

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11068 of 1995

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1. Krishna Kant
2. Krishna Kumar, both sons of Late Ram Nandan Prasad Singh @ Ramji Babu
3. Kailash Prasad Singh
4. Shambhu Kumar, both sons of Late Hari Nandan Prasad Singh
All resident of village- Manjhaul, P.S. Manjhaul, district- Begusarai
..... Petitioners

Versus

1. The State of Bihar
2. The Collector of Begusarai, District- Begusarai
3. Additional Collector, Begusarai
4. The Sub-Divisional Officer, Manjhaul, District- Begusarai
5. The Land Reforms, Deputy Collector, Manjhaul, District- Begusarai
6. The Circle Officer- Cheriabariyarpur Block, District- Begusarai
7. The Director, Fishery Department, Government of Bihar, Patna
..... Respondents

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Appearance :

For the Petitioner/s : Mr. Kaushal Kumar
Mr. Ganesh Chandra Thakur

For the State : Mrs. Nivedita Nirvikar, GA-10
Mr. Manish Dhari Singh, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 30-04-2015

Heard learned counsel for the petitioners and learned Government Advocate No. 10, for the State.

The original petitioners had filed the present writ application for quashing the notice dated 16.9.1995 (Annexure-6) issued by the Additional Collector, Begusarai directing the original petitioners to represent their case in Case No. 1/1993-94 re-opened under Section 4(h) of the Bihar Land Reforms Act.

The land in dispute forms part of Plot No. 5480 under Khata No. 3349, area 5 Bighas 6 Kathas 12 Dhurs under Thana No. 191 Tauzi No.

1077 situated in Mauza Manjhaul in Begusarai district. It was recorded in the Khatian as Gairmajarua Khas land.

The land is claimed to have been settled with the original petitioners by the ex-Landlord through a written but unregistered Hukumnama dated 15th Bhado 1344 Hindi Fasli and after the settlement the petitioners came in cultivating possession of the land and paid rent to the ex-Landlord. At the time of vesting the ex-Landlord in his return also gave the names of the original petitioners on the basis of which Jamabandi No. 877 was opened in the name of the petitioners in the year 1952 which was renumbered as 851 in the year 1962 and since then they are paying rent to the State of Bihar under receipts issued by its officials.

It is also the case of the petitioners that other settlees also took settlement of land prior to 1.1.1946 from the ex-intermediary and in their names also Jamabandi were opened and some of them had also constructed their houses over the said plot No. 5480 which is a big plot of total 48 Bighas 15 Kathas 3 Dhurs and Bazar Samiti, Busstand, Khadi Gramodyog Bhawan, Office of the C-operative Department and its godown are situated thereon.

It is the further case of the petitioners that on the basis of a report of the Circle Officer, Cheriya Bariyarpur dated 23.8.1993, the Deputy Collector, Land Reforms, Manjhaul, by order dated 24.9.1993 initiated an enquiry under Section 4(h) of the Act which was registered as Case No. 1/1993-94. On notice the petitioners appeared and filed their show causes. The DCLR by his order dated 6.1.1994 cancelled the Jamabandi of the petitioners and sent the records of the case to be placed before the Sub-Divisional Officer. The Sub-Divisional Officer after considering the aforesaid case of the petitioners by his order dated 3.5.1994 dropped the proceedings under Section 4(h) of the Act

holding that since the settlement had been made prior to 1.1.1946, it was beyond the scope of proceedings under Section 4(h) of the Act. Thereafter again the Additional Collector has issued a notice dated 16.9.1995 reopening the proceedings under Section 4(h) of the Act directing the petitioners to show cause in the matter.

Learned counsel for the petitioners submits that it is evident from the provisions of Section 4(h) of the Act that the power of the Collector to act under the same is only with respect to transfers made at any time after 1.1.1946 and not with respect to any transfers which have been made on a prior date. It is further submitted by learned counsel that the order dated 3.5.1994 of the Sub-Divisional Officer had acquired finality as there was neither any appeal nor revision against the same and under such circumstances it was not open to the Additional Collector to have reinitiated the proceedings as no such jurisdiction has been provided to the Additional Collector under any provisions of the Land Reforms Act.

In support of his stand, learned counsel for the petitioners relies upon a decision of a learned Single Judge of this Court in the case of Ahmad Hussain Vs. The State of Bihar & Ors.: 1997 (2) PLJR 644, in paras 14 and 15 of which it has been held as follows:-

“14. Apart from what has been noticed above, there is no denial on behalf of the State authorities that name of the petitioner’s father was entered in Register-II, recognizing his settlement through the Hukumnama in question and, accordingly, having accepted the rent, receipts were granted.

15. It is also relevant to notice that State authorities had full knowledge about the settlement through Hukumnama,



because at the time of vesting of estate itself, name of petitioner's father was entered in Register II. But no attempt was ever made either to challenge the genuineness of Hukumnama or the orders, passed by the authorities regarding opening of Jamabandi and entry of the name in Register II. Unfortunately no plausible explanation has been furnished by the State counsel save and except that a settlement by the Ex-landlord through unregistered Hukumnama has no value in the eye of law. Therefore, for the reasons stated above, I am constrained to hold that settlement in question having been made prior to January, 1946, the Collector will have no jurisdiction to take steps for annulment of such settlement under the provisions of Section 4(h) of the Act."

Learned counsel for the State, on the other hand, submits that the land in question is entered in the Sairat Register and continued to be settled earlier by the Circle Officer and thereafter since 1992 on the basis of the decision of the State Government by the Fishery Department and thus the claim of the petitioners is not justified.

It is further submitted that Hukumnana was not produced before the DCLR although learned counsel for the State is unable to deny that the Sub-Divisional Officer has referred to the said Sada Hukumnama which also the petitioners claim to have filed and before this Court also by filing a supplementary affidavit. However, the said supplementary affidavit is not available on the record.

Be that as it may, the Sub-Divisional Officer's order is based on acceptance of the Sada Hukumnama. Moreover, specific averments made by the petitioners regarding the name of the original petitioners being entered in the

Jamindari return has not been denied in the counter affidavit filed on behalf of the State.

Ultimately, it is submitted by learned counsel for the State that since only show cause has been issued to the petitioners, they may be directed to appear and produce the documents so that a final decision may be taken.

So far as the order of the Sub-Divisional Officer dated 3.5.1994 is concerned, it is evident that as a competent authority, the proceedings had been brought to a close under Section 4(h) by him and the same had not been challenged before any higher forum. It is not the stand of the State that the Sub-Divisional Officer did not have the power to pass any such order.

Learned counsel for the State is unable to show as to under what provisions the proceedings could have been reopened by the Additional Collector.

Thus, apart from the support drawn by the petitioners from the decision of this Court in the case of Ahmad Hussain (supra), it is also clear that the impugned notice dated 16.9.1995 issued by the Additional Collector is not supported by any statutory power conferred under the Bihar Land Reforms Act.

For the aforesaid reasons, the impugned notice dated 16.9.1995 is quashed. The writ application is, accordingly, allowed.

(Ramesh Kumar Datta, J)

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