
(2010) 07 PAT CK 0056

In the Patna High Court

Smt. Sukhda Devi, Yogendra Jaishwal and Others and Smt.
Nirmala Devi

APPELLANT

Vs

The State of Bihar, The Circle Officer, The Deputy Collector
Land Reforms and Prabhash Jha and Others

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0056

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—By order, dated 12.1.1986 respondent No. 4 was granted a Parcha under the Bihar Privileged Persons Homestead Tenancy Act. Respondent No. 4 has now been substituted by his heirs on 12.3.2008. On the basis of the Parcha granted to respondent No. 4, his name was mutated and a Jamabandi was opened in his name. It is apparent from the order contained in Annexure 1 that no notice was ever issued to the land holders or the petitioners before granting the Parcha.

2. The petitioners on coming to know about the creation of Jamabandi filed an application for cancellation of the same vide Case No. 1/1987-88 before the D.C.L.R. which was disposed of on 8.1.1988. The D.C.L.R. while considering the manner in which Jamabandi was opened, has come to the conclusion that (a) no notice was issued to the land holder, (b) there was no local enquiry and the procedure as envisaged under the Act aforesaid was not followed, (c) that respondent No. 4 was in possession of the property by virtue of being the manager of the landlord and (d) that the respondent was not resident of the villager where the land is situated. As a result of this finding the D.C.L.R. remanded the matter to the Circle Officer to take proper steps in the matter of opening of Jamabandi. It may be pointed out that the Jamabandi was opened in the name of respondent No. 4 again without notice to the recorded tenants in

Register II.

3. Annexure 6 is the order of the Circle Officer, Gopalpur, dated 5.9.1988 which was passed after the remand order passed by the D.C.L.R. The Circle Officer refrained from passing any order for correction of the Jamabandi on the ground that unless the order dated 12.1.1986 by which respondent No. 4 was granted Basgit Parcha was set aside, the correction of Jamabandi was not possible.

4. Learned Counsel for the petitioners also refers to Annexure 7 which is the report of the Anchal Adhikari. On inspection it was found that the land in question has been sold to the petitioner by valid sale deed, dated 29.10.1986. It has also been mentioned that respondent No. 4 is resident of village Longai, PS Dhoraiya, District Bhagalpur and that the predecessors in interest of the petitioner i.e. land holder had appointed respondent No. 4 three years prior to issuance of Basgit parcha to look after and manage the estate of the land holder. It is said that in absence of the land holder the said Basgit Parcha was issued.

5. The facts reveal that in fact no notice was either issued to the land holder or the transferors while issuing the Basgit parcha or at the time of cancelling the Jamabandi of the land holder which is completely against the law.

6. This Court accordingly quashes the order, dated 12.1.1986 with liberty to the respondents to file an application for grant of Basgit parcha. In case such an application is filed, then the concerned authority will issue notice to the land holder as well as the petitioners before deciding the matter.

7. This writ petition is allowed with the aforesaid observations.