

(1979) 11 PAT CK 0014
In the Patna High Court
Case No : Civil Writ Jur. Case No. 463 of 1977

Syed Ibrahim Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-11-1979

Acts Referred:

Bihar and Orissa Municipal Survey Act, 1920 — Section 15, 9
Bihar and Orissa Municipal Survey Rules — Rule 15

Citation : AIR 1980 Patna 104

Hon'ble Judges : M.P. Varma, J;B.P. Jha, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain and Ahsan Sahabuddin, for the Appellant; T. Dayal, Govt. Pleader No. 2 and A.K. Singh Chauhan, Jr. Counsel to Govt. Pleader No. 2, for the Respondent

Final Decision : Allowed

Judgement

1. In a writ petition the petitioner has challenged the validity of Annexure "3". Annexure "3" contains the order of the Commissioner in appeal arising out of the Bihar and Orissa Municipal Survey Act, 1920 and the Rules framed thereunder.

2. This matter arises out of the preparation of the survey record of Muzaffarpur Municipality. Annexure "1" is the draft publication prepared u/s 8 of the Bihar and Orissa Municipal Survey Act, 1920 (hereinafter referred to as "the Act"). The dispute was in respect of old plots Nos. 3522 and 3523 appertaining to Khata No. 797. The draft publication as contained in Annexure "1" suggested that these plots originally belonged to the ex-landlord Mehdi Hussain. The petitioner (Syed Ibrahim Hussain) is the son of Mehdi Hussain. It is also mentioned in Annexure "1" that after the death of Mehdi Hussain these plots came in possession of Ibrahim Hussain. It is mentioned in Annexure "1" that the disputed plots are the part and parcel of the house of Ibrahim Hussain. The State of Bihar raised objection u/s 9 of the Act. The Assistant Superintendent of Survey ultimately rejected the objection of the State of Bihar and upheld the claim of the petitioner

as contained in Annexure "2".

3. The State of Bihar preferred an appeal under Rule 15 of the Rules framed under the Act. u/s 15 of the Act the State Government has been authorised to frame rules. These rules were framed by the State Government including Rule 15 u/s 15 of the Act. It is relevant to quote Rule 15 (1) and (2) which run as follows:

"15. (1) Every appeal against the order of an Assistant Superintendent of Survey (a) disposing of an objection under Rule 9 and (b) imposing a fine under the Act, if presented within one month of the date of the order appealed against, shall lie to the Superintendent.

(2) An appeal against the order of the Superintendent of Survey disposing of an objection under Rule 9 shall lie to the Collector, or if the Collector is the Superintendent of Survey, to the Commissioner. The appeal shall be presented within one month of the date of the orders appealed against."

In this connection a reference was made to a Division Bench decision of this Court in *Smt. Ganga Devi v. Manila Silpkala Bhawan*, Muzaffarpur, (1979 BBCJ 675). In that case it has been held that no appeal lies against an order passed by an Assistant Superintendent of Survey u/s 9 of the Act. This happened obviously because of the non-production of these rules before that Bench. It is relevant to quote one sentence from para "3" of the judgment of the Bench which runs as follows:--

".....It is said that no rule prescribing any appeal has been made so far and as such the Superintendent of Survey had no authority in law to sit as an appellate Court."

This observation clearly indicates that these rules were not placed before the aforesaid Division Bench.

4. These rules, (quoted above) clearly suggest that an appeal lies to the authorities concerned. Under Rule 15 (1) of the Rules an appeal lies against the order of the Assistant Superintendent of Survey to the Superintendent of Survey. Under Rule 15 (2) of the Rules an appeal lies against the order of the Superintendent of Survey to the Collector. The period of limitation is also provided in these rules. Hence, we are of the opinion that an appeal lies against the order of the Assistant Superintendent of Survey to the Superintendent of Survey and to the Collector from the order of the Superintendent of Survey.

5. In the present case, learned counsel for the petitioner contends that the petitioner is in possession of the disputed portion as a part of the homestead land since before the date of the vesting and he was in possession on the date of the vesting and as such he is entitled to retain the possession u/s 5 of the Bihar Land Reforms Act, 1950. This aspect of the case has not been examined either by the Assistant Superintendent of Survey or the Superintendent of Survey in appeal. Hence, we are remanding the matter to the Assistant Superintendent of Survey for examining as to whether the petitioner was in possession as part of

the homestead land on the date of the vesting or not. If it is found that the petitioner was in possession on the date of the vesting as homestead land then the petitioner shall retain possession of the homestead land on the basis of Section 5 of the Bihar Land Reforms Act and he shall not be evicted therefrom.

6. In the result, the petition is allowed, Annexure "3" is hereby quashed and the case is remitted back to the Assistant Superintendent of Survey for fresh examination in accordance with the direction mentioned above. Parties shall bear their own costs.