

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7379 of 1998

With
I.A. No.3570 of 2002
With
I.A. No.4889 of 2002

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Narendra Kumar, son of late Ram Ekbal Mahto, resident of Choudharyana Tari,
Mohalla Kharkaun Ara, Police Station- Ara Town, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Collector, Bhojpur, Ara
3. Circle Officer, Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s :

Mr. Om Prakash Upadhyay

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. Om Prakash Upadhyay, learned counsel
for the petitioner and Mr. Rajeev Kumar Singh, learned
Government Pleader No.2 for the State.

This writ petition filed under Article 226 of the
Constitution of India seeks to question the order dated 3.8.1998
passed by the Collector, Bhojpur, respondent no.2 herein in
Revision Miscellaneous Case No.16 of 1998-99, whereby the
Collector, according to the petitioner, has refused to exercise the
jurisdiction by relegating him to seek remedy before the appropriate
forum.

The facts of the case lie in a very narrow compass.
The father of the petitioner was a tenant under the Ex-intermediary
in respect of the building in question which is stated to be situated



on part of C.S. Khata no.131, C.S. Plot no.290/810 at present R.S. Plot nos.939, 940 and 941 situated in Mohalla- Murshidpur Imadjani Sabji Gola, Arrah, P.S.- Town in the district of Bhojpur. The possession of the ancestors of the petitioner is stated to be recorded in the cadastral survey khatian. According to the petitioner, his father constructed a house over the plot in question by his own money and was in peaceful possession over the same until his death. It is the case of the petitioner that after the death of his father, the petitioner along with his brother came in possession over the house as well as the shops situated on the plot and their names have been mutated in the Ara Municipality and they are paying holding tax in respect thereof. According to the petitioner, following the revisional survey the names were incorrectly recorded in khatian and for which an objection was filed under section 9 of the Bihar and Orissa Municipal Survey Act whereafter the survey entries were corrected. The petitioner also accepts that there are two tenants in the house. It is the case of the petitioner that after vesting of the estate under the Bihar Land Reforms Act, 1950 (hereinafter referred to as 'the Act') and 'the Rules' framed thereunder the Ex-landlord Choudhary Riyasat Hussain filed a writ petition (incorrectly mentioned as suit in paragraph 15 of the writ petition) questioning the right of the State to realize rent from the tenants occupying the tenanted premises of the Ex-landlord and which was a subject-matter of a Full Bench decision rendered in the case of



Mosammat Bibi Sayeeda vs. The State of Bihar reported in **1985 PLJR 66**. The Full Bench of this Court upheld the right of the State to recover rent under the provisions of 'the Act' since after vesting of the estate subject to the stipulations provided under section 5 of 'the Act'. The matter went up to the Supreme Court and the judgment of the Full Bench has been upheld by the Supreme Court by the judgment reported in **AIR 1996 SC 1936: 1996(2) PLJR 72 (SC) (Mosammat Bibi Sayeeda vs. State of Bihar)**.

Mr. Upadhyay, learned counsel appearing for the petitioner in trying to distinguish his case from the judgment of the Full Bench as affirmed by the Supreme Court has submitted that the case of the petitioner is covered under section 5(1) of 'the Act' inasmuch as it did not fall within the exceptions carved out under section 7A and 7B of 'the Act'. According to the petitioner, the house was constructed by his ancestor and was exclusively being used as a homestead and not to hold hat, bazaar or mela and thus there was no authority in the State Government to realize rent from the petitioner.

The writ petition was admitted for hearing vide order passed on 3.2.2000 and the payment of rental was made subject to the final outcome of this proceedings. It has candidly been accepted by Mr. Upadhyay, learned counsel appearing on behalf of the petitioner that although the petitioner has been making payment of holding tax but the rental has not been paid as envisaged under 'the

Act' and 'the Rules' framed thereunder.

The arguments of Mr. Upadhyay, learned counsel appearing on behalf of the petitioner are the arguments which were advanced before the Full Bench as well as the Supreme Court and were rejected.

Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the State with reference to paragraph 13 of the judgment of the Supreme Court rendered in the case of Mosammat Bibi Sayeeda (supra) submits that all issues raised herein stand answered in this single paragraph.

I have heard learned counsel for the parties and perused the records.

There is nothing on record of the writ proceedings to distinguish the petitioner's case from the Full Bench judgment which stands affirmed by the Supreme Court. It is by operation of law that the petitioner and his ancestors treated as tenants of the Ex-intermediary become a tenant under the State after vesting of the estates under 'the Act'. Though the petitioner in paragraphs 15 to 20 of the writ petition has tried to distinguish his case but as I have held there is nothing on record to establish such fact. It is perhaps considering such circumstances that the Collector vide the order impugned has directed the petitioner to seek his remedy before the appropriate forum and in the accompanying circumstances, I find no infirmity in the order of the Collector impugned in this writ

petition.

In the nature of the controversy sought to be raised by the petitioner coupled with the liberty already granted to him in the order of the Collector, I am not persuaded to grant indulgence in the matter and this writ petition is accordingly dismissed. The interlocutory applications stand disposed of.

(Jyoti Saran, J)

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