
(1993) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8076 of 1991

Sitaram Choubey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-03-1993

Acts Referred:

Citation : (1993) 03 PAT CK 0010

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 10-10-1991 passed by the Respondent No. 2 as contained in Annexure-7 to the writ application whereby and whereunder the Jamabandi standing in the name of the petitioners have been directed to be cancelled.

2. Shortly put the fact of the matter is as follows:

In the year 1944 the ex-tenure holder allegedly granted settlement of the land in question in favour of the petitioners and issued rent receipts in relation thereto.

3. According to the petitioner they being occupancy raiyat of village acquired occupancy right in relation to the land question. After vesting of the State of the ex-tenure holder in the State of Bihar the petitioner's name was entered into Register II (Annexure-1) and rents receipt had all along been issued by the State of Bihar.

4. Admittedly revisional survey settlement operation took place in the year 1970 wherein the name of the State of Bihar was entered.

5. It is also accepted that the petitioners did not file any suit under the provisions of Bihar Tenancy Act or any civil suit questioning the aforementioned entry in the revisional survey record of rights

6. The petitioners however, filed an application for .correction of Jamabandi which was allowed purported to be on a consideration that the petitioners had been in possession thereof and by reason of Annexure-3 to the writ application,

fresh jamabandi was created.

7. Allegedly, however by reason of the order dated 15-4-1991 an ex parte order was passed cancelling the aforementioned Jamabandi.

8. The petitioners filed a writ application in this Court being CWJC No 3362 of 1991 and during the pendency of the said writ application the aforementioned order dated 15-4-1991 was recalled and notice was given to one of the petitioners. The said writ petition is said to be pending but according to Mr. Choubey, the learned Counsel appearing on behalf of the petitioners, the same has become infructuous. Thereafter upon hearing the parties, the impugned order dated 10-10-1991 as contained in Anaexure-7 has been passed.

9. Mr. Kamal Nayan Choubey, the learned Counsel appearing on behalf of the petitioners inter alia submitted that the order of cancellation of Jamabandi will have the effect of cancellation of settlement which cannot be done in the absence of the proceeding u/s 4 (h) of the Bihar Land Reforms Act, 1950.

10. The learned Counsel in support of his contention relied upon a decision of this Court in Harihar Singh v. Additional Collector and Ors. reported in 1978 BBCJ 323 and Khiru Gope v. Land Reforms Deputy Collector, Namui reported in 1983 BLJR 727.

11. The learned Counsel next contended that the State of Bihar, in its counter affidavit has wrongly taken the stand that the land question having been recorded as Gair Majarua Am Land could not have been given in settlement by the ex-landlord.

12. According to the learned Counsel in view of the decision of this Court in Brij Bhukan Kalwar and Others Vs. S.D.O. Siwan and Others, even the settlement of the Gair Majarua Am Land is permissible in law.

13. The Learned Counsel further submitted that the impugned order would have the effect to a eject the raiyat which could only be done in terms of Section 25 of the Bihar Tenancy Act.

14. It was also submitted that in any event, the entry in the record of rights cannot be considered to be a document of title. The learned Counsel in this connection has relied upon a decision of this Court in Nand Kumar Rai and Ors. v. The State of Bihar and Ors. reported m 1974 BLJR 27.

15. Mr. D. K. Sinha, the learned standing counsel No. 4 appearing on behalf of the State, on the other band, submitted that the entries having been made in the name of the State of Bihar in the revisional survey settlement records of rights the petitioners cannot be said to have been prejudiced by reason of the* impugned order.

16. In view of the point involved in this case, it is not necessary to go into all the contention raised by Mr. Choubey.

In terms of the provisions contained in Sub-section (3) of Section 103-B of the Bihar Tenancy Act a strong presumption of correctness of the entry made in the survey settlement records of right arises. Such a presumption is however, rebuttable, Bihar Tenancy Act is a complete Code in itself. It provides for filing of suit and/or application before the competent authorities for correction of the entries made in the survey settlement records of rights.

17. Section 106 of the Bihar Tenancy Act and Section 108-A thereof read thus:

106. Institution of suit before a Revenue Officer.--In proceedings under this part, a suit may be instituted before a Revenue Officer at any time within three months from the date of the certificates of the final publication of the record of rights under Sub-section (2) of Section 103-A of this Act, by presenting plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue Officer has made in, or any omission which the said Officer has made from the record.

Whether such dispute between landlord and tenant, or between landlord the some of neighbouring estates, or between tenant and tenants, or as to whether the relationship of landlord and tenant, exists, or as to whether land held rent free is properly so held; or as to any other matter ; and Revenue Officer shall hear and decide the dispute:

(** ** *) ; Provided (**) that in any suit under this section the Revenue Officer shall not try any issue which has been, or is already, directly, and substantially in issue between the same parties or between parties under whom they or any of them claim in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue Officer u/s 105-A.

108-A. Correction by Collector of Revenue Officer of mistakes in record of rights.- a case of discovery of bona fide or material error in record of rights within a period of five years from the date of the certificate of its final publication under Sub-section (2) of Section 103-A, the Collector or any Revenue Officer specially empowered by the State Government in this behalf, may, on his own motion, or on an application made to him within the said period, after holding an enquiry in the prescribed manner, by order in writing direct that such error shall be corrected in the manner specified in the order:

Provided that in respect of record of rights final publication of which took place in the year 1957 or 1958 the said period shall extend till the 31st March, 1965:

Provided further that no such correction shall be made:

(i) Until reasonable notice has been given to the parties concerned to appear and be heard in the matter ;

(ii) If a a proceeding or suit under any of the Sections 105 to 108 (both inclusive) or an appeal u/s 109-A, affecting such an entry is pending.

18. Admittedly the entries in the survey settlement records of right had been finally published as far back as in the year 1970. The petitioner did not take any step questioning the correctness of the said entry either by filing a proper suit or an application under the Bihar Tenancy Act or by filing a duly constituted suit in the civil court.

19. The Mutation authorities while exercising their jurisdiction are normally bound by the entries made in the survey settlement records of right.

20. So far as the matter relating to creation of Jamabandi or cancellation thereof is concerned, the same used to be governed by the Executive Instructions issued by the State from time to time. Creation of Jamabandi or cancellation thereof has not been done in this case under the provisions of any statute.

21. In *Gobri Singh v. State of Bihar* reported in AIR 1978 NOC 88 a Division Bench of this Court has held that orders of mutation are administrative orders and not judicial or quasi-judicial orders.

22. The said decision of the Division Bench which had a vital bearing on the subject was not even noticed by this Court in the subsequent Division Benches, namely in *Harihar Singh v. Additional Collector and Ors.* reported in 1978 BBCJ 323 and *Khiru Gope v. Land Reforms Deputy Collector* reported in 1983 BLJR 727.

23. This aspect of the matter has been considered by one of us in *Depta Tiwary v. State of Bihar* reported in 1987 BLJR 1037 and *Sundari Devi v. The State of Bihar and Ors.* reported in 1993 BLJR 231.

24. This aspect of the matter has again recently been considered by a Division Bench of this Court in CWJC No. 4130 of 1992 *Most Panna Kumari and Ors. v. The State of Bihar and Ors.* disposed of on 19-3-1993.

25. By reason of an entry in Register II, a person merely becomes entitled to deposit rent. It is, therefore, difficult to comprehend as to now cancellation of Jamabandi would amount to cancellation of settlement, as it is well known neither payment of rent creates title nor non-payment extinguishes any.

26. An administrative order of mutation passed by the Revenue Authorities is not and cannot be a decision on the question of title. Such a decision can only be taken by a Civil Court in a duly constituted civil suit. It is, therefore, not correct to contend that the effect of the impugned order would be cancellation of settlement by itself resulting in extinguishment of the settlement purported to have been made in favour of the petitioners by the ex-landlord.

27. Mr. Choubey, himself has relied upon a Full Bench decision of this Court in *Nand Kumar Rai and Ors. v. State of Bihar and Ors.* reported in 1974 BLJR 27 wherein it has clearly held that an entry in the records of right does not create any title in favour or any person. If an entry in the records of right is not a document of title, it is, in my opinion wholly in comprehensible as to how cancellation of Jamabandi of the petitioner would amount to creation of title in

favour of the State of Bihar and extinguishment thereof so far as the petitioners are concerned.

28. The question as to whether the petitioner have therefore, derived valid right title in respect of the land in question or not has to be adjudicated upon in a duly constituted civil suit by the Civil Court.

29. For the reasons aforementioned, in our opinion this is not a case where this Court should exercise its jurisdiction under Articles 226 and 227 of the Constitution of India.

30. This application is, therefore, dismissed. However, in the facts and circumstances of the case, there will be no order as to costs,

A.N. Chaturvedi, J.

31. I agree.