

(1985) 01 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 553 of 1930

Sone Lal Sahni and another

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 13, 13(1), 15, 15(1), 5
Constitution of India, 1950 — Article 226, 227

Citation : (1985) PLJR 46

Hon'ble Judges : B.P. Sinha, J

Bench : Single Bench

Advocate : Aftab Alam, S.C. III, for the Appellant; S. Hoda, with Mr. M.K. Jha, (J.C. to S.C. III) for the State, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India in which a prayer has been made for issuance of a writ of certiorari quashing Annexure-1 dated 9.11.1979. Annexure-1 is a letter by the District Magistrate, Muzaffarpur, to the Block Development Officer, Gaighat directing him to give vacant possession of plot nos. 467 and 468 area 11 decimals with the help of armed force after removing the petitioners who were found illegally occupying 7 decimals of land. These plots originally belonged to one Shambhal Laheri, who was the recorded tenant in the cadastral survey khatian. It is stated in the petition that one Jamuna Singh the ancestor and predecessor-in-interest of petitioner no. 2 purchased the said lands from Shambhal Laheri. Jamuna Singh died issueless leaving behind his two brothers Jagdev Singh and Jageshwar Singh, father of petitioner no. 2. It is further stated sic a family partition between the two brothers plot no. 467 fell in the share of Jageshwar Singh: On the death of Jageshwar Singh petitioner no. 2 Awadheshwar Singh is said to have come in possession over the said plot. On 18.1.1979 petitioner no. 1 claims to have purchased the said plot from petitioner

no. 2 and further claims to have constructed his residential house. The petitioners' case is that they had no knowledge about any proceeding under the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as the Act) or under the Consolidation proceeding in respect of plot no. 467. It is further stated that respondent no. 5 fraudulently obtained some order with respect to plot no. 467 and moved the District Magistrate for possession over the same and the District Magistrate without any authority of law passed the impugned order.

2, A counter affidavit has been filed on behalf of respondents 1 to 4, the State of Bihar and its officers. In the counter affidavit statements made in paragraph I have been denied. It has been stated in paragraph 4 that respondent no. 6 Sharda Devi wife of Dilawar Baitha is the owner of plot no. 467 area 7 decimals and plot no. 468 area 4 decimals who has constructed a house over plot no. 468 and is living there. It is further stated that in plot no. 467 area 7 decimals respondent no. 6 has her Bari, Sahan and court-yard etc. Both the plots are amalgamated. It is then stated that "Purcha was granted in the name of respondent no. 6 in this year 1970. The Block Development Officer made a spot enquiry to verify the same and possession of respondent no. 6 was confirmed vide enquiry report dated 5.8.1979". In paragraph 6 it has been stated that in the Consolidation proceeding a direction has been given to enter the name of Dilawar Baitha, husband of respondent no. 6 in respect of plot no. 467 as will appear from Annexure-A to the counter-affidavit. In paragraph 7 of the counter affidavit it has been stated that writ petitioner no. 1 Sone Lal Sahni purchased 5 decimals of land from petitioner no. 2 without the permission of the Consolidation Officer and on that ground the purchase was null and void. The petitioners' possession over the plots in question has been denied and it has been further stated that purcha was issued in the name of respondent no. 6 under the Privileged Persons Homestead Tenancy Act in respect of the disputed plot after due notice to the persons concerned by the authorities. It is further stated in the counter affidavit that after the purcha was granted the petitioners have illegally occupied some portions of the disputed plots and in such a situation the District Magistrate had to direct the concerned authorities to get the illegal occupation vacated.

3. Learned counsel for the petitioners had submitted that before passing the impugned order and directing the authorities to remove the petitioners from the plots in question, the procedure laid down in Rule 5 of the Bihar Privileged Persons Homestead Tenancy Rules, 1948 (hereinafter referred to as the Rules) should have been followed. His submission is that no enquiry as contemplated under rule 5 of the Rules was made nor any notice was given to the petitioners before passing the impugned order.

4. Section 5 of the Act provides that if any privileged tenant has been ejected by his landlord from his homestead or any part thereof within one year before the date of commencement of the Act otherwise than in due course of law, the privileged tenant may apply to the Collector for restoration of his possession over

the homestead or part thereof from which he has been ejected. Admittedly this section does not apply to the facts of this case. Section 8 of the Act enumerates the grounds on which a privileged tenant may be ejected. Section 8(1) provides the grounds on which the privileged tenant shall be liable for ejectment. Under sub-section (3) of section 8 the Collector shall make such enquiry as he thinks fit on receipt of an application under the first proviso to sub-section (1) or may reject the application or grant it either unconditionally or subject to condition as may appear to him just and proper. Then comes section 8(5) and 8(6) of the Act on which reliance has been placed by the learned counsel for the petitioners. They read as under :-

"8(5). If a privileged tenant has been ejected by his landlord from his homestead or any part thereof, otherwise than in accordance with the provision contained in sub-section (1), then the tenant may apply to the Collector for restoration of his possession over the homestead or part thereof, from which he has been so ejected.

8(6). The Collector may, on receipt of an application under sub-section (5) or on his own motion, after making such enquiry as he deems fit, order that the privileged tenant shall be put in possession of the homestead or part thereof from which he has been so ejected."

These two sub-sections contemplate the situation where a privileged tenant has been ejected by his landlord otherwise than the provisions contained in sub-section (1). In that case a tenant that is to say, the privileged tenant may apply to the Collector for restoration of his possession over the homestead or part thereof and on receipt of such an application under sub-section (5) the Collector after making such enquiry as he deems fit, order that the privileged tenant may be put in possession. It was submitted that in case of an application under sub-section (5) of section 8 of the Act also the procedure laid down under Rule 5 shall have to be followed. It is not possible to accept this argument made by the learned counsel. Rule 3(a) of the Rules provides that an application to be made by a privileged tenant under sub-section (1) of section 5 shall be in Form A. Rule 3(b) provides that an application to be made either by a landlord or by a privileged tenant under sub-section (1) of section 6 for fair and equitable rent for the holding, shall be made in Form B. Rule 3(c) provides that an application to be made by a landlord under the first proviso to sub-section (1) of section 8. for ejectment of the privileged tenant, shall be Form C. Rule 3(d) provides that an application to be made by a mortgagor under sub-section (1) of section 13 for ejectment of the mortgagee shall be in Form D and Rule 3(e) provides that an application to be made under sub-section (1) of section 15 for ejecting a transferee shall be in Form E. In the present case Rule 3 has no application inasmuch as no application was made under sections 5(1), 6(1), proviso to sub-section (1) of section 8, section 13(1) or section 15(1) of the Act. If any application is made under the provisions mentioned under Rule 3 then on receipt of such application, it is provided under Rule 4, that the Collector shall start a

proceeding under the relevant sections to which the application relates and deal with the same in the manner provided for in the land revenue cases. It is then that under Rule 5 the Collector shall either himself make local enquiry or have such enquiry made by any responsible officer not below the rank of a Circle Inspector or Welfare Inspector and satisfy himself as to the correctness or otherwise of the contents of such application. It is further provided that in any such enquiry, notice will be issued to all the interested parties. The submission of the learned counsel is that Rules 4 and 5 of the Rules are different and the local enquiry contemplated under Rule 5 is not connected with any application mentioned in Rule 3. The argument is devoid of any substance. Had it been so, Rule 3 would have mentioned about the applications to be made u/s 8(5) and 8(6) of the Act. The omission to make reference to sections 8(5) and 8(6) in Rule 3 is quite logical. Sections 8(5) and 8(6) contemplate a situation when after a person has been declared as privileged tenant has been dispossessed by some one. The purcha is granted under the Act after due enquiry and notice to the parties concerned and if after the grant of purcha and confirming possession of a privileged tenant over certain land some one dispossesses a privileged tenant from that land then in that situation no further enquiry is called for. In that case the only thing which has to be found is about illegal possession by a third person after dispossessing the privileged tenant. It is in that situation that Rules 3, 4 and 5 do not mention about any application made under sections 8(5) and 8(6) of the Act. So far the present case is concerned position appears to be that a purcha was granted to respondent no. 6 in the year 1970 after due enquiry and after giving notice to the husband of respondent no. 6. Petitioner no. 1 seems to have purchased a litigation sometimes in the year 1979 and, therefore, his alleged possession is clearly illegal. The law provides that in such a case District Magistrate may order for eviction of the person illegally occupying the land of the privileged tenant either on his own motion or on an application made in that behalf after making such enquiry as he deems fit. That is what the District Magistrate has done by passing the order in Annexure-1.

5. Learned counsel for the petitioner has relied upon two decisions of this Court in *Hiralal Vishwakarma v. Vishwanath Sah and others* (1978 B.B.C.J. 623: 1978 PLJR 398) and in the case of *Bhagsaran Rai v. The State of Bihar and others* (1979 B.L.J.R. 136, None of these decisions are relevant for the purpose of decision of this case. Facts are entirely different. In the case of *Hiralal v. Vishwakarma* (supra) the prayer was to quash an order declaring a person to be a privileged tenant. In that it was held that an enquiry should have been made either by the Collector or by a responsible officer before declaring a person to be a privileged tenant. An enquiry made by the Karamchari was not sufficient. This case has absolutely no relevance to the facts of the present case. In the case of *Bhagsaran Rai* (supra) no proceeding seems to have been initiated under the Act and the parties including the petitioners were not noticed. The order had been passed without initiation of any proceeding. This case has also no application to the facts and circumstances of the present case. I do not find any illegality in the

order made in Annexure-1. The District Magistrate was completely justified in ordering the eviction of the petitioners from the plots in question. Petitioner no. 1, in my opinion, has only purchased a bundle of litigation from petitioner no. 2 and his conduct is not bona-fide. I do not see any reason to interfere with the impugned order. The result is that this application fails and is dismissed but without costs.