

## Shamima Khatoon and Another Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Sept. 27, 2012

**Acts Referred:** Bihar Tenancy Act, 1885 â€” Section 40

**Citation:** (2013) 2 PLJR 53

**Hon'ble Judges:** Kishore K. Mandal, J

**Bench:** Single Bench

**Advocate:** Bhupendra Narain Singh and Shailendra Kumar, for the Appellant; Anwar Karim, Abul Kalam, Gopal Prasad Roy, Samir Kumar and Satyendra Kumar Sharma, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Kishore K. Mandal, J.

Heard learned counsel for the petitioners and the State. Nobody has appeared on behalf of the private

respondents. Present application has been filed for setting aside the order dated 4.10.2002 (Annexure-1) passed by the respondent Commissioner

in Revision No. 2 of 1995-96. An interlocutory application being I.A. No. 987 of 2008 has been filed for setting aside the order dated 26.9.2007

passed by the respondent Circle Officer in Rent Fixation Case No. 2 of 2004-05 which was approved by the respondent Deputy Collector, Land

Reforms vide order dated 11.10.2007 (Annexure-9). Learned counsel for the petitioner submits that the impugned order dated 4.10.2002 passed

by the respondent Commissioner is wholly without jurisdiction. Relying on the said order, the impugned orders have been passed by the Revenue

Officers under him and, as such, they are also fit to be quashed.

2. Considering the aforesaid stand taken by the petitioner, this Court would notice the relevant facts leading to the present writ petition rather

briefly. Petitioners claim 1 bigha and 4 kathas of land appertaining to Khata No. 1673, Khesra No. 4848 situate in Mauza-Balia in the district of

Begusarai. According to them, the land in question was auction sold and purchased by Ambika Prasad and Prahlad Ram in Sale Certificate Case

No. 362 of 1923 which was followed by delivery of possession. The aforesaid co-purchaser sold the subject land in favour of Mohiuddin. The

descendents of Mohiuddin sold 12 kathas of land in favour of Abu Bakar Siddiqui who got his name mutated vide Jamabandi No. 224. On

28.6.1960, Abu Bakar Siddiqui executed a Deed of Ladavi in favour of his daughter Shamima Khatoon (petitioner No. 1) in the year 1983.

Remaining 12 kathas was transferred in favour of petitioner No. 2 by the aforesaid Abu Bakar Siddiqui.

3. On the other hand, according to the respondents, the land in question was recorded in the Cadestral Survey as Gair Majarua Khas in

possession of one Navi Raza @ Kudri Babu, resident of Village-Lakhminia. Aforesaid Navi Raza @ Kudri Babu had two wives. The son of the

first wife of the aforesaid Navi Raza sold on 3.11.1960 the subject land in favour of ancestor of the respondents. As per the return submitted by

the Ex-Landlord, the name of the petitioners were recorded in the Register-II of the State in respect of the subject land. Respondent No. 5 filed an

application for correction of jamabandi giving rise to Case No. 29 of 1987-88 which was rejected by the respondent Circle Officer by order

dated 15.1.1988 (Annexure-4). Having considered the issue raised therein, it was observed that the party aggrieved may approach the Court of

competent civil jurisdiction for adjudication of right, title and interest in respect of the subject land. No appeal/revision was filed there against.

Nearly 5 years thereafter, an application (Annexure-5) u/s 40 of the Bihar Tenancy Act (for short "'B.T. Act'") for cancellation of Jamabandi Nos.

125 and 224 was preferred by the respondent before the respondent Circle Officer giving rise to Rent Fixation Case No. 31 of 1992-93. The

petitioners appeared and resisted the said claim of the respondents. On a consideration of the materials placed by the parties, the respondent

Circle Officer by order dated 30.3.1993 (Annexure-3) took the same view as was taken while disposing of the first application preferred by the

respondents under order dated 15.1.1988. Aggrieved thereby, the private respondents filed appeal vide Rent Commutation Appeal No. 3 of

1993-94. The respondent Additional Collector having heard the parties rejected the said appeal vide order dated 28.6.1995. Feeling aggrieved,

the respondents filed a revision before the Divisional Commissioner, Munger vide Revision No. 2 of 1995. The petitioners, on notice appeared in

the said proceeding and raised an issue of jurisdiction. The respondent Divisional Commissioner by the impugned order dated 4.10.2002 observed

that in sum total, a long outstanding jamabandi is required to be disturbed if the prayer of the revisionist is to be allowed. Having held so, he

disposed of the revision in the following terms:--

I find, and hold, that intricate question of fact and law is involved in this case, as well as right, title and interest and possession have also been

challenged. Auction sale as well as registered sale deed are claimed to be of no bearing. Thus, I am of the opinion that the matter shall be agitated

in the Civil Court by the party aggrieved by this order as revenue court is not competent to decide such issues.

The order appears to be passed by Additional Collector who too was not competent to enter into such question. Thus the order of the Additional

Collector also stands set aside.

The matter stands disposed of accordingly.

4. While assailing the order, the learned counsel for the respondents has contended that the respondent had invoked the jurisdiction of the Revenue

Authority u/s 40 of the B.T. Act which was considered and rejected initially by the Circle Officer which was affirmed on appeal by the respondent

Additional Collector. There is no provision of revision there against in terms of the provisions of the Act and, as such, the respondent

Commissioner had no jurisdiction to entertain the same and while disposing of same to interfere with the order of the Additional Collector dated

28.6.1995 (Annexure-2) whereby the view taken by the respondent Circle Officer in order dated 30.3.1993 that the remedy, in the facts and

circumstances, lie before the Civil Court, was affirmed. By filing interlocutory application, the petitioners have sought quashing of the order

contained in Annexure-9. Learned counsel submits that the petitioner had filed an application before the respondent Commissioner raising a

specific issue of maintainability which was rejected by order dated 16.8.1996 where against they filed a writ petition in this Court vide C.W.J.C.

No. 3816 of 1997 which was disposed of by this Court by order dated 17.9.1997 (Annexure-6). This Court deems it apposite to extract relevant

portion of the order dated 17.9.1997 (Annexure-6):--

It is merely an interlocutory order and on that score, I am not inclined to interfere in this matter at this stage. Mr. Bhupendra Narain Singh, learned

counsel appearing on behalf of the petitioners expressed an apprehension that in case the petitioners participated in the revisional proceeding

before the Divisional Commissioner, they would not be in a position later to assail the order on the ground that it was without jurisdiction.

In my opinion, such an apprehension is misconceived. The petitioners have already raised an objection regarding the jurisdiction of the Divisional

Commissioner to proceed with the revision case and in the event the petitioners are adversely affected by the revisional order, it would be open to

them to assail it also on the ground that it was without jurisdiction.

5. Learned counsel placed before the Court the contents of the order passed by the respondent Circle Officer and affirmed by the respondent

Deputy Collector, Land Reforms (Annexure-9). He submits that the respondents misconstrued the facts of the case as well as the order dated

17.9.1997 passed in C.W.J.C. No. 3816 of 1997 and thereby allowed the correction in jamabandi in respect of the subject land in favour of the

private respondents. The order passed by the respondent as contained in Annexure-9 is, therefore, fit to be quashed and set aside by this Court.

The petitioner in order to substantiate his contention has relied on a Division Bench judgment of this Court since reported in Raghuraj Prasad Singh

Vs. Basudeo Singh and Others, .

6. Learned counsel for the State, on going through the diverse orders passed by the Revenue Authority in the present proceeding including the

orders contained in Annexure-3 and 4 takes a stand that since complicated question of title was involved in respect of the subject land, the best

course open to the aggrieved parties would be to seek remedy in the Civil Court in respect of the subject land. In other words, he has taken a

stand before this Court which was taken by the respondents in the order dated 15.1.1988 (Annexure-4) as well as in the order dated 30.3.1993

(Annexure-3).

7. After hearing the parties and on perusal of the materials on record, it appears that the respondents initially raised a claim in respect of the subject

land before the respondent Circle Officer by instituting a proceeding bearing Case No. 29 of 1987-88 which was considered and rejected by the

respondent Circle Officer by order dated 15.1.1988 (Annexure-4). By the said order, the respondent Circle Officer having found a complicated

question of title involved in the case, denying the relief to the respondents, observed that the issue in respect of the subject land can be raised

before the Civil Court for adjudication of right, title and interest. The said order was not appealed by the respondents. Few years thereafter, he

again filed a proceeding u/s 40 of the B.T. Act for commutation of rent giving rise to Case No. 92 of 1993 which was considered and rejected by

order dated 30.3.1993 (Annexure-3) by the respondent Circle Officer. Aggrieved thereby, he filed an appeal vide Rent Commutation Appeal No.

3 of 1993 which was considered and rejected by the Appellate Court by order dated 28.6.1995 (Annexure-2). The respondents thereafter

approached the Divisional Commissioner who entertained the same and while upholding the view taken by the Courts below that the issues raised

by the parties required to be adjudicated only by the Civil Court, interfered with the order dated 28.6.1995 passed by the respondent Additional

Collector (Annexure-2). The core issue is whether the respondent Divisional Commissioner had the jurisdiction to entertain the revision preferred

by the respondent against the order dated 28.6.1995. On perusal of the provisions contained in Section 40 of the B.T. Act, it appears that the

same relates to commutation of rent payable in kind. This is not the case of the petitioner or the respondent that the rent in respect of the subject

land was/were being paid in kind. Any dispute relating thereto is required to be filed before the Collector or the Sub-Divisional Officer or to a

Revenue Officer appointed by the State under the designation of the Settlement Officer or Assistant Settlement Officer. An appeal is provided

against the said order passed by the authority before the Collector of the district. Section 5 thereof clearly contemplates that the order passed on

appeal by the Collector shall be final. This Court, therefore, finds substance in the submission of the counsel for the petitioners that no revision was

maintainable before the Respondent Commissioner against the order dated 28.6.1995 even if the proceeding is considered to be one taken u/s 40

of the B.T. Act.

8. If that be the position, then the respondent Commissioner while upholding the view taken by the Courts below that the issue require adjudication

by the Civil Court wrongly interfered with and set aside the order dated 28.6.1995 (Annexure-2) by the impugned order dated 4.10.2002

(Annexure-1). It appears from perusal of the order(s) contained in Annexure-9 that the same has been passed relying on the impugned order of the

respondent Commissioner dated 4.10.2002 (Annexure-1) whereby the order of the Additional Collector (Annexure-2) was set aside. Since I have

already held that the respondent Commissioner had no jurisdiction to interfere in the matter invoking jurisdiction which was not vested in him, the

orders passed by the respondents as contained in Annexure-9 is also fit to be interfered with and quashed.

9. Accordingly, while allowing the writ application and setting aside the orders contained in Annexures-1 and 9, this Court observes that it shall be

open for the parties aggrieved to approach the Court of competent civil jurisdiction for adjudication of right, title and interest in respect of the

subject land. Application is allowed in aforesaid terms. No cost(s).