

(2009) 01 JH CK 0034
Jharkhand High Court
Case No: None

Mahanand Lal Kumhar

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Jan. 29, 2009

Acts Referred:

- Bihar Land Reforms Act, 1950 - Section 4(g), 4(h)

Citation: (2009) 2 JCR 400

Hon'ble Judges: Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This letters patent appeal is directed against the order dated 19.09.2006 passed by the learned Single Judge in C.W.J.C. No 2323 of 1998(R), whereby the learned Single Judge rejected the prayer of the petitioner-appellant to quash the notice under which the pond in question was sought to be settled.

2. Learned Counsel appearing for the appellant submits that the pond, in question, was settled by a Hukumnama dated 09.03.1935 to the father of the petitioner. Subsequently, upon the rent being fixed, the same were being paid, but the respondents-State without annulling the settlement of the land under the provisions of the Bihar Land Reforms Act, 1950 put the said pond on auction, which was challenged before this Court on the ground that the respondents-State without giving notice for annulment of the settlement in terms of Sections 4(g) and 4(h) of the Bihar Land Reforms Act (hereinafter referred to as the Act) has put the pond on auction, but the learned Single Judge without considering the case from that angle dismissed the writ application by holding that the disputed question of right, title and interest cannot be decided in this writ application and hence the petitioner-appellant has preferred this appeal.

3. Learned Counsel appearing for the appellant submits that once the pond, in question, was found to have been settled through Hukumnama, the respondents-State cannot settle the pond in question to other without annulling the settlement and that too, without giving notice in terms of Sections 4(g) or 4(h) of the said Act. Since the respondents-State has not taken recourse to those provisions, notice, under which the pond was sought to be settled, is quite illegal. Learned Counsel in support of the submission referred to a decision rendered in the case of State of Jharkhand through the Circle Officer, Ranchi v. Mithila Sahkari Grih Nirman Sahyog Samiti and Ors. reported in 2005 (1) LJLR 355.

4. However, the stand of the respondents-State is that by virtue of the enactment of the Bihar Land Reforms Act, all the Sarayati right and interest got vested in the State of Bihar free from all encumbrances and in that view of the matter, the appellant cannot claim any right, title or interest over the pond in question.

5. Further stand of the respondents is that the pond in question is being settled from the year 1992 onwards yearly to different persons, but the appellant has only chosen to challenge the notice issued in the year 1999 and that the petitioner-appellant was never in possession over the pond in question and in this view of the matter, the State-respondents is not supposed to take recourse of the provisions as contained in Sections 4(g) and 4(h) of the said Act.

6. We do find substance in the submission advanced on behalf of the respondents-State. There has been no denying of the fact that after the Bihar Land Reforms Act, 1950 came into being, all the Sarayati right and interest got vested in the State of Bihar free from all encumbrances. Consequently, the appellant does not have any right, title and interest over the pond in question. Moreover, according to the State-respondents, the petitioner-appellant never remained in possession over the pond in question and in that view of the matter, the question of taking recourse as prescribed u/s 4(g) of the said Act never gets attracted, as only in a case, where the Collector intends to take possession of the property vested in the State of Bihar, requires to give notice to person who is in possession of the property.

7. I Under the situation, learned Single Judge has rightly held that in the facts and circumstances, the provision of Sections 4(g) and 4(h) of the said Act does not get attracted. So far the decision referred to above on behalf of the appellant is concerned, that is not applicable in the facts and circumstances, as in that case issue, which was involved, was that whether the transfer effected was for the purpose of defeating the provisions of the Bihar Land Reforms Act or not.

8. Thus, we find no reason to differ with the findings arrived at by the learned Single Judge. Accordingly, this appeal, being devoid of any merit, is dismissed.