
(2009) 57 BLJR 2253 : (2009) 3 PLJR 354

Patna High Court

Case No: CWJC No. 8763 of 2002

Meena Devi

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: March 24, 2009

Acts Referred:

- Bihar Tenants Holdings (Maintenance of Records) Act, 1973 - Section 16
- Consolidation Act, 1948 - Section 10(2)

Citation: (2009) 57 BLJR 2253 : (2009) 3 PLJR 354

Hon'ble Judges: Mridula Mishra, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mridula Mishra, J.

In all these three writ applications petitioners have prayed for quashing the order dated 14.6.2002, passed by the Collector, Buxar u/s 16 of Bihar Tenants Holding (Maintainance of Records) Act 1973 whereby Revision case No. 40 of 1997, 41 of 1997 and 42 of 1997 preferred by the petitioners against the order dated 11.2.1997 passed by the D.C.L.R. have been dismissed and Mutation Appeal No. 12 of 1996-97 preferred by respondent Nos. 4, 5, 6 and 7 against the order passed in Mutation case No. 971 of 1994-95 dated 31.3.1995 has been allowed and the order dated 31.3.1995 was set aside.

2. Petitioner in C.W.J.C. No. 8763 of 2002 is claiming his right title and interest on plot No. 657, 658, 664, 669 of Khata No. 160, total area 3.42 acres of land.

3. Petitioner"s case is that land was purchased by her ancestors through registered sale deed in the year 1924. At the time of vesting of the estate the return in respect to the land was filed in the name of ancestors. Rent was fixed and it was being paid initially by the ancestors and now by the petitioner and she is in cultivating possession of the land. On

the basis of order dated 24.10.1990, passed in Consolidation case No. 186 of 1990, khatian of the land was also prepared in her name. Similarly petitioner in C.W.J.C. No. 8919 of 2002 has claimed right title and interest over land of Plot No. 267 measuring an area of 1.53 acres of Khata No. 160. This land was also purchased by the ancestor of the petitioner in the year 1924 and till date petitioner is in possession, paying rent with regard to the land. His name has also been entered in the consolidation record under the provisions of Bihar Consolidation of Holding and Prevention of Fragmentation Act. Raj Narayan Ojha, petitioner in C.W.J.C. No. 8809 claims his right title interest and possession over the land pertaining to Plot No. 887, 893, 265, 266 and 267 of Khata No. 160. The lands were purchased by his ancestors in the year 1924. His name has also been entered into the consolidation records of right by the order passed by the Joint Director, Consolidation dated 14.12.1993 passed in Consolidation Revision case No. 423 of 1993.

4. Petitioners case is that they applied for mutation of their name, with respect to lands in their possession under the provisions of Bihar Tenant Holding (maintainance of Record) Act, on the basis of sale deed and the order passed by the Consolidation court recording of their names in consolidation records of right. The Circle Officer after considering the relevant records and enquiring about their possession, passed order dated 31.3.1995 in Mutation case No. 974 of 1994-95.

5. Private respondents preferred Mutation Appeal No. 14 of 1995-96 claiming that these are the lands which have been settled by the State Government in their favour in different settlement cases and purchase have been issued with respect to the plots, having been mutated in the name of the petitioners. The State of Bihar in whose name the lands are said to have been recorded, did not file any objection or appeal against the order passed in mutation case. The D.C.L.R. by order dated 11.2.1997 set aside the order passed in Mutation case No. 97 of 1994-95. Petitioners thereafter preferred revision before the Collector, Buxar vide Revision case No. 40/97, 41/97 and 42 of 1997, which have been dismissed stating that since the land belong to the State of Bihar and it has been settled in favour of the land less persons it could not have been mutated in the name of the petitioners.

6. No counter affidavit has been filed either on behalf of the private respondents or on behalf of the State, though notice have duly been served. The State of Bihar has also not filed any counter affidavit.

7. Fact which needs consideration is that the lands settled in favour of the private respondents are part of Plot No. 214 and not plots mutated in the name of petitioner. The settlement order dated 2.6.1995 has been annexed as Annexure-4 series which shows that part of plot No. 214 only has been settled in favour of the setlee. So far the petitioners are concerned, their names have been mutated with respect to some other lands, details of which has already been given. From the revisional order it is apparent that land settled in favour of private respondents are land, adjacent to the plot of

petitioners, mutated in their names. So far lands mutated in favour of petitioners are concerned, were wrongly recorded in the Consolidation proceeding in the name of State of Bihar. Objections were filed by the petitioners u/s 10(2) of the Consolidation Act and it was duly rectified by the order passed by the Joint Director, Consolidation. Against that order no appeal or revision was preferred by the State of Bihar or any person having any interest. In this view of the matter the land which has been mutated in the name of the petitioners cannot be said to be the land of the State of Bihar. Petitioners are in possession, which is apparent from different reports submitted by the Circle Officer and Halka Karamchari. Annexure-4 series also shows that the land mutated in favour of the petitioner and the land settled in favour of the respondents are different plots.

8. In this view of the matter the appellate authority as well as the revisional authority exercised their jurisdiction in an arbitrary manner, for setting aside the mutation order. There was no reason for entertaining the appeal preferred on behalf of private respondents, as they had no locus to challenge. In spite of that it was entertained and the order was passed by appellate authority as well as revisional authority i.e. Collector without looking into record and without going through the orders passed by the consolidation court.

9. Accordingly the impugned orders passed by the D.C.L.R. Buxar and the order passed by the Collector, Buxar in Revision case No. 40, 41 and 42 of 1997 dated 14.6.2002 are quashed. All these writ applications are allowed.