

Devendra Thakur Vs. the State of Bihar and ors.

Devendra Thakur Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/122915

Court : Patna

Decided On : Feb-13-2008

Judge : Mihir Kumar Jha, J.

Appellant : Devendra Thakur

Respondent : The State of Bihar and ors.

Prior history : Mihir Kumar Jha, J. Heard Counsel for the parties. 1. In this writ application, the petitioner has assailed the correctness of the impugned order dated 25.11.2005 passed by the Collector of Madhubani district in Misc. Case No. 138/1998-99 holding that the oral claim of the petitioner with regard to the title and possession of the land in question, plot No. 6780 & 6781 of mauza Basuki Bihari cannot be upheld especially when the land in question being a sairat (pond) having vested in the State i

Judgement :

Mihir Kumar Jha, J.

Heard Counsel for the parties.

1. In this writ application, the petitioner has assailed the correctness of the impugned order dated 25.11.2005 passed by the Collector of Madhubani district in Misc. Case No. 138/1998-99 holding that the oral claim of the petitioner with regard to the title and possession of the land in question, plot No. 6780 & 6781 of

mauza Basuki Bihari cannot be upheld especially when the land in question being a sairat (pond) having vested in the State in terms of Bihar Land Reforms Act was being settled by the State for last 30 years.

2. It has to be noted that earlier also, the petitioner had moved before this Court with the same claim and this Court did not choose to decide such dispute and relegated the petitioner to approach the District Head of Revenue namely Collector of the district by its order dated 25.1.1999 in CWJC No. 607/1998 which reads as follows:

The grievance of the petitioner is that the tank in question belongs to the petitioner which has been settled in favour of the respondent without any notice. It is further submitted that several petitions have been filed before the respondent authority but no order has been passed as yet. Accordingly, in order to expedite the matter, I direct the petitioner to file a fresh representation before the Respondent Collector of the District who will hear the parties and pass an appropriate order without being prejudiced by the order passed by this Court on early as possible preferably within two months from filing of such representation. This disposes of this writ application.

3. In fact the impugned order has been passed pursuant to the aforementioned direction of this Court. The Collector, the District Head of the Revenue, having considered all aspects, has disposed of the application of the petitioner by passing a reasoned order which cannot be said to be vitiated much less interfered by this Court exercising its jurisdiction under Article 226 of the Constitution of India. The Collector in his order has held that

vkosnd dk ;g dguk fd iz'uxr iks[kjk jS;krh gS A xyr gS dkj.k xr losZ [kkfr;ku esa ;g xSj et:vk [kkl vafdr gS A tks tehankjh mUewyu ds ckn Lor% ljdkj esa fufgr gks tkrk gS A vkosnd ds ikl iz'uxr Hkwfe dk LoRo lEcU/kh dksbZ dkxtkr ugh gS A ftlls muds fodzsrk dk cUnksclrh izekf.kr gks A yxku jlhn LoRo dk izek.k ugh gksrk gS] bls leZFKu esa cUnksclrh ds dkxtkr ;k dksbZ vU; Bksl izek.k gksuk vko;'d gS gky losZ dkxtkr ds vk/kkj ij LoRo dk nkok Lohdkj ugh fd;k tk ldrk gS A /kkjk 145 lh-vkj-ih-lh-okn la;k 85@1965 Jh jkepUnz Bkdqj cuke jkepfj= egrks esa izFke i{k dk eqaflQ izFke ds vkns'k ds vkyksd esa ?kksf'kr fd;k x;k gS A ;g vkns'k vuqeaM+y inkf/kdkjh

e/kqcuu us fnukad 14&9&1970 dks fn;k gS A iz'uxr Hkwfe o'kZ 1975&76 ls ISjkr lwph esa miyC/k gS vkSj izR;sd o'kZ bldh cUnkscLrh eNqvks ds lkFk dh x;h gS A o'kZ 1975 ls 90 rd vapy nokjk cUnkscLr gS A rFkk mlds ckn e RL; ikyd fodkl vf/kdj.k us 1&4&1997 ls 31&3&2000 rd pUnz'ks[kj lguh ds lkFk cUnkscLr fd;k gS A Jh pUnz'ks[kj lguh bl okn esa izfri{k la;k& 5 gS A mi;qZDr fooj.kh ls Li'V gS fd iz'uxr Hkwfe o'kZ 1975 ls ljdkj ds dCtk esa gS A fildh cUnkscLrh fofHkUu yxsxks ds lkFk gqbZ gS A ;fn iz'uxr Hkwfe vkosnd ds dCts esa gksrh rks izkjaHk esa gh vkifRr djrs tks ugh fd;k x;k gS vkSj u dHkh ISjkr lwph ls gVkus gsrq vkosnu fn;s gS Avkosnd us fy[kk gS fd 1944 bZO es HkwriwoZ tehankj us misUnz >k dks iz'uxr Hkwfe iV~Vk ij cUnkscLr dj dCtk ns fn;k ijUrq ,slk dksbZ dkxtkr ;s izLrqr ugh fd;k gS mudk dFku gS fd tehUnkj us fjVZu fn;k gS ds laca/k esa gYdk deZpkjh dk izfrosnu gS fd gYdk es rjehe miyC/k ugh gS js UV lqV fdl tehu ds yxku fd fy, pyk ;g dgh vafdr ugh gS A /kkjk 145 esa vkosnd jke pUnz Bkdqj dk dCtk fnukad 14&70 dks ?kksf'kr fd;k x;k rFkk gky losZ [kfr;ku izfri{k ds uke cu x;k gS ftlds fo:) /kkjk 103,0 ds vUrZxr ljdkj n~okjk vkifRr nkf[ky fd;k x;k tks [kkfjt gks x;k A vkns'k fnukad 27&1&78 es ek= bru gh fy[kk gS fd izfroknh dk [kkrk izHkkjh inkf/kdkjh njHkaxk ds vkns'kkuqlkj rLnhd esa [kksyk x;k gS ftls ony djuk mfpr ugh le>rk gWWa A vkifRr vLohd`r dh x;h ;g rF; ij vk/kkfjr vkns'k ugh gS ftls vihy gksuk le> pkfg, Fkk tks ugh fd;k x;k gS Ami;qZDr fLFkfr ls Li'V gS fd vkosnd dk nkok ekSf[kd gS ftlds leZFku esa muds ikl dkxtkr ugh gS A vkosnd dk dCtk /kkjk 145 n00iz0l0 esa o'kZ 1970 es ?kksf'kr gqv k gS A ijUrq o'kZ 1975&76 ls v|ru dCtk ljdkj dk izrhr gksrk gS A pwWafd HkwriwoZ e;/orh n~okjk fuxZr cUnkscLrh laca/kh dksbZ dkxtkr ugh gS blfy, fo0Hkw0lq0 vf/k0 dh /kkjk 4p ds vUrZxr dk;Zokgh ugh gksxh A gky losZ dk vkns'k Hkh rF; ij ugh gS A blfy, izfri{k ds uke pyh jgh tekUnh dh LFkfxr j[krs gq, vpy vf/kdkjh e/kokiqj dks vkns'k fn;k tkrk gS fd gky losZ vkns'k ds fo:) l[ke U;k;ky; esa vihy nk;j djs A LoRo fu.kZ; ds vuqlkj vfxze dk;Zokgh gksxh A

4. In the opinion of this Court, such disputed question of fact as to whether there was a valid settlement of land in favour of the father of the vendor of the petitioner by ex-zamindar in the year 1944 and as to whether an order passed under Section 145 of the Code of Criminal Procedure could by itself proved the title of the petitioner cannot be effectively gone into by this Court especially when they would involve complicated complex and seriously disputed question of fact.

5. The Collector of the district in his aforementioned order has found that there are no unimpeachable documentary evidence on the basis of which it can be held that the character of land was a raiayti land and not sairat (pond) and in fact the entry of the land in question as sairat in the Sairat Register followed by its settlement made by the State in favour of the private individual on year to year basis from the year 1975, itself went to show that the petitioner was not even in possession of the same. Such findings cannot be said to be based on any error of record so as to correct them by issuing a writ of certiorari. This aspect of the matter is well settled and reference in this connection may be made to the judgment of the Apex Court in the case of Swarn Singh and Anr. v. State of Punjab and Ors. reported in : AIR 1976 SC232 wherein the Apex Court had laid down the law in the following terms.

Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well settled that Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case : [1964]5SCR64 (supra) 'this limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

6. In the facts of the present case, when the petitioner had failed to produce any documentary to evidence before the Collector of the district as with regard to the alleged settlement of land by ex-landlord in favour of the Upendra Jha in the year 1944 or a return allegedly filed by Zamindar in the year 1951-52 showing Upendra Jha to be raiyati of the land in question, a mere reference of some certificate case which also does not clearly contain the details of the land could not have been held to be a clinching evidence on the question of title of the vendor of the father of the petitioner. Thus, a mere sale deed dated 12.5.1964 of the aforesaid Upendra Jha in favour of the father of the petitioner for the land in question, not being shown as sairat but as raiyati land could not have been a conclusive proof with regard to the right of the petitioner in the sairat in question. The reliance placed by the Counsel for the petitioner on an order dated 14.9.1970 as with regard to the petitioner being in possession of the land under Section 145 of the Code of Criminal Procedure also cannot be a proof of title of the petitioner especially when it is the State which has been in possession of the sairat for atleast last 30 years as has been noted by the Collector of the district in his impugned order.

7. As a matter of fact, this Court would not also find any merit in the claim of the petitioner as with regard to the title of the sairat in question on the basis of an order passed in Mutation Case No. 2/1976-77 dated 12.3.1977 as an order of mutation does not create title. Finally non-speaking order dated 27.1.1978 passed under Section 103(a) of the B.T. Act as with regard to entry of his name in Khesra Panji and in course of survey proceedings would again be not even a prima facie evidence much less clinching evidence of the title of the petitioner. The crucial question in fact which can be gone into effectively by a Civil Court is as to whether the land being claimed by the petitioner to be raiyati land was ever raiyati land or in fact a sairat (pond) which had vested in the State in terms of the provisions of Bihar Land Reforms Act. Such disputed question of facts as with regard to the title, possession including the character of land cannot be gone into by this Court under Article 226 of the Constitution of India and the petitioner therefore in order to get his right, title and possession of land in question would be required to file a civil suit. This aspect of the matter in fact again stand well settled and reference in this connection may be made to the judgment of the Apex Court in the case of *Arya Vyasa Sabha etc. v. The Commissioner of Hindu Charitable and Religious*

Institutions and Endowments, Hyderabad and Anr. reported in : AIR 1976 SC475 and in the case of D.L.F. Housing Construction (P) Ltd. v. Delhi Municipal Corporation and Ors. reported in : AIR 1976 SC386 .

8. That apart, the plea of the petitioner that all the original documents filed in the Court in course of contesting a proceeding under Section 145 Cr.P.C. were lost and could not be recovered by the petitioner from the concerned Court itself makes the entire claims of the petitioner as with regard to title and possession of land in question completely suspicious. The petitioner in fact having taken no action at appropriate point of time in the year 1970 as with regard to the recovery of such records from the Court where he had allegedly filed all of them in course of contesting the proceeding under Section 145 Cr.P.C. cannot be allowed to make premium at least before this Court in a proceeding under Article 226 of the Constitution of India.

9. The State in the Counter Affidavit sworn by the Sub-divisional Officer, Baban Prasad, Madhubani has also taken categorical stand that the land in question is a gairmazarua khas land which had vested in the State of Bihar and being sairat (pond) was not only included in the Sairat Register of M.P. Anchal but was also settled by the competent authority of the State from 1975-76. In that view of the matter, when the petitioner claims his right and title in the sairat, he having failed to produce the Hukumnama Patta regarding settlement of land in question by the ex-landlord or any return submitted by the ex-landlord, could not have been held to be perfected his title only because he was a purchaser from the settlee of the ex-landlord (zamindar). Such zinxed and complicated question in fact were not even capable of being decided by the Collector of the district and the appropriate remedy for the petitioner was to approach the Civil Court seeking declaration of the right, title and possession. But, the petitioner has chosen shorter route by approaching this Court under Article 226 of the Constitution of India to get such complicated and disputed question of fact adjudicated in a writ petition. Such recourse is not permissible and in this context the following passage of the Apex Court in the case of D.L.F. Housing (supra) would be a complete answer to the submissions of the counsel for petitioner wherein it was held that:

In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.

10. The last part of the grievance of the petitioner was with regard to the suspension of the order of mutation dated 27.3.1977 in Mutation Case No. 2/1976-77 also is misconceived because once the Collector had held that the question of title would decide the question of possession and since the possession is of the State which has been settling the sairat in question for last 30 years, no prejudice is going to be caused to the petitioner by even that part of the impugned order of the Collector of the district wherein mutation earlier allowed in favour of the petitioner has been only kept under suspension.

11. Counsel for the petitioner however is correct to that extent that cancellation of an order of mutation in favour of the petitioner can be made only in accordance with law and therefore, till such mutation order in favour of the petitioner is not cancelled, the Collector of the district should not have kept the same under suspension. In this regard, all that can be said is that the order of the Collector of district as with regard to the suspension of an order of the mutation in the name of the petitioner has to be understood in the context that State was in the possession of sairat for last 30 years and was also making settlement in favour of the individuals who had been exercising their right over the pond on the basis of their settlement. Technically, the order of mutation would confer no right on the petitioner especially when his possession according to his own case stand interfered by the State for more than last 30 years and in fact, from 1975 onwards by making settlement of the sairat in question with the private individuals. In that view of the matter, the impugned order passed by the Collector of the district would require no interference but then this much is clarified that by virtue of

suspension of the mutation in the name of the petitioner, he will not be prejudiced in any manner in enforcing his claim of right, title to the disputed land in the event he chooses to approach Civil Court.

12. In other words, that part of the order of the Collector of the district as with regard to the suspension of mutation would not be given effect to but then it is clarified that the State or its agency will continue to make settlement of the sairat in the same manner as it has been going from 1975 onwards till the Civil Court of a competent jurisdiction declares the right, title and interest of the petitioner in the land/sairat in question.

13. With the aforementioned observations, this application is disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com