

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8811 of 1998

Kare Urano, son of late Manilal Urano, resident of village-Hansda, P.S. Sadar,
District Purnia.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Sub –Divisional Magistrate, Sadar, Purnia
3. The Anchaladhikari, Purnia East, Police Station Sadar, District Purnia
4. Bibi Manbara Begam, wife of Md. Mustaque
5. Sk. Johak Ali, son of Abdus Subhan.
6. Bibi Rashida Khatoon, wife of Sk.Johak Ali.
7. Maulbi Md. Sazad Ali, son of Abdus Subhan.
8. Sk.Nazamul Haque.
9. Abutala Haque, both sons of Sk. Khuda Bux Ali
10. Alauddin, All 4 to 10 are resident of village Shishabari Tola Hansda, P.S. Sadar, District Purnia.
11. Mukhia Urano
12. Sukhia Urano, both sons of Madhwa Urano resident of village Hansda, P.O. Gulabbagh, P.O.Sadar, District Purnia.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. J.P. Bhagat, Adv.
For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2
For the private respondents: Mr. Kumar Uday Singh, Adv.
Mr. S.K. Saraf, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-07-2015

Heard Mr. J.P. Bhagat, learned counsel for the petitioner, Mr. Rajeev Kumar Singh, G.P.2 for the State and Mr. Kumar Uday Singh for the private respondents.

The petitioner by way of this writ petition filed under Article 226 of the Constitution of India has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 20.5.1998 passed by the respondent No.2, the Sub Divisional Officer, Sadar Purnea in Case No.20 of 1994-95 whereby he has set



aside the order dated 10.11.1994 passed by the Circle Officer, the respondent No.3 herein in Case No.24 of 1994-95 whereunder the right of the petitioner claimed under Section 48D of the Bihar Tenancy Act,1985 (hereinafter referred to as 'the Act') had been upheld. Copies of the orders are impugned at Annexures- 5 and 4 respectively. Although at the stage of filing of the writ petition a challenge was also made to the jurisdiction of the Sub Divisional Officer to entertain an appeal but in view of the amendment incorporated in the rules framed under 'the Act' vide notification dated 28.2.1992 vesting powers in the Sub Divisional Officer to hear appeals against the orders passed by the Circle Officer under Section 48D of 'the Act', that the challenge on the issue of jurisdiction stands conceded.

The facts are not too elaborate and briefly stated is that one Madhwa Orano happened to be a Sikmidar of the landlord Hira Lal Jain in respect of the lands bearing Khata No.67, Khesra No.649 admeasuring 0.61 decimals, Khesra No.650 admeasuring 0.64 decimals and land bearing Khata No.68, Khesra No.594 admeasuring 0.94 decimals in village Hansda in the District of Purnea. The fact that the said Madhwa Orano was a Sikmidar of Hira Lal Jain since 1949 stands admitted and is also confirmed by the Sikmi Khatiyani enclosed by the writ petitioner at Annexure-1 as well as raiyati Khatiyani enclosed by the private respondents at Annexure-A. The Sikmidar expired and the land was returned to the landowners. Litigation started in between the writ petitioner who happens to be the brother of Madhwa Orano the Sikmidar and the landlords and some which were drawn in favour of the writ petitioner while others decided in favour of the landowner.

This Court is not concerned with the other litigations rather the issue which falls for consideration before this Court, is the right claimed by the writ



petitioner who is the brother of sikmidar Madhwa Orano under Section 48D of 'the Act' and the rules framed thereunder. The date of death of the Sikmidar is not discussed anywhere rather the writ petitioner claiming to be the Karta of the family and setting up grounds that the minor sons of Madhwa Orano were under his guardianship with the mother having married again, he filed an application under Section 48D of 'the Act' before the Circle Officer claiming raiyati rights over the plots in question. The Circle Officer decided the issue in his favour vide order dated 9.9.1994 passed in Case No. 24 of 1994-95, a copy of which is placed at Annexure-4. Earlier thereto the lands in question had been sold away by the landlord Hira Lal Jain in favour of Jahak Ali, Sajjad Ali and Khuda Baks Ali in between the period 1981-85 and the name of the purchasers was entered in the revenue records who are the private respondent Nos. 4 to 10 herein. The private respondents being aggrieved by the order of the Circle Officer preferred appeal before the Sub Divisional Officer, Sadar Purnea giving rise to Case No. 20 of 1994-95 and which has been allowed in their favour and the petitioner being aggrieved is before this Court.

Mr. J.P. Bhagat, learned counsel appearing on behalf of the petitioner while admitting that the writ petitioner was not the Sikmidar under the landlord has tried to support the case of the writ petitioner by submitting that since after the death of the Sikmidar the widow abandoned the children and got remarried, that the heritable rights vested under 'the Act' in the minor children of the Sikmidar was espoused by the writ petitioner by filing the application under Section 48D of 'the Act' before the Circle Officer. He thus submits that not for his own sake but for the sake of the minor children who have also been arraigned as respondent Nos. 11 and 12 of the writ petition that the writ petitioner had espoused their cause as well as the rights vested in them under Section 48D of



‘the Act’ and the Circle Officer in consideration of the circumstances existing has allowed the claim. With reference to the Sikmi Khatian placed at Anneuxre-1 to the writ petition he submits that since the fact that the Madhwa Orano was the Sikmidar under the original landlords is not disputed and stands recorded in the Khatian, his legal heirs have a right to claim a declaration as a raiyati under Section 48D of ‘the Act’. He submits that the Ladabi so executed by the widow of the Sikmidar is a document of doubtful character and could not have been a basis to deny the legal right vested in the minor children of the Sikmidar. He further submits that the findings of the Circle Officer is in consideration of the facts apparent on record as well as the findings of the courts on the various litigations engaged in between contesting parties and which requires no interference.

The argument of Mr. Bhagat has been contested by Mr. Kumar Uday Singh to submit that the foundational facts for claiming a right under Section 48D of ‘the Act’ itself is missing and that in view of the Ladabi so executed by the widow of the Sikmidar whose genuineness is yet to be declared otherwise by a competent forum, the writ petitioner certainly cannot claim heritable rights of the deceased Sikmidar. He submits that the order of the Circle Officer was contrary to the statutory provisions and which has since been corrected by the Sub Divisional Officer vide order impugned in this writ petition.

I have heard learned counsel for the parties and I have perused the materials on record.

The writ petition is fit to be dismissed on more than one grounds which briefly stated are as follows:

- (a) The petitioner being the brother of the Sikmidar cannot claim heritable rights especially when the minor sons of the Sikmidar were there along with the mother.

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- (b) The Ladabi is stated to have been executed way back in 1981 which is stated to be after the death of the Sikmidar and thus after a lapse of more than 13 years, the petitioner could not have maintained an application under Section 48D of 'the Act'.
- (c) There is nothing on record to demonstrate that the petitioner was exercising occupancy rights over the plots in question for a continuous period of 12 years and thus the very foundation for exercising their right is missing.
- (d) There is again nothing on record to demonstrate that the minor children of the Sikmidar had moved any application under the guardianship of this petitioner to claim the rights under Section 48D of 'the Act' on the basis of inheritance. On the contrary it is the petitioner alone who has contested the matter right from the stage of the Circle Officer until this Court and it is only at the stage of the writ proceedings that the minor sons have been impleaded as respondents.
- (e) The ladabi executed by the widow is registered and thus its authenticity cannot be questioned until such time it is declared as such by a competent court of law; and
- (f) The Circle Officer has committed a serious error in allowing the application under Section 48D despite noticing the statement of the petitioner that the land had reverted back to the purchasers from landlords and who were in its cultivable possession since last 4 years and thus the applicant before the Circle Officer was not in cultivable possession of the land.

For the reasons aforementioned, the claim putforth by the writ petitioner was not sustainable and has been rightly interfered with by the Sub

Divisional Officer while passing the order dated 20.5.1998 impugned at Annexure-4 of the writ petition which calls for no interference. The writ petition is accordingly dismissed.

(Jyoti Saran, J)

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