

(1994) 07 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No. 1525 of 1987 with C.A. No. 4811 of 1994 (arising out of S.L.P. (C) No. 12065 of 1983)

State of Bihar and others

APPELLANT

Vs

Labendra Chand Bothra, Nirmal Bothra and others

RESPONDENT

Date of Decision : 11-07-1994

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 21A, 4
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1995 SC 390 : (1994) 4 JT 391 : (1995) 2 PLJR 21 : (1994) 3 SCALE 330 : (1994) 3 SCC 146 Supp : (1994) 2 UJ 570

Hon'ble Judges : Yogeshwar Dayal, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. Harawat Estate stood vested in the State of Bihar under the provisions of the Bihar Land Reforms Act, 1950 (the Act). In the inquiry held u/s 4(h) of the Act the Additional Collector Saharsa came to the conclusion that the settlements made by the proprietors of a large area - land in dispute -in favour of Nirmalchand Bothra and other respondents, in the appeals herein, were made with the object of defeating the provisions of the Act and causing loss to the State of Bihar. The findings were upheld by the Commissioner in appeal. Finally the State Government confirmed-the findings in exercise of the powers vested in it under the Act. Nirmalchand Bothra and others challenged the findings of the authorities under the Act by way of two writ petitions under Article 226/227 of the Constitution of India before the High Court. The Patna High Court by its judgment dated January 20, 1983 allowed the writ petitions and set aside the orders of the authorities under the Act. These appeals by the State of Bihar are against the judgment of the High Court.

3. The Circle Inspector, Chhatapur, in his report dated February 27, 1956 alleged

that transfers of seven plots of Khata No. 341 of Mouza Chhatapur were illegally transferred in favour of Nirmalchand Bothra by the Harawat Estate in order to cause loss to the State of Bihar. While proceedings on the basis of the said report were in progress ex-proprietors of Harawat Estate filed a petition dated October 10, 1958 before the Additional Collector alleging that Manikchand Bothra, the Manager of the Harawat Estate in Chhatapur Circle, had fraudulently and dishonestly made or caused to be made a large number of false entries in various jamabandi records purporting to be settlements of large number of plots in the names of his sons, nephews and other persons. The Additional Collector directed the Anchal Adhikari Chhatapur to hold an on-the-spot assessment of the lands in dispute. The Anchal Adhikari sent his report which disclosed that in fact large areas were shown settled with Nirmalchand Bothra, his sons nephews and other persons. The Additional Collector dropped the original proceedings which were started on the report of the Circle Inspector Chhatapur and ordered fresh inquiry into the matter u/s 4(h) of the Act. The State of Bihar produced five witnesses including Anchal Adhikari Chhatapura before the Additional Collector. The local inspection was done by the Additional Collector in the presence of the parties on May 4, 1962 and memorandum of the inspection (Ext. 6) was prepared. The field bujharat reports prepared by the Anchal Adhikari were Exts. 2, 3 and 4. On behalf of the settlers, Rishabchand Bothra son of Manikchand Bothra appeared as the only witness. He produced Ext. A to A/5 six letters received by Bothras from the proprietors of Harawat Estate. The Additional Collector in his order dated September 21, 1962 sums up the rival contentions of the parties before him in the following words:

I have very carefully gone through the records of the proceedings, the documents produced on behalf of the parties and the oral evidence of witnesses in the light of the arguments heard. Broadly speaking, the case on behalf of the transferees is that the lands under proceedings were settled with them in the normal course of business on payment of usual salami to the ex-proprietors. In support of their this assertion, the six letters written to them by the ex-proprietors have been produced in original. They are exhibited A to A/5. The further case on behalf of the transferees is that after having obtained the settlement in the normal course of business, they have formed themselves into a cooperative society for the purpose of joint cultivation. Sri Rishabchand Bothra, who has examined himself as a witness on behalf of all the transferees has further stated that the lands are cultivated jointly and their produce is divided among the members according to their respective shares.

The case on behalf of the Harwat Estate is a complete denial of any settlement having been made by the ex-proprietors in respect of the lands forming the subject matter of the proceedings. It has further been alleged on behalf of the estate that Shri Manikchand Bothra their Circle Sub-Manager had fraudulently and dishonestly made or caused to be made false entries in the various jamabandi papers purporting to be settlements in the names of his sons, nephews and others.

The case on behalf of the State is that all the settlements in question had been brought about in a malafide manner after the first day of January, 1946, with the object of defeating the provisions of the B.L.R. Act, 1950, and causing loss to the State.

The Additional Collector discusses in detail each of the letters Exhibits A to A/5 in his order. Exhibit A/1 is a letter dated May 8, 1952 written by one of the proprietors of the Harawat Estate informing Manikchand Bothra that the Supreme Court declared the Act as ultra vires and as such steps should be taken to settle or dispose of parti lands as expeditiously as possible. On appreciation of the contents of the letters Exhibits A to A/5 the Additional Collector observed as under:

The genuineness of these six letters has not been questioned. It has, therefore, to be held that just on the eve of the vesting of their estate the ex-proprietors had planned to dispose of all their parti-lands through settlement or otherwise before filing the returns under the provisions of B.L. Act, 1950. It has further to be held that very large areas of such lands were in fact settled by the ex-proprietors with Sri Rishabchand Bothra and other.... It is difficult to believe that even .till 7.3.56 the ex-proprietors remained in dark as to the alleged dishonest or fraudulent activities of Shri Manikchand Bothra or as to the details of the lands disposed of by them through Shri Manikchand Bothra just on the eve of the vesting of their estate. I am, therefore, satisfied that the settlements, excluding those covered by Jamabandi Nos. 419 and 420 of Chhatapur had the approval of the ex-proprietors and they had been brought about in the names of the relations and dependents of Shri Manikchand Bothra, who was himself a relation of the ex-proprietors for the purpose of defeating the provisions of the B.L.R. Act, 1950, and causing loss to the State as will appear from the further facts and circumstances discussed above.

The Additional Collector examined the revenue records in detail to find out as to whether the settles were in possession of the land in dispute. He further relied upon the evidence of the revenue officials and came to the conclusion that except the three Bothras no other settlee even resided in the village. He found as a fact that the settles were not in possession] of the land on the following reasoning:

Appendix A gives the details of the lands forming the subject matter of the present proceedings. All the settles, except Shri Jiban Mal Lohra and Shri Singheshwar Rai, are the sons or nephews of Shri Manikchand Bothra. This position has been admitted by Shri Rishabchand Bothra, the only witness on behalf of the transferees. According to his statement Shri Jibanlal Lohra is a resident of Asamgarh near Murshidabad in the State of West Bengal. He does not appear to have ever resided in the district of Saharas. According to his further statement Sri Singheshwar Rai is their servant, Shri Abhaychandra Bothra and Sri Rishabchand Bothra are the own sons of Sri Manikchand Bothra Sri Nirmalchand Bothra is the cousin brother of Abheychand and Rishabchand Bothra

witness No. 4 on behalf of the State is the Mukhia of Chhatapur Gram Panchayat. He has produced the parieerik pustika as finally prepared and published according to law in the year 1958. This is Ext. 5 Exts. 5/a, 5/2 and 5/3 are the entries relating to the houses occupied by Shri Manikchand Bothra, Rishabchand Bothra and Sri Abheychand Bothra. As regards the remaining 12 settles, the Mukhiya has deposed that they have never lived at Chhatapur or within the jurisdiction of Chhatapur Gram Panchayat. He has further deposed that the house occupied by the above named three persons situate in one compound with a common courtyard. He too has definitely stated that except Sri Manikchand Bothra, Rishabchand Bothra and Abheychand Bothra the other so-called transferees do not reside at Chhatapur or any where in the Anchal. He has also stated that they are in no way concerned with the lands shown in their names. Witness No. 2 is the Karamchari of halka No. 6 within whose jurisdiction mouzas Indarpur an Pratapnagar situate. He has categorically stated that Rishabchand Bothra alone looks after the lands in question and that the other settles are not in possession of the land under proceedings. Witness No. 5 is the Karamchari of Halka No. 6, within those jurisdiction the lands of other villagers lie. He too had stated that rents are being paid for all the lands by Sri Rishabchand Bothra. He has further stated that he has not seen any of the settles other than Manikchand Bothra, Rishabchand Bothra and Abheychand Bothra. As already stated above, Sri Rishabchand Bothra has been examined with reference to the statements made in the show cause petition filed on behalf of the settles. He has stated that there is no written document to show that all the 15 transferees have constituted a co-operative society for joint cultivation. He has further admitted that no documents are maintained showing separately the income and expenditure on account of the land of each share holder. In this connection a reference may also to be made to the name of Sri Rishabchand Bothra in the letters Exts. A to A/5 written by the ex-proprietors to Sri Manikchand Bothra. It will appear that in these letters only Sri Rishabchand Bothra has been mentioned as the person negotiating settlement with the ex-proprietors. It was also Sri Rishabchand Bothra who was directed by the ex-proprietors to see them in connection with the salami money. In view of what has been stated above, it has got to be held that Sri Manikchand Bothra and Sri Rishabchand Bothra in consultation with the ex-proprietors had managed to dispose of all the unsettled lands through settlements in the names of the sons, nephews and dependents of Sri Manikchand Bothra before the returns were filed on behalf of the Harawat Estate under the provisions of the B.L.R. Act, 1950. In subsequent plan of joint cultivation on co-operative basis is clearly an after-thought because no such society has yet been formed or any accounts maintained showing the cultivation of the lands on cooperative basis. Appendix A will show that as large area as 685 acres, excluding the lands of jamabandi nos. 419 and 420 was shown settled with Sri Nirmalchand Bothra and others in the years 1951 and 1952 though oral settlements. The mala fide nature of these settlements, is wholly established on the basis of the facts and circumstances mentioned above.

The settlements were also held to have been made in violation of the Bihar Tenancy Act, 1885.

4. The Commissioner, Bhagalpur dismissed the appeal filed by the Bothras on the following reasoning:

The ex-proprietors of the Harawat Estate deny the settlements and claim that Manik Chand Bothra, who was sub-manager incharge of the Chhatapur Circle, had made false entries in the various jamabandi papers purporting to be settlements in the names of his sons, nephews and two others, namely, Sri Jiban Mai Lohra and Singheshwar Rai. As admitted by Shri Rishabchand Bothra, the only witness on behalf of the appellants, Sri Jiban Mal Lohra, is a resident of Azamgarh near Murshidabad in West Bengal and Singheshwar Rai is the servant of the appellants. On behalf of the ex-proprietors it is also urged that Shri Manik Chand Bothra had no authority to make settlements on their behalf. The appellants have not been able to produce any document other than Ex.A/1 empowering Manikchand Bothra to make settlements on behalf of the ex-proprietors. The power of attorney dated 22.12.1944 merely authorised him to take action in judicial matters.

Furthermore, the letter dated 8.5.52 (Ext.A/1), which purposed to authorise him to make settlements, shows clearly that he had no previous authority to make settlements.

4. Ext. A which is dated 17.3.52 asks Shri Manik Chand Bothra to pay up the salai money of the lands of which he had taken settlement, this obviously refers to a settlement made shortly before. Ext. A/1 to A5 indicate that other settlements had been made after the date of vesting in Government under the B.L.R. Act. Even the settlement referred to in Ext. A cannot be held to have been validly executed before the date of vesting as the Salami had not been paid and there was no prior authorization of the ex-proprietors empowering Manik Chand Bothra to make settlements. As these settlements have been finalised after the date of the vesting and as all the settles except two are close relations of the Sub-manager, the learned Addl. Collector was justified in holding that these settlements were made with a view to defeat the provisions of the B.L.R. Act. Had these settlements been made in the normal way, the provisions of Section 21A of the B.T. Act would not have been contravened.

5. We are of the view that the High Court fell into patent error in reversing the findings reached by the authorities under the Act on appreciation of evidence. The High Court came to the conclusion that the factum of the settlements being in favour of close relations could not be a ground to annul the same. The High Court further observed "it would be pertinent to point out that the State has not controverted the fact that the petitioners have been in possession of the lands in question...."

6. The High Court failed to appreciate that the settlements in favour of the respondents were set aside not only on the ground that Bothras were related to

the proprietors but also on various other grounds. There is nothing on the record to show that the Bothras were Raiyats in respect of the land in dispute rather the findings of the Additional Collector as upheld by the Commissioner is that out of 14 settles only 2 Rishab Chand Bothra and Abhey Chand Bothra lived at Chhatapur and other 12 settles have never lived within the jurisdiction of Chhatapur Gram Panchayat. It is further found by the Additional Collector that one of the settles lived in West Bengal and the another was the servant of the Bothras. It has further been found as a fact that the settles were not in possession of the area in dispute. The claim of the settles that they formed a cooperative farming society was also found to be incorrect.

7. We are of the view that it is a clear case where the proprietors of the Harawat Estate in collusion with their manager created oral settlements which were wholly bogus and where with a view to defeat the provisions of the Act. It seems that later on the ex-proprietors and the settles fell - apart and as a consequence the ex-proprietors also lodged a complaint which was inquired into by the Additional Collector.

8. The High Court, in our view, in its jurisdiction under Article 226/227 of the Constitution of India was not justified in setting aside the findings of the authorities under the Act which were based on appreciation of evidence. The High Court did not even refer to the evidence relied upon by the Additional Collector and reversed the findings merely on surmises and conjectures. We, therefore, allow the appeals, set aside the judgment of the High Court dated January 20, 1983 and dismiss the writ petitions filed by the Bothras before the High Court. The appellants are entitled to their costs which we quantify as Rs. 20,000/-.