courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(1992) 08 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2132 of 1991 (R)

Smt. Rekha Singh and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 18-08-1992

Acts Referred:
Bihar Land Reforms Act, 1950 — Section 4
Bihar Public Land Encroachment Act, 1956 — Section 2, 5, 6, 7, 9
Constitution of India, 1950 — Article 226, 227

Citation : (1992) 2 PLJR 854

Hon'ble Judges : U.P. Singh, J;R.N. Sahay, J

Bench : Division Bench

Advocate : M.M. Banerjee, for the Appellant; M.Y. Eqbal, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—In this writ application under Articles 226 and 227 of the Constitute on of India, the Petitioners have prayed for quashing of the impugned orders dated 18.9.1991 (Annexure 12) pased by the Deputy Commissioner and dated 10.7.1989 (Ann-exure 6) passed by the Deputy Collector, Land Reforms, in a proceeding under the Bihar Public Land Encroachment Act. The Deputy Commissioner has affirmed the order of the Deputy Collector, Land Reforms. They have prayed for a writ of mandamus commanding the Respondents to forbear from giving effect to or to act in pursuance of the impugned orders. Further, a direction to the Respondents has been sought to hand-over the vacant possession of the premises taken by them under the purported execution of the said impugned orders.

2. The lands involved in the case under the Bihar Public Land Encroachment Act, besides other lands, were ''Gair-Abad Malik'' lands of Jharia Raj and were in khas possession of Jharia Raj. These lands were permanently settled in the year 1947 and 1949 in favour of Smt. Usha Rani Devi who became the permanent occupancy raiyat and after vesting of the Zamindari she continued in khas

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-rekha-singh-and-others-…

cultivating possession over the settled lands with the other lands in and around settled lands being lands of the proceeding with due knowledge of Jharia Raj and officials of the State of Bihar after vesting of Zamindari. The lands appertaining to Khata Nos. 196 and 197 of village Dhaiya, P.S. and District Dhanbad, vested in the State of Bihar as raiyati land and, thus, changed the nature and character of ''Gair-Abad Malik''. Thus the said land never vested in the State with the vesting of the Zamindari as public land and those plots of land never became the public land or the Government land within the meaning of Section 2(iii) and Section 9 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as ''the Act''). Smt. Usha Rani Devi used to pay rent after the aforesaid settlement, including the lands of the aforesaid proceeding to the ex-la-adlord Raja Kali Prasad Singh till the vesting of the right of the intermediaries in the State under the provisions of the Bihar Land Reforms Act. The ex-landlord submitted return and Zamindari of the settled land, including the occupied lands by the raiyats at the time of vesting in which the name of Smt. Usha Rani Devi finds place in respect of those lands After due verification and bujharat, the possession of Smt. Usha Rani Devi was found over those lands and the revenue records were, accordingly, prepared in her name. On and from 22.9.1947 the State recognised Smt. Usha Rani Devi as permanent occupancy raiyat of the aforesaid lands and she acquired the status of a settled raiyat over the said land and remained in continuous peaceful khas possession.

3. In or about the year 1952-53, the Land Reforms, Deputy Collector, Dhanbad, initiated an annulment proceeding against Smt. Usha Rani Devi in Annulment Case No. 11/1952-53 about the lands covered under registered deeds of settlement dated 3.10.1950 and 22.11.1949 and 15.12.1949 u/s 4(h) of the Bihar Land Reforms Act. By order dated 14.11.1970, the settlements were annulled by the Land Reforms, Deputy Collector. On appeal preferred before the Deputy Commissioner (Annulment Case No. 2/61), by his judgment dated 21.9.1962, the Deputy Commissioner held that the lands covered under registered deeds of settlement dated 22.11.1949 and 15.12.1949 were the lands saved to the Raja of Jharia under Sections 5, 6 and 7 of the Act and, accordingly, a direction was given for fixing appropriate rent by the revenue authorities for the said lauds treating it to be agricultural land. The judgment of the Deputy Commissioner, Dhanbad, was finally confirmed by the State of Bihar in the revenue department letter dated 4.5.1968 addressed to the Deputy Commissioner. In this view of the matter, the lands so covered under the registered deeds of settlement vested in the State as raiyati lands remaining in khas possession of the Raja changing the nature and character of the said lands as public land. Later, Smt. Usha Rani Devi sold the lands to Smt. Anant Gauri Chanchani and Narendia H. Chanchani vide registered sale deeds dated 14.11.1970 and took them in actual physical possession. Since then, they came in khas physical possession over the lands, including the lands of the present proceeding on and from 14.11.1970. Their names were duly mutated in the revenue records and rents were duly paid by them to the State and they were

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-rekha-singh-and-others-…

recognised as valid raiyats. Subsequently, by means of a registered sale deed dated 24.6.1972, Smt. Anant Gauri Chanchani and Narendra H. Chanchani transferred their right, title and interest to the Petitioners and put them in actual physical possession over the lands in plot No. 1244 area 0.25 acre out of 0.33 acre; plot No. 1245 area 0.04 acre out of 0.05 acre; plot No. 1246 area 0.15 acre out of 2.26 acres; plot No. 1247 area 0.18 acre out of .1.35 acres; plot No. 1198 area 0.06 acre out of 4.65 acres; plot No. 1552 area 0.05 acre; plot No. 1553 area 0.01 acre; plot No. 1551 area 1.061/2 acre out of 1.46 acres; plot No. 1546 area 0.82 acre out of 0.92 acre; plot No. 1547 area 0.90 acres; plot No. 1548 area 0.20 acre out of 0.46 acre; and plot No. 1549 area 0.39 acre; total being 3.301/2 acres equivalent to 10 bighas in Mouza Dhaiya, Police Station Dhanbad, district Dhanbad. Thus, the Petitioners were put in actual physi-cal possession over the lands, including the lands covered under the aforesaid proceeding (Annexure 5).

4. Petitioners, thus, acquired permanent right being the settled raiyat of the mouza by remaining in continuous peaceful uninterruped possession since 22.9.1947 through their predecessor-in-interest till date with due knowledge to the then Raja of Jharia and Kali Prasad Singh and the officials of the Respondents after vesting of the right of intermediaries in the State of Bihar. The Petitioners, thus, perfected their right, title and interest over the said lands by adverse possession by remaining in continuous peaceful uninterrupted possession since 22.9.1947. They constructed their residential house and also the houses for business purposes and entire lands purchased by them were bounded with a wall so covered in Annexure 5 after investing substantial amount. Thus, the aforesaid lands covered under the proceeding had already vested in the State of Bihar as raiyati lands under the provisions of the Bihar Land Reforms Act and they ceased to public lands.

5. It may be stated that many other persons, who equally purchased lands from Smt. Usha Rani Devi or her successor-in-interest, have also constructed their residential houses and the Circle Officer mutated their names in the revenue records but none of them have been proceeded against, except the Petitioners who alone have been picked up under the provisions of the Act by the district administration, Dhanbad, against whom the Petitioners had certain grievances and at one stage they had moved the Supreme Court for transfer of their cases from Dhanbad, which enraged Respondents 2 and 4 resulting in the initiation of the present proceeding under the Act.

6. The Petitioners appeared before the Deputy Commissioner and filed their show cause. Further, they filed a petition on 27.4.1989 challenging the maintainability of the proceeding and to decide the same as a preliminary issue since the complicated questions of title were involved in the said proceeding. They also filed an application for a direction to the Circle Officer to adduce his evidence but, without taking up the question of maintainability of the proceeding as a preliminary issue, Respondent No. 4 passed the final order on 10.7.1989

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-rekha-singh-and-others-…

directing the Petitioners to remove encroachment. He further directed the Circle Officer stopping him from accepting rents and for sending requisition for cancellation of the zamabandi standing in the name of Smt. Usha Rani Devi as also the zamabandi, continued on the basis of mutation case in the name of Smt. Anant Gauri Chanchani. Against the aforesaid order, the Petitioners preferred BPLE Appeal No. 34 of 1989 before Respondent No. 2. On 4.9.1990, the Petitioners further filed supplementary grounds of appeal which were necessitated on account of the earlier order passed by the Deputy Commissioner in Annulment Case No. 2/61 dated 21.9.1962. Along with the suppleme-ntary grounds of appeal, the Petitioners had also filed documents as per the list on 4.9.1990 (Annexure 10). On 17.12.1990, written arguments were also filed. Respondent No. 2 brushed aside the petitions filed by the Petitioners for adducing oral evidence; for calling for the zamabandi connected with the lands covered under Annexures 1 and 2; for examining the Circle Officer as a witness; and for deciding the maintainability of the proceeding as a preliminary issue involving complicated questions of title.

7. It appears from the impugned orders passed by the Respondent Nos. 2 and 4 that without discharging the onus by State of Bihar, even prima facie, proving the land to be public land, the onus was shifted on the Petitioners u/s 9 of the Act. It does not appear from the impugned orders in questions to why the onus was not discharged by the State in proving, even prima facie, that the lands in question were public lands within the meaning of the Act. The State did not lead any evidence whatsoever to prove that the land in question was public land at the time of initiation of the proceeding. The impugned order of Respondent No. 2, affirming that of Respondent No. 4 is cryptic. Further, it has exceeded the jurisdiction under the provisions of the Act in deciding the complicated questions of title in a summary proceeding. It has also not considered that these facts have not been refuted even in this Court by filing counter-affidavit that the plots in question had vested in the State of Bihar as khas land of the Raja of Jharia and the said lands vested as Raiyati lands of the said Raja of Jharia and could not be treated as public lands. The Petitioners claimed the lands by adverse possession since 22.9.1947 through their predecessor-in-interest and relying on Annexures 8 and 9, the orders passed by the then Deputy Commissioner in Annulment Case No. 2/61. the Petitioners reiterated that the facts noticed in the earlier proceeding proved that the lands in question ceased to be public lands and had vested in the State of Bihar as raiyati lands and, in this view of the matter, the present proceeding under the Act initiated against the Petitioners was without jurisdiction and an abuse of the process of law. Respondent No. 2 did not keep in mind the settled principle of law and went out of way in holding "that the present proceeding did not involve complicated questions of title but it was a simple question of misleading the Court and Government officials by some vested interests who tried in vain to get the law tilted and twisted in their favour by simply mispre-senting the facts." The impugned orders have disposed of the proceeding contrary to law and facts and without any evidence arrived at a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-rekha-singh-and-others-…

conclusion that the lands vested in the State on 1.1.1956 and therefore, the lands were public lands and, therefore, the Petitioners have encroached and they were further directed to remove the encroachment within 48 hours. By filing petitions, the Petitioners had requested Respondent No. 2 to stay the operation of the impugned order in order to enable them to move the higher courts but, instead of allowing time, possession over the lands was taken by Respondent No. 2 on 20.9.1991. Thus, the impugned order passed by Respondent No. 2 on 18.9.1991 was got executed on 20.9.1991 by deputing police force immediately on the expiry of 48 hours.

8. It has been well settled by now that the summary remedy for eviction under the Act can be resorted to by the Government only against the persons who are in unauthorised occupation of any land which is "the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take unilateral decision in its own favour that the property belongs to it, and, on the basis of such decision take recourse to the summary remedy provided for evicting the person who is in possession of the property under a bona fide claim or title.

9. In the instant case, unquestionably, the Petitioners have a bona fide claim to litigate and they cannot be evicted save by the due process of Jaw. The summary remedy prescribed under the Act is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process for evicting the Petitioners.

10. The facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary course of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property for a considerable length of time can be taken, prima facic, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

11. For the reasons stated above, the impugned. orders dated 10.7.1989 and 18.9.1991 contained in Annexures 6 and 12 are quashed and the Respondents are directed to hand over the vacant possession of the land and the premises in question forthwith maintaining status quo ante as on 18.9.1991 and they are further restrained from giving effect to or in furtherance of the impugned orders.

12. In the result, this application is allowed but there shall be no order as to cost.

R. N. Sahay, J.

13. I agree.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-rekha-singh-and-others-…