
(2010) 09 PAT CK 0006
In the Patna High Court
Case No : CWJC No. 8059 of 1989

Sunil Kumar Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0006

Judgement

Sheema Ali Khan, J.—This writ application was filed with a prayer that the Respondents should not interfere with the possession of the Petitioners with respect to alluvion land which has been added to the Jama of the Petitioners in view of the provisions of the Bengal Alluvion and Diluvion Regulation, 1825. The lands in question relating to Mauza-Ajmeripur are unsurveyed Diara lands. During the last survey prepared and published in the year 1964, large portion of land was submerged in the water and was recorded as "Margang" of Khesra Nos. 2, 315, 330, 331, 335, 337 and 837. The Mauza being very big, three separate charts were prepared for the lands in question.

2. The Petitioners' case is that 300 acres of lands which remained submerged in the river Ganga accessed from the river which has led to the present dispute. The further case of the Petitioners is that the lands which have accessed from the river were settled with them by the ex-landlord and as such the State of Bihar cannot settle the lands to any other party. Before this Court, learned Counsel is taking a plea of least resistance. Counsel for the Petitioners submits that for the time being he is giving up his claim with respect to his title to the lands. It is specifically stated on behalf of the Petitioners that the lands in question appertain to Khata No. 333, and are described below:

Plot No. 1, Area 124.75 d.-Ganga Plot No. 315, Area-105.75 d.-Margang Plot No. 660, Area 5.39 d.-Balu (Sand) Plot No. 837, Area- 30.41 d.-Balu (Sand)

3. A general notice was issued with respect to Khata No. 333, by the Circle Officer for filing objection as the said plot was recorded in the name of the State of Bihar which is contained in Annexure-7 series. It is the specific case of the

Petitioners that Plot No. 1 has not been settled to any party and is in possession of the Petitioners whereas Plots No. 315 and 837 were subsequently settled by Settlement Case Nos. 17 of 1988-89 and 23 of 1988-89.

4. The case of the State on the other hand is that the provisions of the Bengal Alluvion and Diluvion Regulation, 1825 will not be applicable in the facts of this case as the Petitioners have not impleaded the settlees as parties. It is also urged on behalf of the State of Bihar that Petitioners had filed an amendment only in the year 2009, challenging the settlement made by the State of Bihar which is belated and the writ application ought to be dismissed on this ground alone.

5. I may also point out that the Petitioners have given details with respect to the raiyati lands owned by the Petitioners and have also annexed a map of the entire area including alluvion and diluvion lands which emerged after recession.

6. I will first refer to the arguments and the case of the Petitioners. The prayer of the Petitioners would depend on the fact whether this Court will hold that the amendment application has been filed within time and is not barred by laches on behalf of the Petitioners. The amendment filed is that the entire settlement cases 17 of 1988-89 and 23 of 1988-89 should be quashed. The amendment has been allowed, by this Court, and at this stage, it cannot be held that it was wrongly allowed. However, allowing the amendment raises the vital issue, inasmuch, that the Petitioners are claiming that the entire Settlement Case Nos. 17 of 1988-89 and 23 of 1988-89 be quashed without bringing the orders or the proceedings on record and without making the concerned Respondents who would be affected by this order as parties in the writ application. The argument on behalf of the Petitioners is that some of the affected parties have appeared suo motu. Their case is that lands appertaining to Khata No. 333, Khesra Nos. 315, 660 and 837 has been recorded in the Khatiyani as "Gair Mazrui Bihar Sarkar". One acre each, of these lands has been settled in favour of the persons who are Harijans and belong to the backward classes. In lieu of the said settlement, the settlees have been granted receipts and are in possession of the lands in question. It is specifically stated that the Petitioners have no right, title and interest over the lands in question and that they have never challenged the entry in the Khatiyani which indicates that the lands belong to the State of Bihar, and as such in this writ application, they cannot collaterally challenge both the entry made in the Khatiyani and the settlement made.

7. Learned Counsel for the Petitioners, on the other hand, submits that the lands have been settled to 135 persons. The claim of the intervenor Respondents would be the same as the claim of the other 128 odd persons, such persons could not have any better claim with respect to the possession of 7 persons who have filed their intervenor applications and as such it is submitted that the intervenors, adequately represent the cause of all the settlees.

8. For this purpose learned Counsel for the Petitioners has referred to a

judgment delivered in the case of Allwyn Housing Colony Welfare Association v. Government of Andhra Pradesh and Ors. reported in AIR 2009 SCW 5626. The case relates to alienation to 3 acres odd lands which were handed over to different persons by the Petitioner company. The High Court dismissed the writ application on the ground that the persons who were allotted the plots of lands had not been made parties. Against the aforesaid order a SLP was filed. Several intervenor applications had been filed on behalf of the allottees. Finally, the Supreme Court remanded the matter back to the High Court with a direction to hear all the persons affected by the order of allotment. From the case referred to above, it is apparent that it is a well settled principle of law, that the rules of natural justice have to be followed by the Courts while passing any order. In the present case, it would not be sufficient, for substantial compliance of the rules of natural justice to hear only some of the parties, and treat their appearance to be in the representative capacity of a larger group of 135 persons who have been settled various plots of land. The case of the intervenor Respondents indicates that each of the settlees were settled 1 acre of land. In that view of the matter each of the settlees have distinct and different plot of land and therefore, each of them have the right to be heard in the matter.

9. The recent judgment referred to on behalf of the Petitioners, is the case of Public Service Commission, Uttaranchal v. Mamta Bisht and Ors. [2010 (3) PLJR (SC) 100]. At paragraph 8 of the judgment, the Court has referred to the decision of Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, wherein it has been held that if a person challenges the selection process amongst the candidates, at least some of them whose appointment was challenged ought to have been necessary parties. Relying on this part of the judgment, it is submitted that in the present case, about 7 of the settlees have appeared suo motu, their appearance would comply with the requirements of fulfilling the principles of natural justice. As stated earlier by me, this is not a case which can be based on the simple principle and involves certain facts which have to be asserted by the affected parties. I would explain this aspect further when I discuss the provisions of the law on the subject. At this juncture, it is suffice to hold, that each person has a separate and individual right and, therefore, settlees cannot be clubbed together and the appearance of few cannot be treated to be the appearance of all.

10. As far as the stand taken by the State that the amendment has been filed after a delay, inasmuch as the writ application was filed in the year 1989 and the settlement proceedings commenced in 1988-89 and it was very much within the knowledge of the Petitioners, as such they ought to have challenged the proceedings at the very initial stage. The stand of the Petitioners, on the other hand, is that once the amendment is allowed it would revert back to the date of filing. The submission on behalf of the Respondent State is that even if this Court held that that the amendment is not at a belated stage, the Respondents would still be entitled to say, that the prayer made in the amendment petition is barred,

for the reason that there is absolutely no explanation given by the Petitioners as to why they did not think it proper to file an amendment petition challenging the settlements with respect to Plot Nos. 315 and 837 of Khata No. 333. With respect to this argument raised on behalf of the State, this Court finds that in fact, the Petitioners initially in the writ application had thrown a challenge to the right of the State to settle the lands in dispute to any party. The only difference now is that the Petitioners have specifically challenged the orders passed in the settlement case. This Court however, finds that the challenge is not supported with appropriate pleadings and that the Petitioners have in fact, not annexed the orders of settlement or even the proceedings of any one case. Therefore, as far as this aspect of the matter is concerned, it would obviously need to be remitted back to the Sub-Divisional Officer who will consider these aspects after hearing both the parties.

11. Lastly, learned Counsel for the Petitioners submits that the procedure of settlement would be governed by the Bengal Alluvion and Diluvion Regulations, 1825. The purpose of enacting this regulation was that large tracks of land situated on the bank of Ganga or other rivers in India were often thrown out either creating chars or small islands or the river receded throwing up lands belonging to the ex-landlords or in some cases to the State. In order to distinguish the lands which would vest in the State, and the lands which ought be treated to be the raiyati lands of private individuals, these regulations were framed. Specifically learned Counsel refers to Clause 4 of the regulation which reads as follows:

Lands gained by gradual accession from recess of river or sea. First.- when land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered as increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from [the Government] by a Zamindari or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever.

12. The Petitioners claim that the lands which have emerged in the present case because of the recession of the river are annexed to their raiyati lands and, therefore, they would be considered as an increment to the tenure of his land and would have to be settled by the State in favour of the raiyat who is immediately adjacent to the land.

13. In order to substantiate this argument, counsel for the Petitioners relies upon a Full Bench judgment in the case of Khubi Mahton and Others Vs. Mahant Lachmi Das and Others and Musammat Bibi Aniz Bano and Others, This decision lays down that on perusal of the regulations that "holder of a subordinate estate or tenure holding from a landlord intermediate between himself and the Crown, and to the case of "holder of a subordinate estate or tenure holding from a landlord intermediate between himself and the Crown be limited in each case to accretions from the lands of the person from whom he holds and to whom revenue in the one case and rent in the other is payable. In case of superior

landlord the person from whom he holds is that Crown and no one else". The Full Bench held that "where the Crown is the proprietor of the accreted lands the Section come into operation. To hold otherwise and permit a landlord to acquire in this manner a proprietary right in the land of his neighbour, with whom he has no relationship such as that of a tenant to his landlord, would be going outside the scope and intention of the Section and permitting what, in effect, would be confiscation of another man's land". Section 4 also describes the manner and the extent that the lands could be settled whereas Clause of Section 4 deals with charleds or lands which have emerged as islands.

14. Learned Counsel for the State, on the other hand, submits that Section 4 deals with "gradual accession". The question whether the accession was gradual or that had taken place at one go is hardly relevant for the purpose of dealing with settlement of such lands.

15. In my opinion no emphasis can be attached to the word "Gradual" as it does not connote any special meaning to the provisions of the Section. I may clarify here that the counsel for the Petitioners submits that as far as Plot No. 1 of Khata No. 333 is concerned, settlement has not been made in favour of any of the party. In any event, this aspect of the matter has to be verified before any definite order is passed. The law as discussed above stands uncontroverted, and the parties have not been able to produce any case law to dispute the discussions aforesaid. Thus, the Sub-Divisional Officer will necessary have to verify the facts before taking a final decision after issuing notices to the effected parties. As far as the other plots of land, which are subject matter of settlement, depending on the factual position, the Sub-divisional Officer will consider the case put forth by the parties. At the most that the Petitioners can claim, only those lands which have emerged from the river, which are in the boundary of the lands of the Petitioners, should be settled to them. It is not quite clear regarding the status of the settlement case, but in any event of the matter the Petitioners and the proposed settlees would have to be heard, and the law as referred to above would need to be considered before taking a final decision in the matter. In conclusion, this Court gives the Petitioners the liberty to produce this order before the concerned authority, who must decide the claim of the parties as expeditiously ks possible, considering that delay would cause loss of income to the parties as the lands are fertile and would yield good crops. I may clarify here that since no settlement have been initiated with respect to Plot No. 1 of Khata No. 333, the settlement would be governed by the law as laid down in the case of Khubi Mahton and Others Vs. Mahant Lachmi Das and Others and Musammat Bibi Aniz Bano and Others,

16. This, application is disposed of with the aforesaid observations and directions.