

(2012) 04 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (C) No. 934 of 2011 with W.P. (C) No. 940 of 2011 with W.P. (C) No. 946 of 2011

Taurian Infrastructure Pvt. Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h)

Citation : (2012) 04 JH CK 0064

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : P.K. Prasad and Mr. R.K. Bhargava, for the Appellant; Priyanka Dayal, Advocate S.C. (Land and Ceiling) for the State, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari

1. The petitioner is aggrieved by the order dated 16.11.2010 passed by the Deputy Commissioner, Ranchi in Mutation Revision No. 63, 64 and 65R15/2009-10. Since the land and the parties to the sale transaction are the same and the facts and the issues involved are also same, all the writ petitions have been heard together and are being disposed of by this common order. The petitioner in all the writ petitions is purchaser of the portion of the land appertaining to Khata No. 75, 45 and 85 of Mauza Hazam, P.S. Hatia, District Ranchi. The petitioner's case is that the said land was held and possessed by ex-landlord Lal Harak Nath Shahdeo of Mouza Hazam, P.S. Hatia, District Ranchi. The ex-landlord, through his grand son and duly constituted power of attorney namely Kistb Kali Nath Shahdeo, granted permanent raiyati settlement in favour of one Dr. Shiv Shankar Sahay Srivastava by virtue of registered deed dated 9.9.1947. On the basis of the said raiyati settlement, said Dr. Sahay came in possession of the land, paid rent to the ex-landlord and got rent receipts. After vesting of all the intermediary interests by virtue of provisions of Bihar Land

Reforms Act, 1950, an enquiry was made and the said Dr. Shiv Shankar Sahay was recognized as raiyat by the State. Rent was fixed in respect of the settlement made in his favour and a demand was opened in his name. There was amicable partition in the family of Dr. Sahay by registered deed of partition dated 6.8.1971.

2. On the basis of the aforesaid partition, the sons and the heirs of Dr. Sahay applied for mutation of their names in respect of the land allotted to their shares. The application was registered as Mutation Case No. 52R27/1976-77. After due enquiry and observing the legal formalities, the Circle Officer, Khijri allowed mutation in the name of the sons of Dr. Sahay in respect of the land allotted to them in partition by order dated 11.10.1976. Correction slip was, accordingly, issued to sons of Dr. Sahay. They also paid rent separately and rent receipts were issued in their favour since after the said order of mutation. The sons of Dr. Sahay subsequently sold the land to one Suresh Kumar Sarawgi son of Shri Tej Pal Sarawgi by virtue of registered sale deed dated 28.6.1995 and put him in possession of the land purchased by him, By order dated 20.3.2003 the Circle Officer, Khijri Anchal, Namkum allowed mutation in the name of Suresh Kumar Sarawgi and issued correction slip accordingly. Said Suresh Kumar Sarawgi, thereafter, sold the said land to the petitioner by virtue of three registered sale deeds dated 3.1.2008. The petitioner, thereafter, filed three applications for mutation according to the respective sale deeds. The said cases were registered as Mutation Case nos. 2294, 2295 and 2296R27/2007-08. The Circle Officer heard and allowed mutation in respect of the land appertaining to Khata No. 48, however rejected the petitioner's prayer for mutation made in respect of the land of Khata Nos. 45, 75 and 85.

3. The petitioner, thereafter, preferred appeal against the said order of the Circle Officer before the Land Reforms Deputy Collector, Ranchi. The said appeals were registered as Mutation Appeal nos. 31, 32 and 33R15/2008-09. Learned Deputy Collector Land Reforms (DCLR) heard the parties and considered the relevant facts and materials on record and came to the finding that since the petitioner has acquired land from the same purchaser and the basis is also same, the order denying mutation in respect of the land of Khata nos. 45, 75 and 85 is arbitrary and illegal. Learned DCLR allowed the appeals and the petitioner's prayer for mutation.

4. Against the said order the respondents preferred mutation revisions before the Deputy Commissioner, Ranchi. The same were registered as Mutation Revision Case Nos. 63, 64 and 65R15/2009-10. Learned Deputy Commissioner heard all the three mutation revisions together and by his common order dated 16.11.2010 set aside the orders of learned DCLR passed in Mutation Appeal Nos. 31, 32 and 33R15/2008-09.

5. Aggrieved by the said order, the petitioners have preferred this writ petition.

6. According to the petitioner, the order of learned Deputy Commissioner is

wholly arbitrary and illegal. The Deputy Commissioner has passed his order mainly on the ground that the first permanent settlement given by the ex-landlord by registered deed dated 9.9.1947 is of a date subsequent to 1.1.1946 mentioned in Section 4(h) of the Bihar Land Reforms Act. The Deputy Commissioner observed that mutations were allowed ignoring the facts that the previous orders of mutation in the names of transferors as well as the transfer in the name of the settlee were wholly illegal. Some of the lands were recorded in the name of Langda Lohar and some of the lands were "Bakast" and "Gair Mazarua Malik" and that the ex-landlord had no authority to authorise his grand-son by executing power of attorney in his favour. Any settlement made after 1.1.1946 is suspicious and illegal in the eye of law and earlier title and possession has been accepted by the authorities ex-parte. The petitioner failed to bring on record the documents of power of attorney executed by the ex-landlord in favour of his grand son. Return filed by the ex-landlord has also been erroneously accepted as valid by the authorities. The partition among the sons of Dr. Shiv Shankar Sahay is only a paper transaction and the same is not in accordance with law. There is a discrepancy in the khata number of Zamindari rent receipts and the rent receipts granted by the State. The matter relates to costly lands measuring 41 acres. The earlier orders are not legal and valid.

7. Learned Deputy Commissioner, on that ground, set aside the order of learned Land Reforms Deputy Collector passed in Mutation Appeal Nos. 31, 32 and 33 R 15/2008-09 and directed the LRDC for taking appropriate steps against the petitioner.

8. Mr. P.K. Prasad, learned senior counsel appearing on behalf of the petitioners, in all the writ petitions, submitted that the Deputy Commissioner has gone beyond his jurisdiction and has declared all the documents of title and possession including the document of partition among the family of Dr. Sahay and other documents as illegal by usurping the jurisdiction of the civil court. Learned counsel submitted that in the matter of mutation the power of the authorities are very limited. It is an admitted fact that the land in question has been recorded as a raiyati land in the revenue records and demand in their names have been running since several decades firstly in the name of permanent settlee and thereafter in the names of the subsequent purchasers. Rent receipts were issued to them continuously. The revenue field staff, after making enquiry, have also reported that the petitioner has acquired the land by virtue of registered sale deeds from the tenants whose names were recorded in the revenue records and he is in possession of the land. The observation / declaration made by the Deputy Commissioner is perverse and wholly without jurisdiction. He has no right to repudiate the tenancy right of the vendors and others in absence of any decree or declaration to that effect by a competent court of jurisdiction. The DCLR, after considering all the facts and materials, had rightly allowed the appeal and directed for mutating the petitioner's name on the basis of the registered sale deeds.

9. Learned S.C. (L & C) appearing on behalf of the respondents, on the other hand, submitted that the basis of title is the settlement of the year 1947 i.e. subsequent to the appointed date of 1.1.1946 for the purpose of scrutiny of settlement by the ex-landlord under the provision of Section 4(h) of the BLR Act. In view thereof, the Deputy Commissioner has rightly considered the said settlement and the subsequent documents in the light of the said legal provision and has rightly come to the conclusion that the earlier orders passed by the revenue authorities allowing opening of jamabandi and mutation in the name of vendors and original settlee are illegal. The petitioner also failed to satisfy the Deputy Commissioner regarding genuineness of his title and possession over the land. He was given opportunity but he did not produce the documents in support of his claim of title and possession over the land in question. Learned counsel submitted that from the facts and circumstances of the case at least it appears to be a case of doubtful settlement and comes within the ambit of Section 4(h) of the Bihar Land Reforms Act.

10. I have heard learned counsel for the parties and considered the facts and materials on record.

11. By the impugned order learned Deputy Commissioner has set aside the order passed by learned Land Reforms Deputy Collector in Mutation Appeal. On perusal of the order brought on record by a supplementary affidavit I find that learned Deputy Collector Land Reforms had gone in detail and had considered all the relevant facts and came to the conclusion that the mutation court has very limited scope of going into the detail of title and possession. It has to only see the semblance of title and possession of the property. He has referred to and relied upon the decision of this Court in Dipan Ram & ors. vs. State of Jharkhand & ors. [reported in 2002(1) JLR 616]. Ignoring the scope of mutation proceeding the Deputy Commissioner has delved into the question of title and possession, genuineness of the documents of title and other issues. The said issues are of civil nature and attracts the jurisdiction of the civil courts of competent jurisdiction. Learned Deputy Commissioner has made several observations mechanically without being aware of the true import as well as the provisions of law relevant to the context. Those observations of the Deputy Commissioner are perverse and wholly without jurisdiction. The impugned order, which is based on the said reasons, is also wholly illegal and without jurisdiction.

12. For the reasons aforesaid, these writ petitions are allowed. The order passed by the Deputy Commissioner is set aside. The order passed by learned Land Reforms Deputy Collector in Mutation Appeal Nos. 31, 32 and 33 R 15/2008-09 are restored. However, there is no order as to cost.