

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12560 of 2007

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Nandu Paswan, son of Lakhann Paswan, Resident of village- Tinere
Gopalpur, Police Station- Masaurhi, District- Patna.

.... Petitioner.

Versus

1. The State of Bihar.
2. The Collector, Patna.
3. The D.C.L.R., Patna.
4. The Anchal Adhikari, Masaurhi, Patna.
5. Sheo Lakhan Singh, Son of Late Baikunth Singh.
6. Surendra Singh, Son of Late Ram Pyare Singh.
7. Birendra Kumar Singh, Son of Late Ram Pyare Singh.
8. Krishna Murari Singh, son of Late Jang Bahadur Singh.
All resident of Village- Tinere Gopalpur, Police Station- Masaurhi,
District- Patna.

.... Respondents.

with

Civil Writ Jurisdiction Case No.8988 of 2005

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Krishna Murari Sharma, son of Late Jang Bahadur Sharma, resident of
Village- Tinere (Gopalpur), Police Station- Masaurhi, District- Patna

.... Petitioner.

Versus

1. The State of Bihar
2. The Collector, Patna.
3. The Sub-Divisional Officer, Masaurhi, Patna.
4. The Deputy Collector, Land Reforms, Masaurhi, District-Patna.
5. The Anchal Adhikari, Masaurhi, District- Patna.
6. The Circle Inspector, Masaurhi, District- Patna.
7. The Halka Karamchari, Masaurhi, District- Patna. .Respondent 1st Party.
8. Sheo Lakhan Singh, Son of Late Baikunth Singh.
9. Surendra Singh, Son of Late Ram Pyare Singh.
10. Birendra Kumar Singh, Son of Late Ram Pyare Singh.
Respondent Nos. 8 to 10 are residents of Village- Gopalpur, Police
Station- Masaurhi, District- Patna

.... Respondents 2nd Party.

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Appearance :

(In CWJC No.12560 of 2007)

For the Petitioner/s : Mr. Rajeev Ranjan Sinha, Advocate

For the Respondent/s : Mrs. Jahan Ara, AC to AAG-5

(In CWJC No.8988 of 2005)

For the Petitioner/s : Mr. Ram Suresh Roy, Sr. Advocate

Mr. Binod Kumar Singh, Advocate

For the Respondent/s : Mr. Pankaj Kumar Singh, AC to SC-28

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

24 07-01-2015

C.W.J.C. No. 8988 of 2005 and C.W.J.C. No. 12560

of 2007 are taken up together for hearing and are being disposed of by a common order. The petitioners of the writ applications have conflicting interest and are party respondents in each others writ applications.

2. The petitioner, Krishna Murari Sharma, of C.W.J.C. No. 8988 of 2005, who claims himself to be descendants from the Ex-landlord, having right and interest over the land in question, prays for quashing of order dated 30.03.1999, passed by the Circle Officer in Land Encroachment Case No. 5/1995-96 and the appellate order dated 28.09.2004 of Collector, Patna holding him as encroachers and of being under unauthorized occupations and consequently liable for having him removed.

3. Consequent to the order dated 30.03.1999, passed by the Circle Officer in the Encroachment Case No. 5/1995-96 affirmed in appeal by the Collector, the land measuring 2 Katha 4 Dhurs appertaining to Survey Plot no. 1732 of Khata no.135, Mauza Tineri (Gopalpur) was settled with Nandu Paswan, who is petitioner of C.W.J.C. No. 12560 of 2007, by Circle Officer, Masaurhi.

4. Nandu Paswan has moved this Court for a direction to the respondents to give effect to the settlement, as

opposite party no.8 was held to be in unauthorized occupation of the land.

5. The petitioner, namely, Krishna Murari Sharma also called Krishna Murari Singh, of C.W.J.C. No. 8988 of 2005, in fact has also sought enforcement of the settlement order against Sheo Lakhan Singh, son of Late Baikunth Singh, Surendra Singh, Son of Late Ram Pyare Singh and Birendra Kumar Singh, Son of Late Ram Pyare Singh, who are respondent nos. 5, 6 and 7 in C.W.J.C. No. 12560 of 2007. I am informed that Sheo Lakhan Singh, Surendra Singh and Birendra Kumar Singh have already preferred title suit. No one appeared for these three private respondents in these writ applications despite valid service of notice.

6. I find that Nandu Paswan is claiming right and interest over the land on the basis of settlement made in his favour by order dated 11.11.1994. He is not claiming as descendants of original Landlords or the second Raiyat rather the claim is solely based on settlement in his favour in the year 2004 by the Collector of the district.

7. On the other hand, the petitioner Krishna Murari Sharma has staked his claim on the land as descendants of the Ex-landlords. According to him, the disputed land, bearing Survey



plot no. 1732 of Khata no. 135 of Mauza Tineri (Gopalpur) area 2 Katha 4 Dhurs was recorded as Gairmazarua Malik in the remark column of the Khatian prepared in the year 1910. The Khatian has been brought on record by way of supplementary affidavit as Annexure-5. The petitioner asserts that he is descendants from one of the co-land owners mentioned in Annexure-5. The position is not in dispute. The petitioner fairly admits that at the time of vesting, his fore-fathers did not file return though they were in Khas possession of the land in question. The authorities taking advantage of error on the part of his fore-fathers, have initiated land encroachment proceedings against him.

8. In the proceeding before Circle Officer in the year 1992, the petitioner submitted that he is descendants of the ex – landlords and is residing after constructing house. He was also issued rent receipts by the State of Bihar.

9. Being satisfied with the reply of the petitioner, the Circle Officer dropped the proceeding. A second proceeding was initiated on 27.05.1993, which was too dropped. Again a notice was issued on 02.05.1994. This time Sub-Divisional Officer, Masaurhi required of him to explain his claim.

10. Being aggrieved, the petitioner filed C.W.J.C. No. 10113 of 1994. The matter came for hearing on 25.05.1995



before the learned single Judge. The learned single Judge held that the notice issued by the Sub-Divisional Officer was unsustainable. He does not have any sanction under statutory provisions to issue notice of the kind. The learned Judge observed that it is neither a proceeding under Bihar Public Land Encroachment Act nor under any provisions of the Settlement Act. However, liberty was granted to the respondents to act in accordance with law and to initiate appropriate proceedings as sanctioned under the law.

11. In the light of the liberty granted by this Court, the Circle Officer started encroachment proceeding against the petitioner, being Encroachment Appeal No. 3/99-2000 (Sheo Lakhan Singh & others Vs. State). The Circle Officer in the proceeding observed that at the time of vesting, the Ex-landlord did not file any return with respect to the land, which is recorded as Parti Kadim. The Circle Officer as such was of the view that the petitioner was under unauthorized encroachment, and directed his removal.

12. Being aggrieved, the petitioner filed appeal, which too failed. As the petitioner Krishna Murari Sharma was held to be in unauthorized occupation, the land was settled with Nandu Paswan, the writ petitioner of C.W.J.C. No.12560 of 2007.

13. The learned single Judge in his order dated

25.05.1995 observed that till final order is passed in accordance with law and statutory provisions, no coercive steps would be taken against the petitioner, Krishna Murari Sharma.

14. Counsel for the State as well as Nandu Paswan have justified the order passed against the petitioner Krishna Murari Sharma of C.W.J.C. No. 8988 of 2005 in the encroachment proceeding.

15. On the other hand, counsel for the petitioner of C.W.J.C. No.8988 of 2005 (Krishna Murari Sharma Vs. The State of Bihar & Ors) submits that conflicted question of title is involved and the same cannot be decided in a summary proceeding under the Land Encroachment Act.

16. It appears from order dated 25.05.1995 passed in C.W.J.C. No. 10113 of 1994 that the disputed land is part of cadastral survey plot no. 1732, under khata no. 135, Tauzi no. 6441 situated at Mauza Tineri Buzurg, P.S.- Masaurhi, District-Patna. The land was shown in joint ownership of 5 co-owners. The remark column of the Khatiyani showed existence of Mahua trees on the land. Furthermore, the land was neither a Raiyati land of any other individual, other than co-owners nor it was the Kaisare Hind land nor it was the Gair Mazarua Aam but it was the Gair Mazarua Malik land.



17. I find that the owner of the land failed to file any return on vesting of Zamindari. Whether failure on the part of the owner of the land would extinguish the right and interest of his descendants on the said land. It is not in dispute that the petitioner is in possession of the land and is residing after having constructed a house on it. The possession of the petitioner has not been disputed by the State. The interest of the descendants or the co-owners, if they have continued in possession is some what protected under Section 6 of the Bihar Land Reforms Act; particularly, Section 6 (1)(b), which is quoted herein below:

6.(1)(b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock,

18. It would appear from perusal of the provision that certain lands, which were in Khas possession of the intermediaries would be retained by them on payment of rent to them, as the occupations, have given them rights. The petitioner has been issued rent receipt in the year 1992 and according to them they are always willing to pay the rent. The Hon'ble Apex Court in case of Suraj Ahir and others Vs. Prithinath Singh and others, reported in AIR 1963 SC 454, while interpreting Section 6 of the Land

Reforms Act, observed as follows:

18. Section 6 of the Act provides 'defer' alia that on and from the date of vesting all lands used for agricultural purposes which were in khas possession of a proprietor or tenure-holder on the date of vesting shall be deemed to be settled by the State with such proprietor or tenure-holder as the case may be and such proprietor or tenure-holder shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector. The lands coming within this Section 6 included lands used for agricultural purposes forming the subject-matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof it follows that such lands though not in the actual khas possession of the proprietor on the date of vesting would also be deemed to be settled with the proprietor, who would retain their possession as raiyat under the State.

19. It logically follows from the observation of the Hon'ble Apex Court as well as Section 6 of the Land Reforms Act that all lands used for agricultural purposes which were in Khas possession of a proprietor or tenure-holder on the date of vesting, shall be deemed to be settled by the State with such proprietor or

tenure-holder.

20. It is not the case of the respondents that the petitioner was not in possession on the date of vesting of the State.

21. Furthermore, a Division Bench of this Court in case of Card Board Products (Gomia) & Others Vs. The State of Bihar and others, reported in 1994(1) PLJR 99 observed that when a disputed question of title exist, the summary proceeding under the Act may not be suitable remedy.

22. The case of petitioner is that he is not under unauthorized occupation, rather he is claiming his right and interest being the descendants of co-owners and having continuously been in possession. The Circle Officer has committed an error of record in observing that as per the C.S. Khatiyan, the land is a Parti Kadim. It would appear from the Khatiyan that the land is not a Parti Kadim, and Mahua trees existed on the land way back in the year 1911 itself.

23. A summary proceeding under Land Encroachment Act is sustainable only if the State Government is able to demonstrate or establish prima facie interest in the land, or a body. The dispute involves serious question of title and as such it should not have been dealt with in a summary proceeding under Land Encroachment Act.

24. In view of findings recorded in foregoing paragraphs, the impugned order passed by the Circle Officer in Encroachment Case No. 5/95-96 and affirmed in appeal are set aside, so far as the petitioner herein is concerned. Consequently, the settlement of Nandu Paswan on the land held by the petitioner is too not sustainable. However, I am of the view that the petitioner Nandu Paswan should not suffer on account of mistake on the part of the respondents in settling a disputed land which involved complicated questions of title.

25. The respondents are directed to settle an alternative piece of land with Nandu Paswan on preferential basis within a period of six months from the date of receipt of a copy of this order. It will be open for the petitioner of C.W.J.C. No. 8988 of 2005 to establish his claim before the competent Civil Court.

(Samarendra Pratap Singh, J.)

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