
(2012) 05 JH CK 0050

Jharkhand High Court

Case No: W.P.C. No. 2945 of 2003

Baduruddin Ansari and
Others

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: May 15, 2012

Acts Referred:

- Bihar Land Reforms Act, 1950 - Section 4
- Constitution of India, 1950 - Article 300A

Citation: (2012) 3 JCR 510

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Advocate: P.K. Prasad and Amit Kumar Tiwari, for the Appellant; V.K. Tiwari, S.C. (L and C),
for the Respondent

Final Decision: Allowed

Judgement

Prashant Kumar, J.

In this writ application, petitioners pray for quashing of the order dated 31.7.2000 (Annexure- A) passed by Additional Collector, Garhwa (respondent no. 3) whereby he cancelled the Jamabandi of petitioners in relation to the land pertaining to khata no. 4 plot no. 101 area 8.30 acres and plot no. 93 area 0.72 acres of village Bishunpur, P.S. Garhwa, District Garhwa. Petitioners further pray for restoration of their possession by removing pillars and fencings over a portion of land in question. Petitioners further pray for issuance of an appropriate writ in the nature of mandamus commanding the respondents not to dispossess petitioners from the land in question. It is stated that lands pertaining to khata no. 4, plot no. 101 area 8.30 acres and plot no. 93 area 0.72 acres of village Bishunpur, P.S. Garhwa, district Garhwa (herein after refer as land in question) originally recorded in the name of Nand Lal Sahu S/o Late Banarasi Sahu, who got 16 annas zamindari interest in the village Bishunpu district Garhwa. It is further stated that

Nand Lal Sahu died leaving behind his son Basant Sahu. Said Basant Sahu also died leaving behind his two sons namely Mahesh Sahu and Ram Awatar Sahu, who inherited all the properties of their ancestors. It is stated that shares of Ram Awatar Sahu and Mahesh Sahu carved out separately as per the decree passed in Partition Suit No. 17/1941. In the said partition suit, land in question came in the share of Ram Awatar Sahu. It is stated that said Ram Awatar Sahu by virtue of registered sale deed no. 1531 dated 10.5.1946 (Annexure-1) transferred the land to Tahal Sheikh, Deni Sheikh, Triveni Sheikh and Alim Sheikh. It is stated that petitioner no. 1 and 2 are sons of Deni Sheikh, petitioner no. 3 is son of late Nanhak Sheikh, petitioner no. 4,5 and 6 are sons of Triveni Sheikh, whereas original petitioner no. 7 (ancestor of petitioners no. 7(i) to (vi) was the sons of late Tahal Sheikh. It is stated that after coming into force of Bihar Land Reforms Act, intermediaries filed their return and in the said return they stated that transferee of the land in question are in possession of the same. It is stated that at the time of bhujarat operation, transferee were found in cultivative possession of the said land, accordingly, their names recorded in the Revenue Register. Certified copy of rent roll, showing determination of rent under various provisions of Bihar Land Reforms Act 1950 has been annexed as Annexure-7 to the supplementary affidavit.

2. It is stated that thereafter predecessors of petitioners started paying rent to the State vide Annexure-2 series. It is further stated that petitioners ancestors made considerable improvement in the lands in question and converted it into a paddy land. It is stated that petitioners were growing different crops on the land in question and paying irrigation taxes vide Annexures-3 series. It is stated that petitioners were in continuous and peaceful possession of the land in question from the time of their ancestors. It is stated that in the year 1991 petitioners received a notice from the office of Circle Officer, Garhwa asking them to show cause as to why demand running in their names should not be cancelled. It is stated that petitioners replied to the said notice and stated that they have got perfect title over the land in question and they are continuing in possession of same. Thus, their demand cannot be cancelled. It is stated that petitioners received no information regarding said proceeding, thus, they believed that the same had been dropped. It is stated that on 24.1.2003 some government employees alongwith police constables started taking measurement of petitioners' lands and they digged holes for placing pillars. It is stated that when petitioners protested to the aforesaid arbitrary and illegal action of respondents, the Revenue Authority and Police Officials assured that petitioners would not be dispossessed and the pillars will be removed after taking measurement of the lands of the vicinity. It is stated that after some time respondents started giving fencing on the pillars in question and by doing so they surrounded an area of 4.50 acres towards southern side of the land in question. It is stated that said fencing was shown by red color in the sketch map annexed with writ petition as (Annexure-5). Thereafter, present writ petition filed.

3. A counter affidavit filed on behalf of respondents, wherein it is stated that land pertaining to plot no. 101 and 93, khata no. 4 of village Bishunpur district Garhwa is

Gairmazarua land thus, after coming into force of Bihar Land Reforms Act, said land vested in the State of Bihar now Jharkhand. It is stated that rent receipts issued to the petitioners by the State were illegal because opening of demand itself illegal. It is further stated that on inquiry when it was found that demand has been illegally opened, then after giving sufficient opportunity of hearing to the petitioners, said demand was cancelled by competent authority vide order dated 31.7.2000 (Annexure-A). It is further stated that receipts showing payment of irrigation taxes are illegal, forged and fabricated. It is stated that there is no irrigation facility near the land in question, hence payment of irrigation taxes do not arise. It is stated that petitioners are not in cultivating possession. It is further stated that Revenue Authorities have inquired about the matter regarding right, title and possession of petitioners and found that demand was illegally running without order of any competent authority. Thus, issuance of rent receipts is illegal. It is further stated that after passing of order as contained in Annexure-A, land in question transferred to the police department for construction of police line.

4. Shri P.K. Prasad, learned senior counsel appearing for the petitioners submits that petitioners annexed photocopy of sale deed from which it is clear that lands in question transferred in the names of petitioners' predecessors. He further submits that petitioners specifically stated in the writ petition that on the basis of return filed by intermediaries, Revenue Authority recognized possession of petitioners and determined rent under various provisions of Bihar Land Reforms Act, 1950. It is stated that rent was fixed by the then B.D.O. Garhwa which is apparent from Annexure-7. It is stated that petitioners were paying rent to the State Government and they are continuing in peaceful possession of the land in question. It is stated that land in question transferred in the names of petitioners predecessors by registered sale deed dated 10.5.1946. Thus, according to provisions of section 4(h) of the Bihar Land Reforms Act, it is incumbent upon respondent no. 3 to initiate an inquiry and give full opportunity of hearing to the petitioners before passing impugned order and dispossessing the petitioner from a portion of the land in question. He submits that from perusal of Annexure-A, it is clear that respondent no. 3 had not made any inquiry and gave no finding to the effect that the land in question transferred with an object of defeating any provisions of Bihar Lands Reforms Act or causing loss to the State or for obtaining higher compensation. Accordingly, it is submitted that action of respondents is wholly without jurisdiction, arbitrary and violative of Article 300A of the Constitution of India.

5. On the other hand, Sri V.K. Prasad, learned standing counsel submits that it is admitted by the petitioners that Circle Officer gave notice to the petitioners to show cause as to why demand opened in their names be not cancelled. He further submits that petitioners also admitted that they filed their reply in response to show cause notice issued to them. Accordingly, he submits that opportunity of hearing given to the petitioners before cancellation of Jamabandi. He further submits that a Division Bench of this Court in the case of "Jagdeo Mahto Vs. Commissioner, North Chhotanagpur Division, Hazaribagh and others" reported in (2009) 2 JLJR 57 has held that Jamabandi standing

in the name of particular person can be cancelled after giving opportunity of hearing, if the same was based on the apparent error of record. It is submitted that lands in question are Gairmazarua land, therefore, after coming into force of Bihar Land Reforms Act, the same vested in the State of Bihar now Jharkhand. Thus, apparently jamabandi opened due to error of record. Therefore, the same has been cancelled. It is submitted that petitioners had wrongly stated that they were in cultivating possession of the lands because on inquiry it was found that the said lands are not agricultural land. Accordingly, it is submitted that there is no illegality in the impugned order. It is submitted that, petitioners were never in possession of the land in question, thus, question of their dispossession do not arise.

6. Having heard the submissions, I have gone through the records of the case.

7. It is stated by the petitioners at paragraph no. 11 that their predecessors purchased the lands in question from Ram Awatar Sahu on 10.5.1946 by virtue of registered sale deed as contained in Annexure-1. This fact has not been specifically denied by the respondents. At paragraph 9 of the counter affidavit, respondents only stated that sale deed annexed as Annexure-1 to the writ application is the transfer of share of lands in the year 1946 i.e. before vesting of Zamindari. Under the said circumstance, I find that respondents admit in their counter affidavit that there is transfer of land in question before coming into force of Bihar Land Reforms Act. Petitioners stated that ex-intermediaries gave return of vesting of Zamindari and in that return they stated that petitioners' predecessors are in possession of land. It is an admitted position that "Jamabandi" in relation to land in question open in favour of petitioners' ancestors. Annexure-7 shows that the then Block Development Officer, Garhwa determined rent under various provisions of Bihar Land Reforms Act treating the land in question as paddy land. It further appears that petitioners and their predecessors paid rent to ex-landlord and State Government. Petitioners also annexed receipts showing payment of irrigation taxes. Thus, I find that petitioners filed sufficient documents which prima facie shows their title and possession over the land in question. Thus, in my view State Government can take possession of land either by filing Civil Suit or by taking recourse of section 4(h) of Bihar Land Reforms Act. Admittedly, in this case, no suit filed by the State Government for declaration of its title and recovery of possession.

8. Section 4(h) of Bihar Land Reforms Act 1950 runs as follows :

"The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate of tenure or the transfer of any kind of interest in any building used primarily as office or cutchery 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 there under, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard, annul 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;]"

Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector or a district who shall dispose of the same according to the prescribed procedure:

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

9. From plain reading of aforesaid provisions it is clear that Collector can annul transfer and take possession of land by dispossessing a transferee after making proper inquiry and coming to the conclusion that said transfer was made with object of defeating any provisions of the Act or with a view to cause loss to the State or obtaining higher compensation. In the instant case admittedly land in question transferred after 1.1.1946 and after coming into force of Bihar Land Reforms Act "Jamabandi" open in the name of petitioners' ancestors, thus, in my view, before taking possession of land in question respondents are required to initiate an inquiry as contemplated u/s 4(h) of the Bihar Land Reforms Act.

10. From perusal of Annexure-A, I find that Additional Collector Garhwa (respondent no. 3) had cancelled Jamabandi of petitioners in relation to land in question only on the recommendation of Circle Officer, L.R.D.C. and Sub-divisional Officer, Garhwa. Annexure-A further reveals that Additional Collector himself made no inquiry for coming to the conclusion that transfer was made with a view to defeat any provisions of Bihar Land Reforms Act or with a view to causing loss to the State Government or for obtaining higher compensation.

11. From bare perusal of section 4(h) of Bihar Land Reforms Act, it is clear that Additional Collector is an adjudicatory authority, thus he is required to apply his independent mind on entire subject. Law further requires that Additional Collector should himself give notice to the petitioners and give them opportunity of hearing before passing of the order. In this case, no such opportunity given to the petitioners by learned Additional Collector. The notice given by Circle Officer before making recommendation for cancellation of Jamabandi is not sufficient compliance of the provisions of Section 4(h) of Bihar Land Reforms Act. Decision relied by the Standing Counsel in the case of "Jagdeo Mahto Vs. Commissioner, North Chhotanagpur Division, Hazaribagh and others (Supra) will not come in rescue of respondents because in the aforesaid judgment their Lordship had specifically held at paragraph no. 24 that :-

"In view of the discussions above, we hold that Jamabandi standing in the name of a particular person can be cancelled in appropriate cases such as when it is brought to the notice of the revenue authorities that the order or creating Jamabandi has been passed

by an authority who has no authority or jurisdiction at all or where the same is found to be based on the apparent error or record/ facts or on law but of course, after giving prior notice and an opportunity of hearing to the concerned person, whose interest would be adversely affected."

(Emphasis added)

12. Since in the instant case, Additional Collector has not given any opportunity of hearing to the petitioners before canceling of jamabandi and taking possession of the lands in question, in my view, action of respondents is wholly illegal and violative of principles of natural justice. In view of discussions made above, I allow this writ petition and quash Annexure-A to the counter affidavit. I direct respondents to restore the lands having an area of 4.50 acres of lands pertaining to plot no. 101 and 93 of khata no. 4 to the petitioners. I further direct that respondents shall not interfere with the petitioners' possession over the lands in question. However, I give liberty to the respondents to file civil suit for declaration of their title and recovery of possession or initiate a proceeding u/s 4(h) of the Bihar Land Reforms Act before annulling the transfer and taking possession of the land in question. In the facts and circumstances of the case, I order that parties shall bear their own cost.