral) - Heard the parties.

2. The petitioner is aggrieved by the order dated 05.10.2009 passed by the respondent District Collector, West Champaran, Bettiah in Settlement Revision Case No. 65 of 2009- 10, as contained in Annexure-4 to the writ petition, whereby and where under the petition filed on behalf of the petitioner under Section 21 of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short, "the Act, 1947") has been dismissed merely on the ground of being barred by limitation.

3. The learned counsel appearing on behalf of the petitioner submits that the petitioner had no knowledge/information about the order dated 26.05.1993 passed by the respondent Anchal Adhikari, Bairia in Settlement Case No. 17 of 1993-94 whereby the claim of the private respondent no.3 under the provisions of the Act, 1947 and the Rules made thereunder has been allowed.

4. It is contended that once the petitioner came to know about the said order, then he filed a petition under Section 21 of the Act, 1947 before the respondent District Collector, West Champaran, Bettiah on 01.10.2009, but the respondent

District Collector without formally registering a case, in the margin of the petition itself filed by the petitioner, has rejected the aforesaid petition mechanically on the ground of being barred by limitation by the impugned order dated 05.10.2009.

5. The learned AAG 2, appearing on behalf of the respondent nos. 1 and 2, has contested the matter and submitted that the petitioner filed the aforesaid petition after an undue delay of almost sixteen years; therefore, the respondent District Collector has rightly dismissed the petition. However, he has not been able to point out that any period of limitation is prescribed for filing a petition under Section 21 of the Act, 1947.

6. Despite valid service of notice, none is appearing on behalf of the respondent no.3 to oppose the prayer made in the present writ petition.

7. After having heard learned counsel for the petitioner and the learned AAG 2, appearing on behalf of the respondent nos. 1 and 2, this Court is of the opinion that the matter requires reconsideration and a fresh decision by the respondent District Collector, West Champaran, Bettiah. Under the Act, 1947 or the Rules made thereunder, no period of limitation has been prescribed for filing a petition under Section 21 of the Act, 1947. In fact, the power under Section 21 of the Act, 1947 was vested with the District Collector by amending Act 11 of 1989 and the powers under Section 21 of the Act, 1947 is supervisory in nature. Furthermore, this Court is of the opinion that once a petition was filed by the petitioner under Section 21 of the Act, 1947, then the respondent District Collector ought to have registered a case and then he could have passed the final order in accordance with law, but that has not been done in the present case. The powers under Section 21 of the Act, 1947 is quasi judicial in nature and for exercise of such powers, the District Collector ought not to have acted in the manner in which he has done in the present case.

8. For the reasons recorded above, the impugned order dated 05.10.2009 passed in Settlement Revision Case No. 65 of 2009-2010 by the respondent District Collector, West Champaran, Bettiah, as contained in annexure-4 is hereby set aside and quashed and the matter is remitted back to the respondent District Collector, West Champaran, Bettiah with a direction to decide the aforesaid revision case by a reasoned and speaking order, but before passing any final order, an opportunity of hearing must be given to both sides including the petitioner and the respondent no.3, besides others, if any, However, if it is found that the respondent no.3 has passed away, then an opportunity of hearing must be given to his heirs and legal representatives.

9. The writ petition stands allowed to the extent indicated, but with the observations and directions made above.

10. However, the parties are left to bear their own costs.