

N THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6801 of 1998

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1. Gajendra Pandey
2. Devendra Pandey, Both S/o Late Shobh Nath Pandey, resident of village- Ballipur, P.S. Bhabua, District- Kaimur Petitioners
- Versus
1. The State of Bihar
2. The Collector, Kaimur (Bhabhua)
3. The Deputy Collector Land Reforms, Kaimur (Bhabhua)
4. The Anchal Adhikari, Bhagwanpur, Kaimur
5(A). Bageshwar Devi wife of late Begedan Chamar
5(B). Mahendra Chamar
5(C). Babu Lal Chamar
5(D) Radhey Shyam Chamar
6. Rogi Chamar, son of late Fakir Chamar
7. Doma Chamar
8. Lallan Chamar, Sons of late Belas Chamar, all residents of village- Gobrach, P.S. Bhagwanpur, Anchal Bhagwanpur (Kaimur), District- Kaimur (Bhabhua).. ... Respondents
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Appearance :

For the Petitioners : Mr. T.N. Maitin, Sr. Advocate
Mr. Ravi Shankar Sahay,
Mr. Binay Kumar Yadav, Advocates.

For the Respondents : None

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 25-06-2015

Heard learned counsel for the petitioners. No one has appeared on behalf of the respondents.

Today a supplementary affidavit has been filed bringing on record sale deed dated 20.06.1960 as well as a copy of the deed of Ladavi dated 12.03.1975 and a copy of the decision taken under Section 109 of the B.T. Act by way of Annexures 5, 6 and 7 after serving a copy upon the private respondents. However, learned counsel for the respondents has not turned up at the time of hearing. He did not appear on 07.05.2015 also when the matter

was heard in-part.

Through this writ application, the petitioners seek quashing of the order dated 19.05.1998 (Annexure 4) passed by the Collector, Kaimur in Mutation Revision Case No.58/95-96 by which he, after setting aside the orders passed by the Anchal Adhikari, Bhagawanpur as well as the appellate order passed by the D.C.L.R., Bhagawanpur, has remitted back the matter to the Circle Officer for fresh consideration.

It is contended on behalf of the petitioners that the impugned order appears to be passed under gross misconception that the sale deed concerned was executed during the continuance of the consolidation operation. Secondly, the Collector has also held that the lands belonged to the members of the Scheduled Caste, therefore, permission was also required to be taken from the competent authority before the transfer of the land in favour of the original petitioner (Since deceased). Petitioners claim that the lands in dispute, which stands described in paragraph no.4 of Mauza Akorhi, Bhagwanpur (Kaimur), originally belonged to Fakira Chamar and Bilas Chamar, who were the khatiyani raiyats. They sold it to the original petitioner through registered sale deed no.4511 on 20.06.1960 and since then the original petitioner was coming in physical and cultivating possession of



the same without any interference. The petitioner was also paying rent to the State Government which was issuing rent receipts in acknowledgment thereof. During the revisional survey the names of the raiyats shown in the Cadestral Survey khatiyani were recorded by mistake, therefore, the respondents had executed a deed of surrender/ Ladavi in favour of the petitioner on 12.03.1975 accepting his title and possession over the land, a copy of which has been brought on record as Annexure 6. That apart, the original petitioner filed suit no.972/73 under Section 109 of the Bihar Tenancy Act, 1885 (hereinafter referred to be as “the B.T. Act”) challenging the wrong survey entry which was eventually decided in his favour on 30.10.1973 against which no appeal was preferred by anybody obviously in view of the fact that the land was already sold by the khatiani raiyats. The consolidation proceedings in the concerned Mauza commenced on a notification published under Section 3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, however, the proceeding was suspended by the State Government in the year 1992. That led the petitioner to file Mutation Case No.696/93-94 before the Anchal Adhikari, Bhagwanpur for mutation of the land in view of the final order passed under Section 109 of the B.T. Act. The Anchal Adhikari



passed order in favour of the petitioner, a copy of which has been appended as Annexure 2. It appears that the private respondents filed objection but the same was not found tenable by the Circle Officer. Their claim of possession over the land stood falsified as they could not produce even a single rent receipt issued by the State of Bihar in their favour after the sale deed having been executed in the year 1960. The original petitioner was earlier being issued rent receipt prior to the wrong entry made in the records during the revisional survey. The order passed by the Anchal Adhikari was challenged by the private respondents by filing appeal which was also dismissed on the ground that the appellants had never challenged the sale deed executed by their ancestors in favour of the original petitioner before any competent court. The appellate order was again challenged by the private respondents by filing Mutation Revision No.58/95-96 which was allowed chiefly on two grounds.

(i) The authority below has simply relied upon the order passed by the consolidation authorities but the sale deed appears to have been executed during the consolidation operation thus, it has to be determined as to whether permission for transfer was granted by the consolidation authority ?

(ii) The sale deed does not appear to have been

executed after obtaining necessary permission from the competent authority as the lands belonged to the Scheduled Caste.

In above view of the matter, the orders were set aside and the matter has been remitted back to the Anchal Adhikari to pass fresh order after consideration of the aforesaid issue.

Learned counsel appearing for the petitioners submits that the sale deed admittedly being of the year 1960 (a copy of which has been appended as Annexure 5) there was no question of initiation of the consolidation proceeding at that point of time. In fact, he has appended a notice published under Section 3 of the Act. The relevant appendix of the notice issued under Section 3 of the Act declaring initiation of consolidation operation goes to show that the consolidation operation commenced in the Bhagawanpur area on 10.09.1975, therefore, there was no question of continuance of any consolidation proceeding at the time of execution of the sale deed regarding grant of permission of competent authority. In above view of the matter, there has to be held that the issue raised by the Collector-cum-District Magistrate, kaimur was without any foundation.

It has further been observed by the Collector that the transfer does not appear to have been made after obtaining necessary permission of the Collector in view of the fact that the



land concerned admittedly belonged to the members of the Scheduled Caste.

In my view, such observation of the Collector is also without any basis inasmuch as the relevant provisions contained in Section 49 C of the Bihar Tenancy Act, 1885 has already been held to be constitutionally invalid in a decision of Full Bench of this Court rendered in **Bhageran Thakur V. Kewal Singh and others [1969 BLJR 134]**. Chapter VII A of the B.T. Act lays down restriction on alienation of land by protected tenants. Protected tenants have been defined under Section 49 AA of the B.T. Act which is obviously not applicable in the present case. However, Section 49 B lays down that Chapter VII A would also apply to the tenants who are members of the Scheduled Caste, Scheduled Tribes and Backward Classes. Therefore, it is not in dispute that, as per the definition under Section 49 B, the vendor of the original petitioner was a protected tenant. Section 49 C laid down restriction on transfer of tenancy rights in such cases stating that no transfer by a protected tenant of his right in his tenure, holding or tenancy, or in any portion thereof by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in Chapter VII A. Section 49 G(b) provides that if protected tenant desires to



transfer his land or any portion thereof by private sale, gift or will to any person, he may apply to the Collector for permission. However, in view of the restriction imposed by Section 49 C of the B.T. Act, a Division Bench of this Court in **Most (Lakhwanti Kuer) Vrs. Khobhari Dusadh and Others [1977 BBCJ 591]**, while dealing with the issue of transfer of raiyati right by a member of Scheduled Caste without obtaining permission of the Collector had held after placing reliance upon the Full Bench decision in **Bhageran Thakur (Supra)** that protected tenant includes Scheduled Caste also and, thus, after the decision of the Full Bench holding the provisions contained in Section 49 (C) to be constitutionally invalid, the restriction imposed by the aforesaid provision of law with respect to the scheduled Caste also vanishes as the decision rendered by the Full Bench would equally be applicable with respect to the members of the Scheduled Caste.

Having regards to the aforementioned facts and circumstances, one would have to come to irresistible conclusion that the concerned transfer made in the year 1960 cannot be held to be void on any of the aforesaid two grounds taking shelter of which the order impugned has been passed and orders passed by the Circle Officer and the appellate order passed by the D.C.L.R.

has been set aside and the matter has been remitted back to the Circle Officer for fresh consideration.

Accordingly, this writ application stands allowed and the impugned order as contained in Annexure 4 is quashed and set aside. However, there would be no order as to cost.

(Dr. Ravi Ranjan, J)

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