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Court : Patna

Decided On : Sep-03-2008

Judge : Samarendra Pratap Singh, J.

Appellant : Md. Abbas and ors.

Respondent : State of Bihar and ors.

Judgement :

Samarendra Pratap Singh, J.

1. Heard the learned Counsel for the petitioners, the State as well as the private respondents.
2. In the instant writ application the petitioners have prayed for an appropriate direction to the official respondents, namely, respondents No. 2 to 7 to remove the illegal incroachment made on his plot by the private respondents.
3. This case has very chequered history. A land ceiling proceeding being Land Ceiling Case No. 275 of 1976 was initiated against Vishwanath Kuer and Anandi Kuer, the landholders. The aforesaid landholders filed their objections stating that they hold 9 acres 34 decimals of land and remaining 41-42 acres of land belong to other cosharers as mentioned in para 3 of objection petition itself. The landholders stated that they have already sold the remaining 9 acres 34 decimals of land of Mauza Barhari to different persons in the year, 1973 and some portions of the

lands have been submerged in the Ganges water.

4. The petitioners filed writ application being CWJC No. 2742 of 1983 in this Court. This Court by order dated. 10.8.1992 disposed of the writ application with a direction to the file an application under Section 45-B of the Land Ceiling Act (hereinafter to be referred to as 'the Act') before the Revenue Minister, Government of Bihar. The petitioners filed application under Section 45-B of the Land Ceiling Act but the Revenue Minister vide order dated 21.5.1997 rejected the same without applying his mind. Thereafter the petitioners filed CWJC No. 5302/97 before this Court.

5. This Court after hearing the learned Counsel for the parties directed the State counsel to file a detail counter affidavit and a direction was also given that the petitioners would not be dispossessed from their respective lands. Ultimately this Court vide order dated 17.7.1998 disposed of CWJC No. 5302/97 setting aside the order dated 21.5.1997, passed by the Hon'ble Revenue Minister and remitted the matter back to the respondent-State to consider the matter afresh to open the case under Section 45-B of the Act, treating the such land to have been selected by the landholders.

6. Thereafter, the petitioners filed a case before the Minister of Revenue, Government of Bihar, giving rise to case No. 2 of 1998 under Section 45-B of the Act. The learned Minister vide order dated 11.9.2001 after opening the case under Section 45-B of the Act and after due consideration directed the Collector to release the land of the petitioners and to acquire the land of the landholders.

7. As no action was taken by the Collector, Bhagalpur despite order of the Hon'ble Minister the petitioners were compelled to file CWJC No. 7396/04 before this Court in which the learned State counsel filed a detail counter affidavit with stipulation therein that the matter will be disposed of within three months. This Court vide order dated 14.9.2004 disposed of the said writ application with undertaking of State Government that neither any purcha would be issued nor the possession of the petitioner as to the land in question shall be disturbed. A photocopy of the order dated 14.9.2004 is appended as Annexure-2.

8. As the order of this Court was not complied with the petitioners filed contempt application being MJC No. 362 of 2005, in which the State filed show-cause dated 21.2.2006. In the counter affidavit it was stated that the land of the petitioners who are purchasers from the original landholders had been released from the category of surplus land and modified Gazette Notification No. 329 dated 12.3.1981 issued under Section 15(1) of the Act vide order dated 11.2.2006. The purcha, thus, issued to the private respondents were cancelled and recalled.

9. The petitioners filed objection to the show-cause, filed by the State stating that certain lands were still left to be released, details of which was given therein. Thereafter the Collector vide order dated 18.4.2006 modified its earlier order and released further lands and accordingly modified the notification under Section 15(1) of the Act. The State in its second show-cause categorically stated in paras 4 and 6 that the purcha holders were never given possession by the administration nor their possession is as per the land mentioned in the purchas. It was stated that the land till date is continuing as private land. This Court dropped the contempt proceeding vide order dated 20.6.2006.

10. Further case of the petitioners is that during the pendency of the CWJC No. 7396/04, the private respondent began creating trouble to forcibly encroach upon the land for which necessary information was given to the Goradih Police Station, and after due inspection the Officer-in-Charge of Goradih Police Station, sent a report to the SDO, Bhagalpur to initiate a proceeding under Section 144 of the Cr PC, against the private respondents. There upon SDO, Bhagalpur initiated a proceeding against some of the private respondents and made it absolute.

11. Learned Counsel for the petitioners submits that though initially purchas were issued for the acquired land in question, but possession was never given to them. It is submitted that the Circle Officer had admitted that about 3 acres of land of the petitioners had been encroached upon. Learned Counsel submits that the private respondent challenged the cancellation of their purcha including release of land in favour of the petitioners by authorities in CWJC No. 10370/06, which was dismissed on 28.2.2007, by a Bench of this Court as contained in Annexure-6 to this writ application. The private respondents according to the petitioners are

trespassers and illegal intruders of their land. He further submits that even the Circle Officer, respondent No. 6 sent a report to the SDO. Bhagalpur, respondent No. 5. stating therein that the private respondents are illegally trying to encroach upon the land of the petitioners.

12. The case of the private respondents is that they have filed counter affidavit stating therein that purchas were rightly issued in their favour and consequently they came in possession of the land in question. In this context the learned Counsel for the respondents referred to the copy of the parwana/purcha which is appended to the counter affidavit as Annexure-B series. It is stated that they filed LPA being LPA No. 274 of 2007, against the order dated 28.2.2007, passed in CWJC No. 10370/06 by Hon'ble Mr. Justice Navaniti Prasad Singh. The aforesaid LPA was permitted to be withdrawn by order dated 23.11.2007 with observation that:

In case the appellants chose to file review application, same shall be decided on its own merit and order dated 28.2.2007 passed in CWJC No. 10370/06 shall not come in its way.

Thereafter the private respondents have filed C. Review. No. 27/8 in the light of liberty granted by this Court for reviewing the order dated 17.7.1998 passed in CWJC No. 5302/97 and order dated 14.9.2004 passed in CWJC No. 7396/04.

13. After hearing the learned Counsel for the parties, this Court finds that a Bench of this Court vide order dated 1.7.1997, passed in CWJC No. 5302/97, contained in Annexure-1 ordered that the petitioners shall not be dispossessed from the lands claimed by them. Ultimately, pursuant to the direction of this Court in the aforesaid CWJC No. 5302/97, the petitioners filed a case before the Minister of Revenue bearing Case No. 2/98, under Section 45-B of the Act and the learned Minister opened the case under Section 45-B of the Act and after consideration of the case directed the Collector to release the land in favour of the petitioners from category of surplus land. Pursuant to the aforesaid order the Collector, Bhagalpur, vide his orders dated 11.2.2006 and 18.4.2006, as contained in Annexure-5, directed to release the land in question in favour of the petitioners and amended Gazette Notification as required under Section 15(1) of the Act and same was duly

published. The purcha granted to the private respondents was also cancelled. The private respondent preferred CWJC No. 10370/06, in this Court against the order cancelling their purcha which was dismissed vide order dated 28.2.2007, as contained in Annexure-6.

14. In view of the aforesaid discussions, it would appear that the petitioners have a rightful claim of the land in question, which has been duly released in their favour after reopening of the case under Section 45-B of the Act, pursuant to the order of this Court. Mere pendency of the Civil Review application bearing C. Review No. 27/08, for review of the different orders of this Court including orders passed in different writ applications will not pre-empt the claim of the petitioners to the rightful enjoyment of the land which has been released in their favour.

15. The Hon'ble Apex Court in the case of : (2006)4SCC501 . R.R. Murlidharan and Ors. v. Swami Dharmananda Theertha Poddar and Ors. observed that a citizen is legally entitled to rightful enjoyment of the properties which has been decreed in his/her favour the Court concerned.

16. After having considered the facts and circumstances of the case, this Court observes that the petitioners, if so advised may file an appropriate application before the SDO, Bhagalpur, for ensuring peaceful enjoyment of the land and on receipt of the same the concerned SDO as well as CO will take appropriate action in the light of the decision of the Hon'ble Apex Court as well as orders of the High Court for removal of alleged encroachment made on their land in question within three months from the date of representation.

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