

(2009) 01 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 1534 of 2007

Subhash Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Bihar Tenancy Act, 1885 — Section 21, 25

Citation : (2009) 3 PLJR 273

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Shashi Shekhar Dwivedi for the petitioners, and Mr. Anil Kumar Jha, learned Government Advocate No. 2. This writ petition is directed against the order dated 13.11.2006 (Annexure-3), passed by the learned Commissioner of Sasaram Division, Chapra, in Jamabandi Appeal No. 1016/2006 (Girija Prasad & Ors. vs. State of Bihar), whereby he has dismissed the appeal preferred by the petitioners and has upheld the order dated 28.7.2006 (Annexure-2), passed by the learned Collector of the District of Gopalganj in Jamabandi Cancellation Appeal No. 29/93-94/12/97. In other words the learned Collector cancelled the alleged Jamabandi created in favour of the petitioners which has been upheld by the learned Commissioner. The present proceedings are with respect to 1 Katha and 12 Dhurs of land of Plot No. 322, Khata No. 128, situate at Viliage-Bideshr Tola Thawe, District-Gopalganj. The total area of the plot is 4 Bighas, 19 Kathas, and 5 Dhurs.

2. According to the writ petition, the petitioners claim that 1 Katha and 12 Dhurs of the said Plot No. 322 was settled by Hathwa Raj in favour of the ancestors of the present petitioners. They have been continuing in possession for more than 70 years, have constructed their house thereupon and are using a portion of the same for commercial purposes. After vesting of Zamindari, the Hathwa Raj in their returns under the Bihar Land Reforms Act had shown the lands in question

to have been settled in favour of the ancestors of the petitioners and Jamabandi was accordingly created.

3. The learned Collector of the District of Gopalganj directed the learned Anchala Adhikari to cancel the alleged Jamabandi created in favour of the petitioners, who took steps by the order dated 12.1.1993. The matter was enquired into and he submitted his report to the Additional Collector. They submitted their reports to the learned Collector recommending cancellation of the Jamabandi created in favour of the petitioners. By his order dated 287.2006 (Annexure-2). the learned Collector ordered for cancellation of the Jamabandi.

4. Aggrieved by the order dated 287.2006 (Annexure-2), the petitioners preferred an appeal, which has been rejected by order dated 13.11.2006, passed by the Commissioner, Saran Division, Chapra, and the appellate authority has upheld the order of cancellation of Jamabandi. Hence this writ petition.

5. While assailing the validity of the impugned order, learned counsel for the petitioners submits that the settlement made way back in 1933, and affirmed by the Jamabandi created after vesting of zamindari cannot be cancelled after a lapse of 70 years. The Collector of the District has no jurisdiction to cancel the Jamabandi. He relies on the following reported judgments:--

- (i) 1979 BBCJ 605. Para 4, (Jamaluddin Ahmad vs. S.D.O., Khagaria & Ors.), and
- (ii) Khiru Gope and Others Vs. Land Reforms Deputy Collector, Jamui and Others, .

5.1. He next submits that the learned authorities below have erroneously held that it is a case of encroachment. The correct position is that, soon after the settlement, the ancestors of the petitioners had constructed their house and shop. The settlement affirmed by the Jamabandi cannot be unsettled after a lapse of 70 years. He relies on the judgment of the Privy Council, reported in AIR 1916 PC 110, (Banga Chandra Dhur Biswas & Anr. vs. Jagat Kishore Acharjya Chowdhuri & Ors.). He next submits that the petitioners have acquired occupancy right in terms of Section 21 of the Bihar Tenancy Act which can be taken away in terms of Section 25 of the Act alone. He also submits that the order of the first authority is on the dictates of the learned Collector and is, therefore, bad in law. He relies on the following reported judgments:--

- (i) Orient Paper Mills Ltd. Vs. Union of India (UOI), , and
- (ii) The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, .

5.2. He lastly submits that the proceedings up to the level of the learned Collector are in gross violation of the principles of natural justice.

6. Learned Government Advocate has opposed the writ petition. He submits that the learned Collector has not directed the learned Anchal Adhikari to cancel the Jamabandi. He had only directed to initiate steps to examine the issue. He further submits that it is not a case of cancellation of Jamabandi. It is rather a

case of removal of encroachments. Detailed enquiry has revealed that the entire plot, covering an area of 4 Bighas, 19 Kathas and 5 Dhurs, is Sairat land where market is held on the basis of annual auction. The petitioners have encroached a portion of the same. He next submits that notices were issued to the petitioners and the principles of natural justice were observed. He also submits that removal of encroachments is an administrative action and, therefore, the judgments relied on by the parties are inapplicable to the facts and circumstances of the present case. He next submits that the judgment dated 22.6.1948 (Annexure-7) of the learned Additional Munsif, Gopalganj, in Title Suit No. 110/135 of 1946-48, was really in the nature of a partition suit which can only bind the parties, cannot bind the State of Bihar, which was not a party therein, and did not deal with the issue of encroachment of Sairat land. He lastly submits that the petitioners did not produce any document before the learned Commissioner in support of their case, and the issues are indeed concluded by findings of facts.

7. I have perused the materials on record and considered the submissions of the learner counsel for the parties.

8. Learned Government Advocate is right in his submission that the learned Revenue Authorities have found on enquiry that it is a case of encroachment. The relevant portion of the order dated 28.7.2006 (Annexure-2) reads as follows:--

It has been clearly found that the whole of Plot No. 322, covering an area of 4 Bighas, 19 Kathas and 5 Dhurs, is Sairat land, on which hat is held every year. It is settled on the basis of annual settlement. The petitioners have encroached to the extent of 1 Kaiha and 12 Dhurs of the plot. In that view of the matter, it is not a case of cancellation of Jamabandi but, really, a case of removal of encroachment. Therefore, the judgments relied on by the learned counsel for the petitioners in Jamaluddin Ahmad (supra), and Khiru Gupta & Ors. (supra), are inapplicable to the facts and circumstances of the present case. The correct position in law is that unlawful occupation and/or encroachment of lands can be evicted forcibly and does not need due process of law. For the same reason, the judgment of the Privy Council in Banga Chandra Dhur Biswas & Anr. (supra) is also inapplicable to the facts and circumstances of the present case. Equally, Sections 21 and 25 of the Bihar Tenancy Act are not attracted in the facts and circumstances of the present case.

9. The materials on record do not create an impression in my mind that the Anchal Adhikari was directed to cancel the Jamabandi. There was indeed a direction to examine the correct state of affairs. The judgments of the Hon'ble Supreme Court in Orient Paper Mills Ltd. (supra), and Purtabpur Company Ltd. (supra), are, therefore, inapplicable to the facts and circumstances of the present case. Encroachments has been established after detailed enquiry.

10. Learned Government Advocate is right in his submission that the principles of natural justice were fully observed and the orders were passed after notice to the present petitioners. Following portion of the order dated 29.1.2004 (Annexure-1)

establishes the position that notices were issued to the petitioners:--

I am, therefore, of the view that notice of the proceedings were issued to the petitioners and the proceedings were conducted after due observance of the principles of natural justice.

11. If further appears to me that, in spite of opportunity given to the petitioners, they did not produce any paper at all before the authorities in support of their case. This position is manifest from a perusal of the order dated 13.11.2006 (Annexure-3). Relevant portion of the order is reproduced herein below for the facility of quick reference;--

"On perusal of the record, appellant did not produce the sada pata granted to him by Hathua Raj, return of Hathua Raj and order & judgment of civil court in his favour before the lower court. All the reports and recommendations regarding the disputed land are against the appellant. Disputed land is a sairat land on which Bazar is held and every year there is auction for it."

The petitioners, therefore, completely failed to utilise the opportunity of satisfying the revenue authorities of establishing their case. They purposely failed and/or refused to produce the relevant documents in support of their case.

12. It is further relevant to state that the judgment of the learned Additional Munsif in Title Suit No. 110/135 of 1946-48 was between private parties and cannot bind the State of Bihar. The question whether or not it is sairat land, the question relating to encroachment was not the issue there. In the result, I do not find any merit in this writ petition, it is accordingly dismissed.