

(1972) 08 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jur. Case No. 6 of 1972

Smt. Ugratara Debi

APPELLANT

Vs

Deputy Collector, Land Reforms and Others

RESPONDENT

Date of Decision : 18-08-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4
Constitution of India, 1950 — Article 226

Citation : AIR 1974 Patna 162

Hon'ble Judges : U.N. Sinha, C.J.; J. Narain, J

Bench : Division Bench

Advocate : L.K. Choudhuri and B.R. Sharma, for the Appellant; Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has filed this writ application under Articles 226 and 227 of the Constitution of India, praying, that, the order passed on the 30th March. 1972 by the Deputy Commissioner, Ranchi, be quashed. with respect to plot N.o. 3026.

2. The relevant, facts are as follows. On the opinion of the Government pleader Ranchi. to the effect, that Sasai Bazar, held over plot No. 3025 of Khata No. 114, and plot No. 3026 of Khata No. 117 had vested in the State of Bihar under the Bihar Land Reforms Act, notices u/s 4 (s) of the Act were issued to the Parties concerned to deliver possession of the said plots of land and a miscellaneous case was started, numbered as Miscellaneous Case no. 16 of 1963-64 in the Court of the Deputy Collector incharge of Land Reforms, Gumla. The notices were challenged by the parties concerned and plot No. 3025 was claimed by Sri U. N. Mishra as having been settled with him in raiyati Settlement in the year 1995 Sambat. So far as plot No. 3026 was concerned. Sri Brij Kishore Ram claimed the land as his raiyati land. Plot No. 3025 had been recorded in the record-of-right as Ghairmazrui Malik-Bazar Tanr and Parti Kadim. Plot No. 3026 had been recorded in the record-of-right as Ghairmazrui Majhi and Malikparti Kadim, Before the

Deputy Collector Incharge of Land Reforms, the claimant of plot No- 3025 had produced a sada Hukumnama dated the 1st Mash. Sambat 1995, and some rent receipts. It may be mentioned, that a few counterfoils of rent receipts had also been produced, on notice to the ex-landlord, On the materials that the Deputy Collector had before him, specially on a perusal of the Hukumnama he came to the conclusion, that the claimant of plot No, 3025 had obtained a raivati settlement in 1995 Sambat as was his case. With respect to plot No. 3026, the Deputy Collector stated, that Brii Kishore Ram had claimed that rent of this plot of land had been fixed in his name u/s 6 of the Bihar Land Reforms Act and therefore, the State cannot take possession of this land u/s 4 (g), unless the rent fixed is cancelled in revision or appeal by a competent Court In the result, the entire proceeding with respect to both the plots of land in question was dropped. Thereupon, the State of Bihar appealed to the Court of appeal, which appeal has succeeded by the impugned order, dated the 30th March 1972. Allowing the appeal filed by the State of Bihar the learned Deputy Commissioner, Ranchi, directed the claimants, of Plots Nos. 3025 and 3026 to give up possession Of the lands in question.

3. Learned counsel for the petitioner has urged, first that after favourable order was passed by the Deputy Collector, no appeal lay by the State of Bihar to any Court of appeal, in view of the wordings of Section 4 (s) of the Bihar Land Reforms Act. It is urged, that, an appeal could have been filed only by the claimant of plot No. 3026, if an order had been Passed against him u/s 4 (g), because the section contemplates only an order which can be passed against a claimant of any particular plot of land. Reliance is placed specifically on the wordings of the proviso following Section 4 (g), where it is said that an appeal will lie to the Collector "if the order under Clause (g) is passed by an officer below the rank of the Collector of a district" It is argued, that, the expression "if the order under Clause (g)" can only mean an adverse order passed u/s 4 (g) against a claimant, which will, in effect be an order for giving up possession of any disputed land, on the footing, that it had vested in the State under Bihar Land Reforms Act That is to say, according to the learned counsel for the petitioner, if a proceeding u/s 4 (g) of the Act is dropped, no appeal by the State of Bihar was maintainable. There are two difficulties in the way of accepting this contention raised on behalf of the petitioner. It appears, that the objection of non-maintainability of the appeal had not been taken before the Court of appeal where the State of Bihar was appellant, and furthermore, it does not appear that this writ application is based on this ground at all. Our attention has not been drawn to any part of the writ application, where the maintainability of the appeal before the Court of appeal has been challenged to the effect that, the Court of appeal has no jurisdiction to entertain the appeal. Therefore, we do not propose to deal with the interpretation of Section 4 (g) and the proviso thereof in this particular case. Secondly, it is contended by the learned counsel for the petitioner, that, the State is estopped from challenging the allegation of fixation of rent of plot No. 3026, not having done so before the appellate Court. This

contention does not appear to be valid. The point has been specifically dealt with by the Court of appeal in paragraph 8 of its order. In this paragraph, the learned Deputy Commissioner has stated, that, there was merit in the contention raised by the appellant to the effect that there was no question of fixation of fair rent u/s 6 of the Bihar Land Reforms Act because under this provision rent is fixed for such khas lands which were in cultivating possession of the landlord on the date of vesting. It is quite clear, that the learned Deputy Commissioner had in view the respective cases of the parties as to whether fair rent had been fixed of plot No. 3026 or not. No material has been brought forward in this writ application to show, that, fair rent had, in fact, been fixed for this plot of land under the Bihar Land Reforms Act. The other contention raised on behalf of the writ petitioner who was substituted in the Court of appeal in the place of her father, Sri Brijkishore Ram, who had died by then, is, that the Court of appeal should have decided the right of the daughter that she was claiming, including her claim of adverse possession of the Bazar and the land on which the Bazar was held. Apparently, what the learned counsel means is, that, at some stage, the daughter had claimed to have extended her Bazar held on plot No. 3022 to some part of plot No. 3026 and it is contended, that, her right had also to be considered before the appellate Court could dispose of the appeal in which the daughter was the respondent in place of Sri Brijkishore Ram. We do not think, that, this contention can be accepted either. The daughter had been substituted in the Court of appeal in the place of her father, who was the original claimant of plot No. 3026 and she could resist the appeal only in the right of an heir and legal representative of the original claimant and it was hardly possible for her to raise a claim at that late stage to the effect, that, she had her own rights in plot No. 3026, based on other facts and circumstances unconnected with the claim which had been made by her father. Therefore, the Court of appeal had not rightly considered the daughter's individual case, if such a case was pressed at all. Therefore, it appears, that, the points raised by the writ petitioner in this case are not valid and this writ application must fail and is dismissed. In the circumstances of the case, however, there will be no order for costs.