

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.107 of 2019

In
Letters Patent Appeal No.150 of 2014

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Dinesh Kumar Mishra Son of Late Atma Ram Mishra Resident of Supaul,
Ward No.2, P.S.- and District -Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar Through its Chief Secretary, Old Secretariat, Patna, Bihar.
2. The Commissioner Khosi Division, Saharsa.
3. The Additional Collector Supaul, District Supaul, Bihar.
4. The Sub- Divisional officer Supaul, District Supaul, Bihar.
5. The Circle Officer Supaul, District Supaul, Bihar.
6. Smt. Nirmala Devi Wife of Sri Rabindra Kumar Singh Resident of Supaul,
Ward no.2, P.S. and District- Supaul, Bihar.
7. Smt. Shakuntala Devi Wife of Sri Sita Ram Singh Resident of Supaul, Ward
no.2, P.S. and District- Supaul, Bihar.
8. Smt. Lalita Devi Wife of Sri Hare Ram Singh Resident of Supaul, Ward
no.2, P.S. and District- Supaul, Bihar.
9. Smt. Nirmala Devi Wife of Sri Indra Deo Singh Resident of Supaul, Ward
no.2, P.S. and District- Supaul, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Kumar Singh, Adv. Mr. Narendra Kumar Singh, Adv.
For the Opposite Party/s :		Ms. Nutan Sahaya, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-04-2023

We have heard Mr. Rajiv Kumar Singh for the

petitioner and Ms. Nutan Sahay for the State.



The petitioner seeks review of the judgment dated 25.01.2018 passed in LPA No. 150 of 2014 arising out of CWJC No. 2406 of 2003 to the extent that it be clarified that no order has been passed under Section 4(h) of the Bihar Land Reforms Act, 1950 till date regarding cancellation of the sale deed executed in favour of the petitioner.

Before addressing us on merits, Mr. Singh has pressed I.A. No. 1 of 2022, seeking condonation of delay of one year and twenty days in preferring this review petition.

The reason ascribed in the application seeking condonation of delay is the time having lost in going before the Supreme Court against the order passed by the Division Bench of this Court which is now sought to reviewed in the present application and the liberty having been granted by the Supreme Court to prefer a review petition.

For the reasons stated in the application, we



allow the prayer and condone the delay.

The I.A. No. 1 of 2022 is disposed of accordingly.

Coming to the main issue, it has been urged on behalf of the petitioner that he had approached the revenue authority namely Sub-Divisional Officer, Supaul for fixation of rent against a land which was acquired by him under a valid sale deed executed by the Ex-Zamindar. The same was allowed but the State took the matter in appeal before the Additional Collector, Supaul wherein the matter was remanded to the Sub-Divisional Officer, Supaul for a reconsideration.

At this stage i.e. after remand, the S.D.O., Supaul came to the finding that the land in question was acquired by the petitioner after 1st of January, 1946, by which time the land which was being used as a Kutchery by the Ex-Zamindar had vested in the State Government by virtue of Section 4 of the Bihar Land Reforms Act, 1950. The S.D.O, Supaul thereafter recommended for



initiation of a proceeding for removal of encroachment from the said land.

Though the claim of the petitioner was rejected by all the revenue authorities including Commissioner, Kosi Sub-Division, Saharsa as also the learned Single Judge hearing the matter but, at all these levels, there was no consideration of the fact that the proceeding for removal of encroachment under the 4(h) had never been initiated, which gave the petitioner a right to be heard before the sale deed could have been annulled.

All the authorities, it has been urged on behalf of the petitioner, limited their focus to the issue whether the land in question could have been alienated by way of sale deed in favour of anybody after 1st of January, 1946.

The learned counsel for the petitioner further submits that all these decisions of the revenue authorities and of the learned Single Judge, referred above, were affirmed by the Division Bench in LPA No.



150 of 2014 which put its imprimatur on the proposition that in no case can the provision of Section 4(h) of Bihar Land Reforms Act, 1950 could have been defeated by resorting to alienating the land by a sale deed after the cut-off date, when it was found for certainty that the land in question was being used as a Kutchery by the Ex-Zamindar.

The argument advanced by the petitioner before the Division Bench that any statutory authority is under an obligation to exercise its power within a reasonable time frame, did not find favour with the appellate court as such powers could have been exercised only on discovery of the fact that an attempt was being made to defeat the provisions of Section 4 of the Bihar Land Reforms Act, 1950 and, therefore, such statutory decisions could not have been restricted within any calendar.

The argument of the petitioner that none of the orders which had been affirmed by the Division



Bench in LPA No. 150 of 2014 recorded any subjective satisfaction on the basis of objective facts, was also not accepted as in the assessment of the Division Bench, the satisfaction was complete at all levels that the sale deed was executed after the cut-off date of 1st of January, 1946 and that the land had, hitherto, was being used as a Kutchery by the Ex-Zamindar.

Section 3 of the Bihar Land reforms Act, 1950 provides and specifies that the State Government may from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, to have vested in the State, which notification shall be published in the official gazette and shall also be sent by registered post with acknowledgment due to the proprietor of the estate recorded in the general register of revenue-paying or revenue-free lands maintained under the Land Registration Act, 1876 or in case where the estate is not entered in any such registers and in the case of tenure-



holders to the proprietor of the estate or to the tenure-holder of the tenure, if the Collector is in possession of a list of such proprietors or tenure-holders, together with their addresses, and such posting shall be deemed to be sufficient service of the notification on such proprietor or tenure-holder.

The State Government has also been vested with the powers to declare that the intermediary interests of all intermediaries in the whole of the State has been vested in the State.

The consequences of such vesting has been provided under Section 4 of the Act. Notwithstanding anything contained in any other law for the time being in force or any contract or with regard to any non-compliance or irregular compliance of the provisions of other Sections of the Act, with the publication of the notification referred to above, such estate or tenure including buildings appurtenant thereto, shall vest in the State.



Section 4(h) further specifies that the Collector shall have the power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or kutchery for the collection of rent of such estate or tenure or part thereof and if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after annulling such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable.

An appeal against the order of the Collector if preferred within 60 days of such order, would lie to the prescribed authority, who would not be below the rank of the Collector of a District and which appeal shall be



disposed of in accordance with the prescribed procedure.

There is a further proviso to Section 4 which clarifies that no order annulling a transfer shall take effect nor possession shall be taken in pursuance of such decision unless such an order has been confirmed by the State Government.

(emphasis provided)

In this context, we find that the Division Bench affirmed the decision of the Revenue Authorities and the learned Single Judge that the alienation of the land in question in favour of the petitioner was made after the cut-off date and which land was used as kutchery hitherto.

Mr. Singh, learned counsel for the petitioner submits that there is no cavil with respect to the affirmation that the alienation was after the cut-off date, but the issue with respect to such land having been used as kutchery by the Ex-Zamindar has not yet been decided by any one of the Authorities.



We further find that the order passed by the Division Bench is capable of being misunderstood that the issue has become *cadit quaestio* viz. that the vesting of the land in State is complete. By virtue of a decision of the Sub-Divisional Officer, Supaul in a case on remand, a recommendation was made for initiating a proceeding for vesting of the land in the State of Bihar and annulling of the sale deed in favour of the petitioner. Beyond that stage, no decision has been taken by the Authorities. Once it is decided that the land was used as a kutchery prior to 1st of January, 1946, then only the alienation of such land at a later date could be questioned and such sale deed could be annulled. That would require the satisfaction of the revenue authorities. The S.D.O., Supaul, in this instance, had only initiated for a proceeding to be initiated in that regard, which has not yet been taken to its logical conclusion.

Even if it is found that the land in question was used as a kutchery before 1st of January, 1946, the



annulment of the sale deed executed later than 1st of January, 1946 requires the vendee to be heard before any decision is taken and a final shape is to be given only after the confirmation by the State Government.

Thus, there are several stages before which the land in question could either be taken possession of or the deed of alienation by whatever mode could be annulled.

To that extent, Mr. Singh argues that the order passed by the Division Bench requires review so that the issue could be clarified and the petitioner may not be confronted later that a satisfaction has been recorded for annulling the sale deed and consequent dispossession of the petitioner for the land for it to be vested in the State.

The petitioner would have two clear rights in his favour viz. one of being heard before such satisfaction is arrived at by the Authorities and secondly at a stage when he would have a liberty to file an appeal



against the order of the Collector annulling such sale deed. The confirmation of the State only puts a final seal to the decision regarding vesting of any land in the State.

We find force in the submission of the learned counsel for the petitioner.

We also find from the counter affidavit that there is no categorical statement whether the proceeding which was recommended to be initiated by the S.D.O., Supaul was taken to any logical conclusion.

Thus, we only clarify the judgment which is sought to be reviewed that the issue with respect to the determination regarding the land being used hitherto as a Kutchery and that its transfer was with the sole purpose of defeating the provisions of the Act, is open and not foreclosed by the decision of the Division Bench. What the Division Bench holds is that the petitioner shall have no right to seek fixation of rent at this stage when there has been a discovery of fact that the alienation of



land in his favour by sale deed of 1951 was only for the purposes of the defeating the object of the Land Reforms Act, 1950.

The judgment stands clarified to the extent indicated above.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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