
(1998) 01 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 11341 of 1996

Surya Narain Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-1998

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2(j), 8(8)

Citation : (1998) 2 BLJR 924 : (1998) 1 PLJR 561

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N. Pandey, J.—Dispute in these cases is with respect to 2 Kattha 12 Dhurs of land out of Plot Nos. 2488 and 2490 appertaining to Khata No. 15 of Village-Dhoi in the district of Darbhanga. Petitioner Suraj Narayan Mishra & others, CWJC No. 7713/96 are the landlords of-the disputed land "whereas Ram Naresh Mishra, Petitioner in CWJC No. 11341/96 is allegedly privileged tenant of the same land. Both the writ petitions have been preferred against the order of the Collector, Darbhanga dated 17.6.1996 in Misc. Case No. 154 of 1992-93.

2. As the case has got a chequered history, therefore, it would be advisable to state few facts. Undisputedly, the ancestors of the petitioners Suraj Narain Mishra and others purchased this piece of land on 20.2.1956 in "Money Execution Case No. 134 of 1995 and got their possession. Thereafter, at several stages the matter was contested by Ram Naresh Mishra but ultimate success remained with Suraj Narain Mishra and others.

3. Thereafter, in the year, 1976 a petition was filed by Ram Naresh Mishra before the Anchal Adhikari to declare him a privileged tenant of the land in dispute and to grant Purcha, which was registered as Case No.8 of 1976-77. On 24.11.1977 the Anchal Adhikari declared Ram Naresh Mishra as privileged tenant and directed for issuance of Purcha. But no notice was given to the land holder either

at the time when local inspection was made by the Circle Inspector or at the time the matter was heard by the Anchal Adhikari.

4. Thereafter a Land Encroachment Case No.33 of 1977-78 was filed by Ram Naresh Mishra alleging that in spite of Purcha having been granted under the provision of Bihar Privileged Persons Homestead Tenancy Act (in short "the Act"), the land holders have evicted him. On 13.9.1978 the Anchal Adhikari passed an order for eviction of the land-holders. Against this order, Suraj Narayan Mishra and others filed Misc. Appeal No. 89 of 1977-78 in the Court of Collector, Darbhanga. The matter was heard and on 8.3.1979 the order of the Anchal Adhikari was set aside with a direction that he should take steps in accordance with the provisions of the Bihar Privileged Persons Homestead Tenancy Act.

5. Ultimately the Anchal Adhikari registered a case bearing Case No. 1 of 1979-80/5 of 1980-81 and on 8.2.1980 passed an order directing the land holders to give vacant possession to Ram Naresh Mishra within 15 days. When the said order was not carried out, the Anchal Adhikari preferred the matter to the Deputy Collector, Land Reforms, Darbhanga for a suitable action u/s 8(8) of the Act against the land holders, who after hearing both the parties by order dated 5.8.1981 directed the Anchal Adhikari to take steps to hold inquiry and to grant Purcha thereafter. The matter was not allowed to rest there and a Case No. 17 of 1982-83 was filed before the Collector, Darbhanga, who ultimately sent the matter before the Deputy Collector, Land Reforms for disposal. But the Deputy Collector, Land Reforms by his order dated 20.6.1983 dropped the matter since he had no jurisdiction to pass orders with regard to the proceedings initiated under the provisions of the Bihar Privileged Persons Homestead Tenancy Act.

6. Feeling aggrieved by the same order, Revision Case No. 18 of 1983-84 was filed before the Collector, which was ultimately disposed on 2.7.1991, directing the Deputy Collector, Land Reforms to submit a report after holding detailed inquiry.

7. Thereafter, the Deputy Collector, Land Reforms, vide his order dated 17.10.1992 in Misc. Revision Case No. 17 of 1982-83 (Annexure-13 to CWJC No. 7713 of 1996) though held that no proper inquiry in this case was conducted by the authorities nor notices were given to the land holders before issuance of Purcha in favour of Ram Naresh Mishra, but declined to record any finding since he had no jurisdiction under the provisions of the Bihar Privileged Persons Homestead Tenancy Act. Of course he has disclosed the full details of the case of the parties.

8. Thereafter, on receipt of the report of the Deputy Collector, Land Reforms, the Collector vide his impugned order dated 17.6.1996 disposed of the case and held that it was not proper for the Anchal Adhikari to grant Purcha without holding inquiry, as required under the Act and Rules and notice to the land holders. He further held that any order to hand over possession of the lands in favour of Ram Naresh Mishra on the basis of Basgit Purcha may not be justified since dispute

with regard to title of the parties is continuing with effect from 1955. He also directed the parties to get their right and title adjudicated by the civil Court. But it was held that no correction with regard to Basgit Purcha or any interference with possession of the parties was possible.

9. Though Mr Ravi Shankar appearing for petitioner Suraj Narayan Mishra and others submitted that initiation of the proceeding under the provisions J Bihar Privileged Persons Homestead Tenancy Act was quite uncalled for and mala fide because Ram Naresh Mishra had already lost his claim with regard to the title and possession of the land in the previous proceedings before the civil Court, therefore, any attempt by him to obtain Purcha under the provisions of this particular Act was nothing else but a mala fide design.

10. On the other hand, Mr. Kumar learned Counsel appearing for Ram Naresh Mishra and Mr. Verma appearing for respondent Nos. 6 to 9, CWJC No. 7713/98, contended that the Collector had no jurisdiction to interfere with regard to such matters where orders to grant Purcha were passed in the year, 1976, it was further contended that Ram Naresh Mishra is a poor man and he has no other land except the present one. Attempt was also made to show that Ram Naresh Mishra has been continuing over the land from the very beginning. Therefore, the Circle Inspector had submitted a report in his favour with a recommendation to the Anchal Adhikari to grant Purcha.

11. From the facts, noticed above, there appears no dispute that the impugned order of the Collector has been passed in such a confusing manner that both the parties are bound to be aggrieved. This has also been established that no proper inquiry, as required under the law, was conducted in this case nor due notices were issued to the land holders. That apart, the Collector under the Act before granting Purcha has to find out whether the claimant is a privileged person as defined u/s 2(i) and a "privileged tenant" as defined u/s 2(j) of the Act. Therefore, in absence of due observance of the aforesaid statutory requirements, order granting Purcha has to be declared illegal and without jurisdiction.

12. That apart, the procedures followed by the authorities from time to time appear quite irregular and without jurisdiction. Because the only question relevant was whether Ram Naresh Mishra was a "privileged person" and entitled for a Purcha under the provisions of Bihar Privileged Persons Homestead Tenancy Act with regard to the land in dispute. Therefore, orders, passed by the Deputy Collector, Land Reforms, either it be under the provisions of Bihar Land Encroachment Act or under the provisions of the present Act, have to be declared illegal and without jurisdiction. It has also to be noticed if the land in question was purchased in a Money decree by ancestor of Suraj Narayan Mishra and others, there may not be any scope to doubt their title unless and until it is shown that those orders of the civil Court were later set aside or the other party came in possession through any other means.

13. In my view, for the reasons, stated above, it would be just and proper in the

interest of justice and both the parties that entire matter be re-examined by the Anchal Adhikari in a right direction strictly in accordance with the provisions of Bihar Privileged Persons Homestead Tenancy Ac and Rules, after giving proper notices and opportunity to both the parties either it be at the stage of inquiry or at the stage of hearing.

14. In the result, therefore, the impugned order of the Collector dated 17.6.1996, and the orders of the Anchal Adhikari, passed from time to time, granting Purcha with respect to the land in dispute or with regard to delivery of possession are hereby quashed and both the writ applications are, thus, disposed of with a direction to the Anchal Adhikari to take up the matter in accordance with the directions in this case.