

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1660 of 2016

In

CIVIL REVIEW No.247 of 2015

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Mithilesh Jha Son of Bala Kant Jha, aged about 55 years resident of Village-
Gandwar, P.S.- Andhera Tharhi, Dist- Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Collector, Madhubani.
3. The Additional Collector, Madhubani.
4. The Circle Officer, Madhubani.
5. Most. Jaleshwari Devi wife of Late Vishwanath Singh resident of Village-
Gandwar, P.S.- Andhera Tharhi, Dist- Madhubani.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Anju Mishra, Adv.
For the State	:	Mr. Anisul Haque, AC to AAG5
For the Resp. No.5	:	Mr. B.N. Tiwari, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-01-2023

Heard Ms. Anju Mishra, learned advocate for the

appellant and Mr. B.N. Tiwary for the respondent no.5 and

Mr. Anisul Haque for the State.

The order under challenge is dated 11.08.2015

passed by the learned Single Judge of this Court in CWJC

No. 6008 of 2009 whereby the order passed by the

Collector, Madhubani in Miscellaneous (Basgit Parcha) Case



No. 25 of 2006-07 / 07 of 2007-08, cancelling the Basgit Parcha issued to the appellant, has been affirmed.

The learned Single Judge, while affirming the order passed by the Collector cancelling the Basgit Parcha issued in favour of the appellant, found that the land in question belonged to one Mahanth Madan Mohan Das and Uday Kant Jha, the writ petitioner, was his employee. This was the relationship between the ancestor of the appellant (the appellant is the nephew of Uday Kant Jha who has preferred this appeal after the death of Uday Kant Jha and his wife) which was the reason for possession of land with the ancestor of the appellant.

There was no settlement in favor of the writ petitioner/Uday Kant Jha, which fact was admitted by him in the writ petition. With the vesting of Zamindari in the Government and there being no settlement of land in favour of Uday Kant Jha by the ex-landlord, there did not exist any relationship of landlord and tenant.

After examining the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'the Act'),



the learned Single Judge was of the view that the provisions contained therein were aimed at preventing a privileged tenant from being ejected from the homestead land, except on the grounds mentioned in Section 8 of the Act viz ejection could only be on the ground that the tenant had used the holding or any part thereof in a manner which rendered the holding unit for the purposes of tenancy and on the ground that the tenant has failed to pay the rent of the holding for two years and that no privileged tenant would be so ejected except in execution of an order of ejectment passed by the Collector and secondly that no such order passed on the ground of failure of rent was to be executed, if the full amount of the arrears of rent together with interest if any; or where there has been a decree for such arrears, the amount payable under such decree, was deposited with the Collector within three months from the date on which the order was signed.

The provision contained in Section 8 regarding the requirement of an execution proceeding before the Collector



for him to pass an order of ejectment has been deleted by the Amendment Act of 11 of 1989.

Finding that there was no status of Uday Kant Jha of a privileged tenant, Basgit Parcha could not have been issued to him in the first instance. Any land which is vested in the State of Bihar is not amenable to the beneficent provisions of Bihar Privileged Persons Homestead Tenancy Act, 1948.

The issuance of Basgit Parcha thus was found by the learned Single Judge to be bad in the eyes of law.

Ms. Mishra, learned counsel for the appellant, while challenging the aforesaid order, has drawn the attention of this Court to the fact that Section 21 of the Act which provides the power to the Collector of the district to call for and examine records, was introduced in the Act only by Amendment Act 11 of 1989 by which one proviso of Section 8 was deleted. She, therefore, submits that for Section 21 to be invoked, which is an addition in the Act in the year 1989 only, the transactions had to be post 25.09.1989. In support of the aforesaid contention, Ms. Mishra has drawn



attention of this Court to the judgment of this Court in Om Prakash Singh Vs. The State of Bihar & Ors.; 2004 (2) PLJR 621, wherein this argument was raised and was considered but the case was decided on other grounds.

We also find from the order impugned that when the Basgit Parcha granted in favour of Uday Kant Jha, the ancestor of the appellant, was cancelled by the District Collector by order dated 28.08.2006, the same was challenged by him in an earlier proceeding in CWJC No. 526 of 2007 on the sole ground of no notice having been issued to him before cancellation of such Parcha. For that reason, such cancellation order was set aside and the matter was remitted to the Collector, Madhubani, for deciding the issue afresh after giving fresh notice to the parties.

Pursuant thereto, the order by the Collector was passed, holding that the ancestor of the appellant was not entitled for Basgit Parcha for the reason that the land belonged to the Government and not to any Zamindar and while the time the Zamindari rights remained vested with the



Ex-Zamindar, there was no settlement in favour of the writ petitioner/Uday Kant Jha.

True it is that provisions of Section 21 of the Act could be invoked for transaction post the amendment of 1989 i.e. 25.09.1989, but in the present case, the Basgit Parcha granted to the ancestor of the appellant is non-est in the eyes of law, as there was no existing jural relationship of the landlord and the tenant with anybody.

It is axiomatic that a government land cannot be allowed to be appropriated by any person in the absence of any specific settlement in favour of such person. Without invoking the powers under Section 21 of the Act therefore, the Collector found the order granting Basgit Parcha by the Circle Officer to be bad in the eyes of law and, therefore, it was treated as non-est.

Much later, the land in question was settled with private respondent no.5, which Parcha has not been questioned by the appellant in any proceeding whatsoever.



Mere statement of the appellant that he does not have any idea about such Parcha having been granted to respondent no.5, would be of no avail to the appellant.

Thus, on the issue of the Basgit Parcha in favour of the ancestor of the appellant being non-est in the eyes of law and the land in question having been settled with private respondent no.5 not having been questioned in any proceeding whatsoever, we are not persuaded to interfere with the order passed by the learned Single Judge.

There is no merit in this appeal.

The appeal is thus dismissed but without any order as to costs.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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