
(2002) 07 JH CK 0075
In the Jharkhand High Court
Case No : L.P.A. No. 306 of 1998

State of Bihar and Others

APPELLANT

Vs

Vijay Kumar Chowdhury

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 21, 22, 24

Citation : (2002) 07 JH CK 0075

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : A.K. Mehta, SC I and C. Prabha, for the Appellant; Debi Prasad L.K. Lal, A.K. Singh and P. Akhouri, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal at the instance of State of Bihar under clause 10 of the Letter Patent is directed against the judgment dated 27.2.1998 passed in C.W.J.C. No. 2641 of 1988 (R) whereby the learned Single Judge quashed the order passed by the Revenue authorities and also the demand notice issued by the appellant for payment of salami and commercial rent in respect of property in question.

2. The admitted position is that the land appertaining to Plot No. 525 under Khata No. 18 of mouja Lohardaga was recorded in the records of right in the names of three brothers, namely, Indranath Mahto, Surajnath Mahto and Badrinath Mahto having occupancy right over the said land. The abovenamed raiyats transferred the land in favour of one Sheolochan Chaudhary predecessor-in-interest of the respondent (writ petitioner) by virtue of registered deed of sale dated 10.2.1997 and the said purchaser came in possession of the said land. After coming into force of the Bihar Land Reforms Act, 1950. The predecessor-in-interest of the writ petitioner continued in possession of the land as raiyat and his name was duly entered in register II and he started paying rent to the State of Bihar. In 1969 the transferee made an application for sanction of plan for

construction of Cinema hall for running a cinema in the name and style of Alka Cinema Hall.

3. Petitioner's case was that after construction of Cinema Hall all rent, taxes fixed including holding tax are being paid to the different authorities of the State of Bihar and the Lohardaga Municipality. All of a sudden, the petitioner was served with a notice dated 9.3.1987 from the office of Circle Officer, Lohardaga demanding "Tukur Salami" to the tune of Rs. 2,70,000/- and commercial rent to the tune of Rs. 2,48,000/-. On receipt of the notice the petitioner inquired and learnt that the Circle Officer on the basis of audit report of the Accountant General Bihar initiated proceeding for determination of salami and commercial rent. On the basis of audit objection a report was called for from the Circle Office and then the Circle Officer fixed the salami and commercial rent which was approved by the Additional Collector, Lohardaga and then Commissioner as per Rule 9(3) of the Khas Mahal Manual and returned the file to the Circle Officer who issued demand notice to the petitioner for payment of salami and commercial rent. Petitioner's further case is that he being the occupancy raiyat his rights are protected u/s 21 of the Chotanagpur Tenancy Act (in short CNT Act) and enhancement of rent can be permissible only u/s 27 to 29 of the said Act.

4. The appellants who were the respondents in the writ petition filed counter affidavit wherein it was stated, inter alia, that the commercial rent and salami was fixed under the provisions of Rule 9 of the Khas Mahal Manual since provisions of CNT Act was not applicable. It was stated that proceeding for recovery of salami and commercial rent was initiated by the Circle Officer in view of the audit report received from the Office of the Accountant General, Bihar.

5. Learned Single Judge, after hearing both the parties and after considering the facts and law came to the conclusion that the question of application of Khas Mahal Manual does not arise as the land was not the Government estate and, therefore, imposition of salami and commercial rent was wholly without jurisdiction. Learned Single Judge accordingly allowed the writ petition and quashed the impugned order and the demajid raised by the appellant.

6. We have heard Mr. A.K. Mehta, learned counsel appearing for the appellants and Mr. Debi Prasad, learned Sr. Counsel appearing for the respondent.

7. In course of argument Mr. Mehta, Standing Counsel has not disputed that the land in question is a raiyati holding duly recorded in Revisional Survey and the writ petitioner and his predecessor-in-interest acquired occupancy right in the said land. The only question, therefore, falls for consideration is whether the authorities of the appellants-State was justified in imposing salami and commercial rent on the said raiyati holding merely because of using the land for commercial purpose. Before deciding this question I would first like to refer some of the relevant provisions of the CNT Act. Section 21 of the Act deals with the right of occupancy raiyati in respect of use of the land which reads as under :

"Rights of occupancy Raiyat in respect of use of land.--(1) When a raiyat has a right of occupancy in respect of any-land, he may use the land --

(a) In any manner which is authorised by local custom or usage, or

(b) Irrespective of any local custom or usage in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

(2) Notwithstanding anything contained in any entries in the records of rights or any local custom or usage to the contrary, the following shall not be deemed to impair the value of the land materially or to render it unfit for purpose of the tenancy, namely,--

(a) the manufacture of bricks and tiles for the domestic or agricultural purposes of the raiyat and his family;

(b) the excavation of tanks or the digging of wells or the construction of bandhs and ahars intended to provide a supply of water for drinking, domestic, agricultural or plscicultural purposes of the raiyat and his family; and

(c) the erection of buildings for the domestic or agricultural purposes or for the purposes of trade or cottage industries of the roiyats and his family.

(3) If an occupant-Raiyat, who pays for his holding rent in any of the ways specified in subjection (1) of Section 61. excavates a tank on such holding for any purpose mentioned in Clause (b) of Sub-section (2), the landlord's share shall be nine-twentieth and the roiyat's share shall be eleven-twentieth in the produce of such tank."

8. From bare perusal of the aforesaid provision it is clear that raiyat may use the land in any manner which does not materially impair the value of the land or render it unfit for the purpose of tenancy.

9. Section 22 of the Act confers protection to the occupancy raiyat from eviction except on specified grounds. Section 22 reads as under :

"Protection of occupancy raiyat "from eviction on specified grounds.--An occupancy raiyat shall not be rejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground --

(a) that he has used the land comprised in his holding in a manner which is not authorised by Section 21.

(b) that he has broken a condition consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be rejected."

10. Section 24 provides that occupancy raiyat shall pay rent for his holding at a fair and equitable rate. The next provision is Section 27 which deals with the enhancement of rent of occupancy raiyat, which reads as under :

Methods in which rent of occupancy raiyat may be enhanced.--(1) From and after the commencement of this Act-

(a) in any area for which record-of- rights has not been prepared and finally published under this Act or under any law in force before the commencement of this Act, or for which an order has not been issued under this Act or under any law in force before the commencement of this Act for the preparation of such a record, the money-rent of an occupancy-Raiyat whose rent is liable to enhancement may be enhanced only be order of the Deputy Commissioner passed u/s 29, and

(b) in any area for which a record-of-rights has been prepared and finally published as aforesaid, or for which an order has been issued as aforesaid for the preparation of such a record the money-rent of an occupancy-Raiyat whose rent is liable to enhancement may be enhanced only;

(i) in cases referred to in Section 62, Section 94 or Section 99, by order of the Deputy Commissioner passed u/s 29, and

(ii) in other cases, by order of a Revenue-Officer passed under Chapter XII.

(2) No enhancement of such rent made after the commencement of this Act in any manner other than that referred to in clause (a) or clause (b), as the case may be, whether by private contract or otherwise shall for any reason be recognized or given to in any suit or proceeding in any Court.

11. The provisions of CNT Act particularly quoted hereinabove does not confer any power to the Revenue Authorities to demand salami or commercial rent in the event raiyati holding is used for commercial purposes. The appellant-State in their counter-affidavit have admitted this position that salami and commercial rent cannot be demanded under the provisions of CNT Act. However, the stand of the appellant-State is that the salami and commercial rent have been imposed by initiating a proceeding in the manner and procedure provided under the Khas Mahal Manual.

12. Bihar Government Estates (Khas Mahal) Manual 1953 deals with the Government Estates. The term Government Estates has been defined as Estates under the direct management of Government whether these are the property of the Government or are the Estate of Private individuals brought under the direct management of the Government. In other words, the provisions of Khas Mahal Manual applies to the Estates either directly managed by the Government or sold or settled or leased out to an individual. Rule 9 of the said Manual prescribes the procedure for levying salami in government estates. In my considered opinion, therefore, imposition of salami and commercial rent in the instant case by the authorities of the State in respect of raiyat holding belonging to the petitioner is illegal and wholly without jurisdiction.

13. The stand of the appellants is that proceeding for imposition of salami and commercial rent was initiated only on account of the audit objection raised by the

Accountant General, Bihar on the basis of circular issued by the Government of Bihar.

14. It appears that on the basis of circular No. 1452 dated 21.5.1983 of the Revenue Department, Government of Bihar. Similar demand was raised against the owner of Bajrang Talkies and others who were using the land for commercial purposes. All those person moved the Patna High Court by filing several writ petitions. A Division Bench of the Patna High Court (of which I was a member) quashed the said demand taking notice of the fact that the said circular was held to be not applicable to the land other than Khas Mahal lands. Reference may be made to the decision reported on 1997 Bihar Revenue Labour Journal, page 65.

15. Taking into consideration the fact of the case, I am of the definite view that learned Single Judge was right in holding that the land in question being not the Government estate imposition of salami and commercial rent by applying provisions of Khas Mahal is absolutely illegal and wholly without jurisdiction. The impugned judgment passed by the learned Single Judge, therefore, needs no interference.

16. For the reasons aforesaid I do not find any merit in this appeal. This appeal is, accordingly, dismissed.

Hari Shankar Prasad, J.

17. I agree.