
(2020) 02 PAT CK 0089

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2546 Of 2020

Surendra Prasad @ Surendra Prasad

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Bihar Tenancy Act, 1885 — Section 103, 108

Citation : (2020) 02 PAT CK 0089

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Anirudh Kumar Singh, Rishi Raj Sinha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned SC 19 for the State.

2. The petitioner has moved the Court for the following relief:

That by way of this writ application, the petitioner invoking extra-ordinary writ jurisdiction of this Hon'ble Court prays for

issuance of an appropriate writ/writs in the nature of writ of certiorari to quash the order dated 17.12.2018 passed by Hon'ble

Chairman, Bihar Land Tribunal, Patna (Respondent no. 2) in B.L.T. Case No. 668 of 2016 contained in Annexure-6 and also the order

dated 30.04.2005 passed by learned D.C.L.R. Jagdishpur, Bhojpur (Respondent no. 5) in Misc. Appeal Case No. 02 of 2004-05 contained

in Annexure-2.

3. The brief facts of the case relevant for consideration of the present application is that the petitioner was a tenant on the land in question which was

recorded in the name of the father of the respondent no. 7 in the revisional

survey khatiyani and jamabandi had also been created in his name.

Thereafter, the respondent no. 7 asked the petitioner to vacate the premises in August, 2004 due to default in payment of rent. The petitioner instead

got initiated Encroachment Case No. 3 of 2004 by the Circle Officer, Jagdishpur in which by order dated 14.09.2004 the jamabandi in the name of the

father of the respondent no. 7 was cancelled. The respondent no. 7 challenged the same before the DCLR, Jagdishpur in Miscellaneous Appeal Case

No. 2 of 2004-05. The same was allowed by order dated 30.04.2005 and the original jamabandi in the name of the father of the respondent no. 7 was

restored. The petitioner thereafter moved before the Collector, Bhojpur in Miscellaneous Case No. 11 of 2008-09 which was allowed in favour of the

petitioner by order dated 01.07.2010 by which the original order passed by the Circle Officer, Jagdishpur dated 14.09.2004 was restored. In the

meantime, the respondent no. 7 had filed Eviction Suit No. 10 of 2006 against the petitioner on the ground of default in payment of rent and personal

necessity which was decreed in his favour by judgment dated 30.04.2011 against which the petitioner has filed Title Appeal No. 860 of 2011 which is

pending. The respondent no. 7 challenged the order passed by the Collector dated 01.07.2010 before the Commissioner, Patna Division in Revision

Case No. 135 of 2010 rejecting the same. The respondent no. 7 thereafter moved before the High Court in CWJC No. 3921 of 2014 which was

disposed off by order dated 20.05.2016 giving liberty to the petitioner to approach the Bihar Land Tribunal (hereinafter referred to as the

â??Tribunalâ??). In terms thereof, the respondent no. 7 filed BLT Case No. 668 of 2016 before the Tribunal which was allowed by order dated

17.12.2018.

4. Learned counsel for the petitioner submitted that the land belongs to the State of Bihar and wrongly jamabandi was created in the name of the

father of the respondent no. 7 and, thus, the orders passed by the Circle Officer, Jagdishpur; the Collector, Bhojpur as well as the Divisional

Commissioner, Patna are correct.

5. Having considered the matter, the Court finds that the action of the petitioner is absolutely ill-misconceived. He has also filed Title Suit No. 407 of

2005 for correction of the survey entry made in the name of the father of the respondent no. 7 alleging that it should be in the name of the State of

Bihar. The Court has no doubt that the present application is absolutely frivolous. The fact that the petitioner, who has no locus standi to challenge the

jamabadi in the name of the father of the respondent no. 7, as he is not a claimant, could in no view of the matter, have filed such suit espousing the

case of the State. It was for the State to either file suit or go for cancellation for jamabandi, but based on the application of the petitioner and the stand

taken that he has filed Title Suit No. 407 of 2005 for correction of survey entry which is pending, the Court would only observe that such title suit is

frivolous and not maintainable. In this connection, the Court, concurring with the findings of the Tribunal, would reproduce paragraphs no. 3, 4, 5 and 6

of the order passed by the Tribunal, which read as under:

â??3. After considering the submissions and perusal of the materials on record, it is evident that the land in question recorded in survey

plot No. 179/3114, has been directed to be so recorded in the survey khatiyan by the order passed earlier under Section 103 B.T. Act and

thereafter in Case No. 948 of 1973 under Section 108 B.T. Act. This order passed by the revenue authority was not challenged by the state-

opposite parties. The jamabandi was accordingly created for the land in question in the name of the petitioner by order dated 19.09.1986

passed by the Circle Officer.

4. The opposite party No. 6 was tenant of the petitioner over the premises situated in the above said plot. There is no dispute on behalf of

the state opposite parties that an eviction decree was passed against the opposite party No. 6 and the possession over the premises in the

suit was delivered to the petitioner.

5. Surprisingly however the opposite party No. 6 filed petition before the Circle Officer complaining against the creation of jamabandi over

the above plot in the name of the petitioners. The Encroachment Case No. 3 of 2004-05 was initiated on the petition filed by the opposite

party No. 6 before the Circle Officer who by order dated 14.09.2004 (Annexure-3) directed for cancellation of jamabandi with regard to

the above plot which was running in the name of the petitioners. The petitioners filed Misc. Appeal No. 02 of 2004-05 before the D.C.L.R.

who by order dated 30.04.2005 allowed the appeal and set aside the order passed by the Circle Officer. There is again no dispute between

the parties that this order passed by the D.C.L.R. was never challenged by the State of Bihar and had attained finality. However again the

opposite party No. 6 filed Misc. Case No. 11 of 2008-09 before the Collector of the district where in the opposite party No. 6 further took

the plea that the T.S. No. 407 of 2005 had been filed by the opposite party No. 6 for declaration that the plot in question in fact belonged to

the state-opposite parties. By order dated 01.07.2010, the Collector of the district allowed the Misc. Case No. 11 of 2008-09 and set aside

the order passed by the D.C.L.R. in the above said Misc. Appeal No. 02 of 2004-05. The revisional authority by the impugned order, in the

revision filed by the petitioner has affirmed the order passed by the Collector of the district.

6. The aforesaid background facts leave no room for doubt that a proxy litigation is being fought by the opposite party No. 6 who was the

erstwhile tenant of the petitioner and against whom the petitioner had got eviction decree and recovery of possession in pursuance of the

said decree in accordance with law.â??

6. In view of the discussions made hereinabove, the application, being devoid of merits, stands dismissed.