

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1033 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Buxar

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1. Shivaji Choubey Son of Late Jag Dayal Choubey Resident of Village-Parmanpur, P.S.- Nawanagar, District- Buxar- 802129
 2. Raghunath Choubey Son of Late Ram Pravesh Choubey Resident of Village-Parmanpur, P.S.- Nawanagar, District- Buxar- 802129
 3. Chanda Kuer Wife of Late Vijay Nath Choubey Resident of Village-Parmanpur, P.S.- Nawanagar, District- Buxar- 802129

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bansidhar Choubey Son of Musafir Choubey Resident of Parmanpur, P.S.- Nawanagar, District- Buxar
3. Sudesh Choubey Son of Late Jag Dayal Chobey Resident of Village-Parmanpur, P.S.- Nawanagar, District- Buxar.
4. Lalan Ram Son of Late Jhagru Ram Resident of Village- Parmanpur, P.S.- Nawanagar, District- Buxar-802129
5. Hansraj Singh Son of Late Lal Mohar Singh Resident of Village- Parmanpur, P.S.- Nawanagar, District- Buxar-802129
6. Sumitra Devi Wife of Late Gopal Choubey Resident of Village- Parmanpur, P.S.- Nawanagar, District- Buxar-802129

... .. Respondent/s

with

CRIMINAL REVISION No. 1044 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Buxar

Sumitra Devi W/o Late Gopal Choubey R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar- 802129

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bansidhar Choubey S/o Musafir Choubey R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar
3. Shivaji Choubey S/o Late Jag Dayal Choubey R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar
4. Sudesh Choubey S/o Late Jag Dayal Choubey R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar
5. Lalan Ram S/o Late Jhagru Ram R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar

- 6. Rangnath Choubey S/o Late Ram Pravesh Choubey R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar
- 7. Hansraj Singh S/o Late Lal Mohar Singh R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar
- 8. Chanda Kuer W/o Late Vijay Nath Choubey R/o village- Parmanpur, P.S.- Nawanagar, District- Buxar

... .. Respondent/s

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Appearance :

(In CRIMINAL REVISION No. 1033 of 2019)

For the Petitioner/s : Mr. Satyabir Bharti, Adv.
Mr. Abhishek Anand, Adv.
Ms. Kanupriya, Adv.
For the O.P. No. 2 : Mr. Dr. Chandra Shekhar Azad, Adv.
Mrs. Anju Mishra, Adv.

For the O.P. No. 3, 4, 5
& 6 : Mr. Shatabadi Sinha, Adv.
For the State : Mr. Anil Kumar Singh No. 1, APP

(In CRIMINAL REVISION No. 1044 of 2019)

For the Petitioner/s : Mr. Satyabir Bharti, Adv.
Mr. Abhishek Anand, Adv.
Ms. Kanupriya, Adv.
For the O.P. No. 2 : Mr. Dr. Chandra Shekhar Azad, Adv.
Mrs. Anju Mishra, Adv.

For the O.P. No. 3, 4, 5, : Mr. Shatabadi Sinha, Adv.
6, 7 & 8
For the State : Mr. Anil Kumar Singh No. 1, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 21-02-2024

Since, a common question of fact and law are involved in both the revisions, therefore, this Court proposes to dispose of both the revisions by a common judgment.

2. In both the revisions, the petitioners have claimed their right of possession over the disputed land on the basis of *sikmi* right (under rights). It is contended by the petitioners that they have been possessing the case property from their predecessor in interest since, 1909 and they also

disposed of certain portions of land in favour of third person on the basis of their *sikmi* right.

3. The opposite party no. 2 instituted a proceeding under Section 144 of the Cr.P.C. to unsettle the settled deposition of the petitioners. The said proceeding was converted to a proceeding under Section 145 of the Cr.P.C. The learned Sub-Divisional Magistrate, Dumraon passed an order in favour of the petitioners. The opposite party no. 2 filed a Cr. Rev. No. 77 of 2017 before the learned District & Sessions Judge, Buxar. The criminal revision case was transferred to the Court of the learned Additional Sessions Judge, Fast Track Court- II, Buxar for disposal and by an order dated 03.11.2018, he allowed the said revision in favour of the opposite party no. 2. This laid the petitioners to file the instant two revisions, splitting themselves into two groups.

4. At the outset, the learned Advocate on behalf of the opposite party no. 2 has raised a preliminary issue on maintainability of the petition under Section 144, 145 and criminal revisions. Referring to the provision of Section 48C of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act of 1885'), it is submitted by the learned counsel on behalf of the opposite party no. 2 that the said provision speaks about the

acquisition of right of occupancy by under rights. It is also submitted by her that *sikmi* right created under the Act of 1885, which is an inheritable right but is not a transferable right. The petitioners claimed *sikmi* right over lands under dispute, as a result of their possession since, 1909. It is further contended by the learned Advocate for the opposite party no. 2 that Section 48D of the Act of 1885 says about acquisition of *raiya*ti right by occupancy under rights. The provision runs thus:-

***“48D. Acquisition of raiya*ti right by occupancy under-raiyat :-**

(1) An occupancy under-raiyat shall if he makes an application in this behalf in the prescribed manner, be entitled to acquire the right of a raiyat subject to the payment to be made as may be prescribed by the State Government and the right of the land-holder in such land shall extinguish: Provided that the land on which he acquires such right along with other land held by him anywhere in the State does not exceed the area he may hold under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962).

(2) The remaining area, if any, in which the under-raiyat does not acquire the right of a raiyat shall continue to be held by the

raiyat under whom the under-raiyat held the land.

(3) The land owner in respect of whose land the under-raiyat acquires the right of a raiyat under sub-section (1) shall be paid as compensation an amount equivalent to twenty four times the rent of the holding in the manner prescribed in this behalf.”

5. Section 48E of the Act of 1885 stipulates the provision available to the under rights for prevention of threatened ejectment of under rights and restoration of under rights unlawfully ejected. On these two contingencies, the under rights are given right to file appropriate application before the Collector, who will decide the question in accordance with the provisions stated in subsequent sub-sections of Section 48E of the Act of 1885. Sub-section 13 (of Section 48E of the Act of 1885) clearly states that “save as expressly provided in this Act, no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under sub-section (1) by the Collector.”

6. The learned Advocate on behalf of the opposite party no. 2 next refers to Section 5 of the Code of Criminal Procedure which is a saving clause, stipulating therein that nothing contained in this Code shall, in the absence of a specific

provision to the contrary, affect any special or local law for the time being, in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Thus, it is submitted by the learned Advocate for the opposite party no. 2 that efficacious relieves of the petitioners lies in filing a proceeding under Section 48E of the Act of 1885. She also admits that initiation of proceeding under Section 144 of the Cr.P.C. and continuation thereof under Section 145 of the Cr.P.C., then in revision at the instance of the opposite party no. 2 was also not justified in view of the specific provisions under the Act of 1885, read with Section 5 of the Code. In support of his contention, the learned counsel for the opposite party no. 2 refers to a decision of this Court in ***Suryabansh Upadhyay Vs. Awadhesh Choudhary & Ors.*** reported in ***1999(2) PLJR 173***. In the said report, a Co-ordinate Bench of this Court while interpreting Section 48C and 48D of the Act of 1885, observed that a person acquires occupancy right by legal fiction by a flux of time on expiry of the prescribed period, as an under rights or *sikmi*.

7. However, the inquiry about the acquisition of occupancy right in terms of Section 48C of the Act of 1885 can be made under Section 48D of the Act of 1885. Since, such right

is not available under general law of the land, the forum created under the local law is alone competent to declare the status of a person as an occupancy under rights or right within the meaning of Section 48C and 48D of the Act of 1885.

8. Similar question came up for consideration before the Hon'ble Supreme Court in Cr. Appeal No. 952 of 2009 : ***Bharat Prasad & Ors. Vs. State of Bihar & Ors.*** decided on 06.05.2009. Paragraphs 25 to 28 of the aforesaid judgment are relevant for the purpose of this case which are reproduced below:-

“25. Similarly, construing Section 5 of the Code, the Constitution Bench of this Court held in Maru Ram Vs. Union of India and others [(1981) 1 SCC 107]:

"If a special or local law exists covering the same area, this latter law will be saved and will prevail."

26. Sub-Section 13 of Section 48E of the said Act makes it clear that no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under sub-section (1) of the Collector.

27. In the instant case, admittedly a proceeding under Section 48E was initiated

and it terminated in favour of the appellants holding their rights as Bataidar. The said adjudication has become final.

28. However, sub-section 48E (13) has a proviso to the effect that nothing in this sub-section shall be deemed to affect the power of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.”

9. In paragraph 33 of the judgment, the Hon’ble Apex Court discussed the fate of the proceedings under Section 144/145 of the Code of Criminal Procedure in relation to any claim of *sikmi* right over the disputed land. Paragraph 33 of the aforesaid judgment of the Hon’ble Apex Court is reproduced below:

“33. In this case, this Court is of the opinion that if the respondents are aggrieved by the findings reached in the Bataidari proceeding they have the statutory right of the appeal to be exercised according to law. Without doing that the affect of Bataidari proceeding cannot be scuttled with the subterfuge and juggle of 144/145 proceedings. In the facts of this case, such a proceeding is an abuse.”

10. In view of the clear decision of the Hon’ble

Apex Court in the above mentioned report, regarding applicability of Section 48C, 48D and 48E of the Act of 1885 at different stages of claim of *sikmi* right, I do not have any other alternative but to hold that both the revisions are not maintainable. In view of the provision contained in Section 5 of the Code of Criminal Procedure, read with the relevant provisions of the Act of 1885.

11. Accordingly, both the revisional applications are dismissed being not maintainable.

12. However, the parties are at liberty to take recourse of the relevant provisions under the Act of 1885 for establishment of their rights.

(Bibek Chaudhuri, J.)

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