

(1984) 12 PAT CK 0023

In the Patna High Court

Case No : C.W.J.C. No's. 1345, 1346, 1347, 1369 and 1387 of 1980

Thakur Grija Nandan Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1985) 33 BLJR 593 : (1985) PLJR 415

Hon'ble Judges : Birendra Prasad Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Birendra Prasad Sinha, J.—These five writ applications have been heard together and are being decided by a common judgment. The

petitioner in all these writ applications is the landlord. Respondent No. 5 in each of the writ applications have claimed themselves to be privileged

persons under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act). The petitioner in

each of these applications has prayed for quashing the orders contained in Annexures 1 and 8 of each of the writ petitions. By order dated 9-6-

1975 contained in Annexure 1 of the writ applications the Anchal Adhikari has granted Parchas to respondent No. 5 of each of the writ

applications under the provisions of the Act. By Annexure-8 of the each of the writ application the Additional Collector has ordered restoration of

possession to respondent No. 5 of each of the writ petitions.

2. Respondent No. 5 of each of the petitions filed applications u/s 5(1) of the Act for restoration of possession over their homestead"" It was, inter

alia, stated that they were privileged tenants and were entitled for a permanent tenancy in the homestead held by them. The applications were

initially allowed. The Additional Collector affirmed those orders against which the petitioner came to this Court and filed an application under

Articles 226 and 227 of the Constitution which was numbered as C.W.J.C. 1200 of 1977. On 28-3-1979 a Bench of this Court remanded the

case back to the Deputy Collector Land Reforms to hold an inquiry in accordance with Rule 5 of the Privileged Persons Homestead Tenancy

Rules. It appears that an inquiry was held and a report was submitted by the Deputy Collector Land Reforms on 12-12-1979. Relying upon that

report the Additional Collector has by the order contained in Annexure-8 of each of these writ applications ordered restoration of possession to

Respondent No. 5 of each of these petitions, as stated above.

3. Learned Counsel appearing on behalf of the petitioner has contended that the applications having been filed by respondent No. 5 of each of

these petitions sometime in the year 1974 could not be one u/s 5 of the Act and no order for restoration could therefore be passed. Section 5(1) of

the Act reads as under:

5. Privileged tenant ejected from homestead within one year before the date of commencement of the Bihar Privileged Persons Homestead

Tenancy Amendment) Act, 1952"-

If any privileged tenant has been ejected by his landlord from his homestead or any part thereof within one year before the date of the

commencement of the Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1952, (Bihar Act 23 of 1952) otherwise than in due

course of law, such tenant shall, for the purposes of Section 4, be deemed to have held such homestead or part thereof, as the case may be,

continuously for a period of one year before the commencement of the Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1952,

(Bihar Act 23 of 1952) and he may apply to the Collector for the restoration of his possession over the homestead or part thereof from which he

has been so ejected.

Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1952 to be deemed to have held it on such date continuously for a period of one

year.

It is manifest that Section 5 of the Act shall be applicable only in a case where a privileged tenant has been ejected by his landlord from his

homestead or any part thereof within one year before the date of the commencement of the Act. Section 5(1) of the Act was amended by Bihar

Act 23 of 1952, which came into force on 7th of December 1952. Section 5(1), therefore, shall be applicable only in a case if a privileged tenant

was ejected by his landlord one year prior to 7th of December, 1952. It is not contemplated by this Act that any such application u/s 5(1) of the

Act shall be filed even if a person was ejected after the 7th of December, 1952. Mr. Tarkeshwar Dayal, learned Counsel appearing for respondent

No. 5, with his usual fairness has stated that in the circumstances of these cases applications u/s 5(1) of the Act were not maintainable. However

he submits that the applications could be treated as one u/s 8(5) of the Act. I do not think that question arises in this case at this stage and I need

not go into that question. In the facts and circumstances of this case, I am of the view that the applications filed by respondent No. 5 in each of the

writ applications on the basis of which the impugned orders passed were not maintainable. These applications, therefore, have to be allowed only

on that ground.

4. The applications are, accordingly, allowed and the order contained in Annexures 1 and 8 of each of the writ applications are quashed, but

without costs.