

(2005) 02 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 15210 of 2001

Suryodeo Yadav and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2I, 2J, 4
Bihar Privileged Persons Homestead Tenancy Rules, 1948 — Rule 5

Citation : (2005) 1 BLJR 774 : (2005) 2 PLJR 28

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : S.S. Dwivedi, R.S. Dwivedi, S.K. Srivastava and C.C. Pandey, for the Appellant; Rajeshwar Pd. and Anjani Kumar Sharan, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—This application has been filed for quashing the order dated 28.2.1995 passed by the Circle Officer, Raghunathpur, by which the application filed by respondent No. 4 for issuance of Basgitparcha with respect to 6 decimals land of plot No. 1216 khata No. 149, of village Usuribujurg in BPPHT Act case No. 13 of 1994-95 has been allowed and direction has been issued for issuance of parcha in favour of respondent No. 4. Further prayer of the petitioners is for quashing the order dated 6.11.2001 passed by the Collector, Siwan, in BPPHT Act case No. 290 of 1999 in exercise of the revisional jurisdiction.

2. Respondent No. 4 who is practitioner of Ayurvedic Medicine, filed an application before the Circle Officer, Reghunathpur, on 10.2.1995 stating that the land of khata No. 131, plot No. 1216 measuring 7 dhoors is in his possession for continuous 12 years and he is residing over the land after constructing a house. As such, Basgitparcha may be issued in his favour with respect to these lands. In his petition he has also stated that the land was recorded in the revisional survey khatian in the name of Meghu who died issueless and now it is an abundant land. Since he has no other land parcha be issued in his favour. The Circle Officer

without initiating a proceeding on the same day stated that he received the report of Halka Karamchari through the Circle Inspector with respect to the land and directed to issue general notice. The order-sheet dated 20.2.1995 shows that service report of the notice has been received. No objection was filed and on 28.2.1995 the final order was passed by the Circle Officer for issuance of Basgitparcha in favour of respondent No. 5 in respect of survey plot No. 1216 khata No. 149 measuring 7 dhoors under Bihar Priviledged Persons Homestead Tenancy Act.

3. Petitioners' case is that this land was recorded in the name of Meghu. He died issueless. As such, it was inherited by Phulchand and Mulchand, who were sons of his brother, Kodai Kalwar. Subsequently, Partition suit No. 73 of 1971 was filed by the heirs of Phulchand which ended in compromise. 8 dhoors of plot No. 1216 was allotted to the branch of Phulchand and the rest was allotted to the branch of Mulchand as per compromise. Subsequently, a Partition suit No. 95 of 1990 was filed by the heirs of Phulchand. The suit was also compromised and the land was allotted to share of Kanhaiya Sah. He constructed a shop on the disputed land and let it out to the tenant. Later on, Kanhaiya Sah transferred 4 dhoors within plot No. 1216 to petitioner No. 1 through registered sale deed dated 11.12.1989. Again he transferred remaining 2 dhoors of his share in the same plot in favour of petitioner No. 2 through registered sale deed dated 16.1.1990. Respondent No. 4 is resident of Jehanabad and he has his house and landed property there. He wanted to start his medical practice at village Usuribujurg. He has been running his practice in the house of Gopalji Sonar. He cultivated acquaintance with petitioner No. 1. Since the house of Gopalji Sonar was demolished he requested petitioner No. 1 to permit him to run his clinic in his aforesaid shop for some period till the house is constructed. Subsequently, when petitioner No. 1 asked him to vacate the premises, he filed a criminal case against petitioner No. 1 and during the course of investigation he revealed that Basgitparcha has been issued in his favour with respect to 7 dhoors land of plot No. 1216 in BPPHT Act case No. 13 of 1995, It has been submitted that the entire proceeding of BPPHT Act case No. 13 of 1995 was illegal and conducted in violation of Section 4 as well as Rule 5 of the Bihar Priviledged Persons Homestead Tenancy Act. The petitioners were not impleaded as a parties. No enquiry was conducted as provided under Rule 5 of the Bihar Priviledged Persons Homestead Tenancy Rules. The so called enquiry was conducted by Halka Karamchari which is against the provisions of Section 4 of the Bihar Priviledged Persons Homestead Tenancy Act. u/s 4 it has been provided that enquiry should be conducted by the Collector himself or by an officer not below the rank of Circle Inspector. In the present case, from the order-sheet it is apparent that Halka Karamchari had conducted enquiry and simple recommendation has been made by the Circle Inspector. The order passed by the Circle Officer was challenged by the petitioners before the Collector, Siwan, which was numbered as BPPHT Act case No. 290 of 1999. The Collector, Siwan, without considering any of the evidence and documents produced by the petitioners dismissed his

revision affirming the order passed by the Circle Officer.

4. Further it has been submitted by the petitioners' counsel that for issuance of Basgitparcha the applicant must be a privileged persons as defined u/s 2 (I) of the Act as well as a privileged tenant as defined u/s 2 (J) of the Act. Respondent No. 4 is neither a privileged person nor a privileged tenant, ignoring all these materials illegally Basgitparcha has been issued in favour of respondent No. 4 in an ex parte proceeding in violation of rules of natural justice. As such, both the orders passed by the Circle Officer as well as the Collector, Siwan, is fit to be quashed.

5. Learned counsel for respondent No. 4 has stated that the case presented by the petitioners in the writ application is contradictory and incorrect. He has no locus to challenge the order as he has no right, title or interest of the property. The land was recorded in the name of Meghu who died issueless. The land became abundant and it will be presumed to be the property of the State. There was no need to implead the petitioners as a party in the case or any notice to him before deciding the application filed by respondent No. 4 for issuance of Basgit parcha. It has also been submitted that the document annexed with the writ application are contradictory and if properly considered, these documents clearly make out that a false claim has been made by the petitioners.

6. On perusal of the order-sheet as well as the submissions advanced by the parties, it is clear that the petitioners were not included as a party in the case and they were not noticed. The inquiry has been conducted in violation of Section 4 as well as Rule 5 of the Bihar Privileged Persons Homestead Tenancy Act. Before the Circle Officer the petitioners did not get any opportunity to present their case and the Collector in exercise of revisional jurisdiction refused to discuss and consider the case of the petitioners.

7. In the facts and circumstances, the order dated 28.2.1995 passed by the Circle Officer, Raghunathpur, in BPPHT Act case No. 13 of 1995 and the order dated. 6.11.2001 passed by the Collector, Siwan, in case No. 290 of 1999 are hereby quashed. Parwana issued in favour of respondent No. 5, is also quashed.

The Circle Officer, Raghunathpur, is directed to initiate a fresh proceeding after issuing notice to the parties. He will decide the case giving proper opportunity to the parties as well as after holding enquiry in terms of Section 4 as well as Rule 5 of the Bihar Privileged Persons Homestead Tenancy Act.

6. Accordingly, this application is allowed.