
(2007) 04 PAT CK 0177
In the Patna High Court
Case No : CWJC No. 2999 of 1987

Subodh Narain Jha and Others	Vs	APPELLANT
Collector, Madhubani and Others		RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Citation : (2007) PLJR 159

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Sujeet Kumar Gupta, for the Appellant; Deo Narayan Yadav, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Sujeet Kumar Gupta, counsel for the petitioners and Mr. Deo Narayan Yadav, AAG 6 representing the State. No one appears for the private respondents 4 and 5. The petitioners primarily seek to challenge the order dated 19.9.1979 passed by the Subdivisional Magistrate, Sadar, Madhubani in Case No. C 190/79. A copy of the order is at Annexure-2. By this order the Subdivisional Officer directed the petitioners, who were Opposite party before him, to hand over possession of certain agricultural land to respondents 4 and 5 (the applicant before the Subdivisional Officer). Also coming under challenge are the orders passed by the Additional Collector, Madhubani and the D.C.L.R., Madhubani by which the petitioners' appeal against the order of the Subdivisional Officer was disallowed on the plea that it was an administrative order.

2. The impugned order prima facie appears to be completely illegal and without any sanction of law. It appears that respondents 4 and 5 filed an application before the Subdivisional Officer stating that certain plots of land (described in the impugned order) were recorded in the Khatian in the names of their ancestors. It was alleged that the petitioners had forcibly dispossessed them from the land. A prayer was made to restore their possession over the disputed land. The

Subdivisional Officer apparently called for a report from the Circle Officer. The Circle Officer stated that the mutation of the disputed land was made in favour of the petitioners without production of the original transferred deed. He also stated that notwithstanding the sale the applicants (respondents 4 and 5) had lawful right in the disputed land. On the basis of the enquiry report the Subdivisional Officer directed the Opposite party to hand over possession of the balance area remaining pursuant to the sale to the applicant in a peaceful manner. The Subdivisional Officer plainly usurped the jurisdiction of the Civil Court and gave direction in regard to the title and possession over the disputed land.

3. Mr. Yadav was unable to show any provision of law that would justify the Subdivisional Officer to pass such an order. The order cannot be sustained even on the plea that it was passed in administrative exigency. The law is very clear that any dispute in regard to title and possession over an immovable property, agricultural land in this case, can only be adjudicated on by a Civil Court of competent jurisdiction.

4. Against the order passed by the Subdivisional Officer the petitioner preferred a petition before the Sessions Judge, Madhubani that was registered as Criminal Misc. No. 22 of 1979. The Sessions Judge held that the petition was not maintainable because the impugned order appeared to have been passed by Subdivisional Officer, Madhubani and not by Subdivisional Magistrate. He further observed that no revision would lie against the impugned order and summarily dismissed the petition filed by the petitioners by order dated 1.7.1980. The petitioner then went before the Additional Collector. He also said that the order was passed by the Subdivisional Officer in his administrative capacity. The D.C.L.R., Madhubani by order dated 24.8.1983 also dismissed the petitioners' application on the same ground.

5. On hearing counsel for the parties I am satisfied that in the first place the order of the Subdivisional Officer was completely without jurisdiction and non est in the eyes of law. I am further of the view that both the Additional Collector and the D.C.L.R. abdicated their responsibility by not declaring it to be so. I accordingly set aside the orders passed by the Subdivisional Officer, Additional Collector and the D.C.L.R. If the parties are left with any grievance(s) they are free to seek their remedy before a Civil Court of competent jurisdiction in accordance with law. In the result, this writ petition is allowed but with no order as to costs.