
(2007) 08 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 12524 of 2000

Suresh Yadav and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h), 40(1)
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 146

Citation : (2007) PLJR 273

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Kamal Nayan Chaubey, Ambuj Nayan Chaubey and Akhilesh Kumar, for the Appellant; Anwar Karim for the State and M/s. Shiva Nandan Roy, Ravindra Kumar Rai and Rama Sinha for Resp. No. 4, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the parties. The petitioners seek quashing of the order dated 24.10.2000 passed by the Collector, Khagaria, respondent No. 2, in so far as it relates to Jamabandi No. 47/ 51 in Jamabandi Cancellation Case No. 05/1999-2000.

2. The case of the petitioners is that the lands in question having an area of 47 bigha 15 katha and 6 dhoor was settled by the ex-landlord in favour of the father of the petitioner No.1 namely, Mungeri Das on 14.6.1940 which was followed by issuance of rent receipts and a deed of settlement was also executed. The petitioners claim to be coming in exclusive cultivating possession over the land in question. The further case of the petitioners is that the ex-landlord of the present Tauzi No. 4966 also submitted returns in the name of the father of the present petitioner No.1 and on the basis of the said return, the Jamabandi was created in the name of the father of petitioner No.1 and continuing as such. It has also come in the report of the Circle Officer submitted before the Collector that the Jamabandi has been made on the basis of the earlier sada settlement by

Zamindar, the Zamindari Jamabandi that had been opened as well as the Zamindar rent receipts of 1358 and 1359 Fasli. It has also come that the rent has been paid to the State Government from 1961-62 to 1997-98. It appears that a dispute arose between the petitioners and respondent No. 4 from the year 1998 in which various litigations including those under Sections 144, 145 and 146 Cr.P.C. have taken place. Thereafter the respondent No. 4 filed Jamabandi cancellation case No. 5/1999-2000 for cancellation of the Jamabandi of these petitioner as well as of two other persons.

3. The main submission of the learned counsel for the petitioner is that the Collector had no jurisdiction to pass an order cancelling the Jamabandi made earlier. In support of the same, learned counsel for the petitioners relies upon a Division Bench decision of this Court in the case of Harihar Singh and Anr. vs. Additional Collector, Incharge Land Reforms, Monghyr : 1978 BBCJ 323, in para-16 of which it has been laid down as follows:--

"There is no provision in the Land Reforms Act which would indicate that after issuance of such a notice, learned Additional Collector could cancel the Jamabandi. Settlement can only be cancelled u/s 4(h) of the Bihar Land Reforms Act and the impugned order of the learned Collector does not show that he had proceeded in the matter as contemplated by that provision. In fact, apart from referring to Section 40(1) of the Bihar Land Reforms Act, Mr. Standing Counsel No. 2 was unable to refer to any provision of law or any instruction issued by the Revenue Department authorising the Additional Collector to cancel a Jamabandi opened in accordance with law under the direction of the Anchal Adhikari. The reason given by the Additional Collector for cancelling the Jamabandi is that the petitioner No.1 has not claimed that he was in possession of the land, therefore, the Anchal Adhikari should have himself enquired into the matter. The second reason given is that as the land was Gairmazarua Malik and was a big plot the Anchal Adhikari should have personally enquired into the matter particularly because in the return filed by the ex-intermediary, no entry had been made in favour of the petitioners. In the absence of any authority given to the Additional Collector either by law or by executing instructions, I am constrained to hold that he had no jurisdiction to annul the Jamabandi made in favour of the petitioners by the Anchal Adhikari."

4. The aforesaid statement of the law has been followed and reiterated by two other division Benches of this Court in the case of Khiru Gope and Others vs. Land Reforms Deputy Collector: 1983 PLJR 727 and D.N. Jatia Vs. The State of Bihar and Others, .

5. Learned counsel for respondent No. 4 on the other hand, sought to support the order on the basis of various facts including the factum of earlier litigations between the ancestors of respondent No.4 and other parties in which apart from proceedings u/s 144 and 145 Cr.P.C. Title Suit were also fought between the parties. However, it is admitted that the petitioners or their father were not party to any of those proceedings. Learned counsel also relies upon the merits of the

matter as stated in the order of the Collector. However, he was unable to meet the proposition that the Collector had no authority to pass the order.

6. It is evident from the facts enumerated above that Jamabandi had been created on the basis of oral settlement made by the ex-landlord and the same has been acted upon for a long period of time and under the said circumstances, as laid down by the aforesaid division Benches, the Collector had no jurisdiction to cancel the same. In the aforesaid facts and circumstances, this writ application is allowed and the order dated 24.10.2000 passed by the Collector, Khagaria in Jamabandi Cancellation Case No. 5/99-2000 is quashed.