

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7559 of 1998

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1. Abdul Majid
2. Mazharul Haque
3. Md. Fazlur Rahman, all sons of late Najibulla, residents of village Dokhra,
P.S. Kadwa, District Katihar Petitioner/s

Versus

1. The State of Bihar
2. Circle Officer, Kadwa, District Katihar.
3. Sub Divisional Officer, Barsoi, District Katihar.
4. Badhu Mandal son of late Sonai Mandal, resident of village Pokhra, P.S.
Kadwa, District Katihar

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Adv.

For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-04-2015

Heard Mr. Mukesh Kumar Jha, learned counsel for the petitioners and Mr. Rajeev Kumar Singh, G.P.2 for the State.

At the stage of admission, notice was issued to the private respondent No.4, the beneficiary of the impugned orders and despite service he did not choose to appear and this Court taking notice of the issues raised vide order passed on 28.10.1999 admitted the writ petition for hearing and since the notice had already been served upon the private respondent hence the service of fresh notice at the hearing stage was waived.

Learned counsel while canvassing the case has argued that the original landlord of the lands in dispute was one Bhola Nath Biswas from whom the petitioners are purchases of land vide registered sale



deed dated 1.12.1956. It is further contended that of the land so purchased, the dispute in the present case relates to 94 decimals of land bearing sikmi Khata No.501, sikmi Plot No. 2182 which admeasures 1.41 acres, situated in Mauza Kadwa in the District of Katihar. It is the case of the petitioners that although the disputed land was purchased by them along with some other plots in 1956 but during Revisional Survey in 1958, the names of 3 persons namely Raju Mistry, Baiju Mistry and Topai Mistry was entered in the records as Sikmidars and these sikmidars in turn sold the disputed land in 1976 in favour of respondent No. 4. It is the case of the petitioners that an application was filed by the respondent No.4 under Section 48D of 'the Act' claiming raiyati rights over 94 decimals of the total area of the plot admeasuring 1.4 acres bearing Case No. 47 of 1995-96 and which claim of the respondent No.4 was allowed by the Circle Officer vide order passed on 24.9.1996 placed at Annexure-2 and affirmed in appeal by the Sub Divisional Officer vide order passed on 20.6.1998 placed at Annexure-3. The petitioners being aggrieved are before this Court.

As I have already observed, though served the respondent No.4 has not chosen to appear.

Mr. Mukesh Kumar Jha, learned counsel for the petitioners on the strength of the judgments of this court reported in **1981 BBCJ 466 (Bibi Jaloosan Vrs. Bhulal Baitha & Ors.)** as reiterated in **2002(4)**

PLJR 31 (Md. Yunus & Anr. Vs. Moinuddin & Ors.) has submitted that a sikmi right cannot be transferred. He submits that the provisions of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act') prohibits transfer of sikmi rights although an exception has been carved out in such of the cases where such a custom prevails.

Mr. Jha learned counsel for the petitioners with reference to the judgments of this Court, submitted that although a customary right of transfer of Sikmi rights has been recognized by this Court but even such customary right has to be proved by the person aggrieved by leading evidence which has to be proved. He submits that in the present case though no such stand has been taken by the private respondent before the Circle Officer regarding any customary right prevalent in the area but the Circle Officer has gone ahead to confirm the right of the private respondent on grounds that such custom was prevalent in the area. It is the argument of Mr. Jha that an existence of custom regarding transfer of sikmi rights has to be proved by the person claiming as such by leading evidence to the satisfaction of the statutory authority but it is missing in the present case in as much as neither any such case was made out by the respondent No.4 nor did he lead any evidence or nor any evidence in this regard stands recorded in any of the orders under challenge.

Mr. Jha with reference to the judgments of this Court rendered

in the case of **Bibi Jaloosan** and **Md. Yunus** (supra), submitted that the orders are unsustainable.

There is no opposition from the private respondent to the contention raised nor any counter affidavit has been filed on behalf of the State to confront the issues raised by the petitioners. Albeit Mr. Singh learned counsel for the State while referring to the orders impugned fairly admits that the finding of the statutory authorities is not based on any evidence. He further admits to the position that although a transfer of sikmi rights by way of custom has been recognized by this Court in the judgments relied upon but the courts at the same time have also put a responsibility on the person claiming such rights, to prove the same by leading evidence in this regard.

Having heard learned counsel for the parties and in view of the statutory position prohibiting transfer of Sikmi rights coupled with the absence of any evidence on record to prove that there was any custom prevailing in the area, the order of the Circle Officer as affirmed by the appellate authority becomes presumptuous and based on no evidence. Prohibition on transfer of Sikmi rights is the rule of law and claiming such right on the strength of custom prevalent in the area, is an exception to such rule, which needs to be established on strength of evidence as held by this Court. The manner in which the statutory authorities have dealt with the matter, is a reflection of their understanding of law and their mechanical approach towards a serious

issue.

For the reasons aforementioned, the order dated 24.9.1996 passed by the Circle Officer as affirmed by the appellate authority vide order passed on 20.6.1998 placed at Annexures 2 and 3 respectively cannot be upheld and accordingly set aside. The writ petition is allowed.

(Jyoti Saran, J)

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