
(1984) 11 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1672 of 1980

Sk. Wajuddin

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2, 4

Citation : AIR 1985 Patna 248 : (1984) 32 BLJR 537

Hon'ble Judges : Birendra Prasad Sinha, J

Bench : Single Bench

Advocate : Nawal Kishore Singh, Ravi Bhushan Singh and Najmul Bari, for the Appellant; Rameshwar Prasad, Govt. Pleader and Amarendra Kumar Sinha, Jr. Counsel to Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Sinha, J.—This is an application under Arts. 226 and 227 of the Constitution. A prayer has been made for issuance of a writ of certiorari for quashing Annexures 3 and 5. By Annexure-3 which is an order dated 29-8-1981 passed by the Anchal Adhikari, Katihar in Basgit Case No. 72 of 1980-81, Respondent No. 2 Md. Belal Hussain has been declared to be a privileged person and it has been directed to issue a Purcha to him in respect of plot No. 274, khata No. 72 area 3 decimals in village Rampur in the district of Katihar. The petitioner has challenged this order contained in Annexure-3 on the ground that the impugned order is not only cryptic and unreasoned but no finding has been recorded that there is any relationship of landlord and tenant between the petitioner and respondent No. 2. It is also submitted that there is no finding that respondent No. 2 is a privileged person.

2. According to Section 2(h)(i) of the Bihar Privileged Persons Homestead Tenancy Act, privileged person means a person "who is not a proprietor, tenureholder, under-tenureholder or a mahajan; and

(2) who, besides his homestead, holds no other land or holds any such land not exceeding one acre."

Privileged tenant is defined in Section 2(j) and means "a privileged person who holds homestead under another person and is, or but for a special contract would be, liable to pay rent for such homestead to such person."

Section 4 of the Act provides : that

"Subject to the payment of such rent as may be agreed upon between a privileged tenant and his landlord, or where there is no contract or no valid contract in respect of rent or where the rent contracted is alleged to be unfair or inequitable such rent as may be fixed by the Collector under the provisions of Section 6, - a privileged tenant shall have a permanent tenancy in the homestead held by him at any time continuously for a period of one year."

It is also necessary for the privileged tenant claiming permanent tenancy in the homestead to prove that he is a privileged person within the meaning of Section 2(h)(i) and that besides his homestead he does not hold any other land or holds any such land not exceeding one acre. The authorities have got to give a finding to this effect before passing any order under the provisions of this Act giving a permanent tenancy in the homestead to the privileged tenant. It is clear from the impugned order that no such finding has been given by the authority concerned. The order, therefore, is not in accordance with the provisions of this Act and must be quashed.

3. The application, accordingly, succeeds and the impugned order contained in Annexure-3 is quashed. There shall be no order as to costs.