

(1992) 11 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2222 of 1983

Sitaram Sah and another

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Citation : (1993) 1 PLJR 325

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : K.K. Sinha and Rajendra Prasad, for the Appellant; Seema Ali Khan and Mr. Rao Kundan Kumar Karmvir, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the petitioners for quashing the order dated 20.4.1983 passed by the Subdivisional Officer, Sadar Chapra, in Jamabandi Case No. 15 of 1982-83 as contained in Annexure "8/1" to the writ application by which Jamabandi in question has been cancelled as also for quashing the notice dated 25.5.1983 issued by the Anchal Adhikari, Jalalpur, directing the petitioners to vacate the premises in question and, in case of failure on the part of the petitioners to do so, it will be done through the Government machineries and cost will be recovered from the petitioners. The dispute relates to 5.25 decimals of land appertaining to khata no. 275, kheshra no. 305 situate at Takai Tola, Khodaibagh at Anchal Jalalpur in the district of Saran (Chapra). In respect of the land Jamabandi Nos. 341 and 345 were created in favour of the ancestors of the petitioners. Before vesting the Manjha Sursand Estate was the Malik of village Khodaibagh and the lands in question were Gair Majarua Malik land. According to the petitioners the disputed lands had been settled in favour of the ancestors of the petitioners by execution of two Sale Pattas dated 1.7.45 and 29.6.1950. It is the claim of the petitioners that said Sale Pattas were executed by Sri Jaideva Lal and Rameshwar Prasad, the Managers of the Estate under the directions of their Malik. It is also claimed that

since then the petitioners are in continuous possession over the said lands. According to the petitioners the two Jamabandis in question were created keeping in view the settlement by the ex-landlord and the rent receipts had been issued by the State of Bihar accordingly.

2. It appears that on certain report against the petitioners, and their ancestors, the impugned proceedings for annulment of the Jamabandi was initiated and ultimately the final order as contained in Annexure 8/1 has been passed. Keeping in view the materials placed during the proceeding, the learned Subdivision Officer has rejected the claims of the petitioners in respect of the settlement of the lands in favour of petitioners and their ancestors.

3. Learned Counsel appearing for the petitioners has sought to dispute the findings of facts recorded by the Subdivisional Officer. But, in my opinion, it is difficult to enter into that aspect in the writ jurisdiction because this aspect can be properly adjudicated upon only in a properly constituted Civil Suit. Therefore, I refrain myself from entering into the disputed questions of facts leaving it open for the parties to agitate such questions if they are so advised by preferring a civil suit.

4. But so far as the consequential notice by the Anchal Adhikari directing the petitioners to vacate the lands in question by removing their pucca structure and on failure of the petitioners to do so, it will be done through the Government machineries at the cost of the petitioners is concerned, in my opinion, the same is not permitted by law. It is well settled that even if a person is found to be in unauthorised occupation of a property his eviction can be enforced only through the procedure established by law. Mere annulment of Jamabandi does not authorise the executive authorities to take coercive measures seeking eviction of a person, who is in possession of certain properties. If according to the respondents, the petitioners are not vested with any valid title in respect of the land over which they are in possession, the only course open to them for seeking their eviction is either to file a Civil Suit and/or to take the recourse of the proceeding envisaged under Bihar Public Land Encroachment Act, 1956.

5. In the case of Bishan Das and Others Vs. The State of Punjab and Others, , at pages 1574-75, it has been held that,

We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implication and impact on law and order.

A similar view has been taken by the Supreme Court in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , wherein in para 15, it has been held that:

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra judicial right of re-entry. Possession can be

resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.

6. In the above view of the matter, the notice as contained in Annexure-12 is quashed and the Respondents are restrained from dispossessing the petitioners except by taking the recourse of a civil suit or the statutory provisions of the Bihar public Land Encroachment Act and/or any other statutory provisions authorising the Respondents to take such an action. The writ application is, accordingly allowed to the extent indicated above. There shall be no order as to costs in the facts and circumstances of the case.