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Court : Jharkhand

Decided On : Jul-31-2003

Reported in : [2003(4)JCR41(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Bihar Land Reforms Act, 1950 - Sections 4; Constitution of India - Article 226

Appeal No. : CWJC No. 2216 of 1994 (R)

Appellant : Smt. Gulabasi Devi and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : C.S. Prasad and; Kishore Kr. Mishra, Advs. for respondent No. 7 and;

Advocate for Pet/Ap. : N.N. Tiwary, Sr. Adv.

Disposition : Petition allowed

Judgement :

M.Y. Eqbal, J.

1. In this writ application the petitioner has prayed for quashing the entire proceeding and the order dated 23.7.1994 passed in Miscellaneous Case No.

40/1993-94 whereby the respondent No. 2 Deputy Commissioner, Garhwa purported to have accorded sanction for cancellation of jamabandi running in the name of the petitioners and their vendor on the objection raised by respondent No. 7 now deceased. A copy of the order sheet of the Miscellaneous case has been annexed as Annexure 10 to the writ application.

2. Mr. N'.N. Tiwary, learned senior counsel appearing for the petitioner assailed the impugned order and the entire proceeding as being wholly illegal, arbitrary, mala fide and without jurisdiction. Learned counsel submitted that Jamabandi once opened in pursuance of a judicial proceeding and become final, the same cannot be cancelled in a subsequent proceeding, the entire proceeding and the impugned order is hopelessly barred by the principle of res judicata and the respondent have committed serious error of law in according sanction for cancellation -of jamabandi created in the name of the vendor of the petitioners and subsequently in the name of the petitioners.

3. The land which are involved in; the proceeding of the Miscellaneous Case No. 40/1993-94 comprise within several, plots of Khata No. 255 of village Nagaruntari and Khata No. 9 of Bahaiyart measuring an area of 3.16 acres. The admitted facts are that the land were recorded as Gair Maxarua Malik in the record of rights prepared in the year 1914 in the name of ex-landlord Bhaiya Raj Kishore Deo. On his death the entire properties including the said land were inherited by his son Bhaiya Rudar Pratap Deo. The petitioner's case is that the ex-landlord by virtue of deed of settlement dated 26.6.1945 settled the land in favour of Ram Kewal Sahu. The settle Ram Kewal Sahu continuously paid rent to the ex-landlord till the date of enforcement of Bihar Land Reforms Act. It is contended that the ex-landlord submitted his return before the competent authority in the year 1952 and in that return Ram Kewal Sahu was shown as settle in respect of the land in question. In or about 1966 Ram Kewal Sahu made an application for mutation of his name and opening of jamabandi and the same was allowed after full-fledged inquiry and a jamabandi was opened in the name of Ram Kewal Sahu. In the year 1968 Ram Kewal Sahu sold the land in question in favour of Madan Prasad and petitioner No. 1 and Madan Prasad in his turn sold the land of his share to the petitioners and on the application filed by the petitioners their names were entered in the jamabandi

register.

4. The dispute arose in 1977 when respondent No. 7 made an application before Additional Collector, Palamau stating inter alia that the transfer of land in question which was sold to the petitioners is illegal and their names were wrongly mutated in respect of the said land. The said application was rejected by the Circle Officer on 4.8.1977 after holding an inquiry in the matter. One Baij Nath Prasad has also filed an application for mutation of his name in respect of 31 decimals of land appertaining to plot No. 34-37 and 24 including portion of the land in question in respect of which demand was already opened in the name of the vendor of the petitioners which application was also rejected on 20.4.1969. The said Baij Nath Prasad preferred second appeal before the Additional Collector, Palamau which was registered as Revenue Appeal No. 117/69-70. The Additional Collector, Palamau by his order dated 4.8.1977 passed in case No. XV/117 of 1969-70 rejected the appeal holding that the land in question belongs to the petitioners who along with his vendor have acquired valid right, title and possession. It further appears that at the instance of respondent No. 7 the land encroachment proceeding was initiated against the petitioners in respect of the said land being case No, 1/1987-88. The Collector by order dated 31.10.1988 dropped the proceeding holding that the land was not a public land within the meaning of the said Act. It further appears that in the mutation proceeding filed by the petitioner their names was ultimately mutated on the basis of order passed in Mutation Appeal of 1987. The respondent No. 7 also challenged the order of mutation passed in favour of the petitioners by filing revision before the Additional Collector which was registered as Mutation Case No. 189/92-93. The Additional Collector by order dated 7.8.1993 dismissed the revision filed by respondent No. 7 after hearing both the parties and considering all the materials on record and the said order became final in as much as it was never challenged by respondent No. 7. The respondent No. 7 after losing all the proceedings filed an application for himself and oh behalf of the villagers for cancellation of jamabandi opened in the name of the petitioners. The said application was registered as Miscellaneous Case No. 40/93-94. In the said proceeding the impugned order has been passed and the jamabandi which was opened long back has been cancelled.

5. The respondent-State in their counter-affidavit have stated that the demand opened in the name of the original settle Ram Kewal Sahu after coming into force of the Bihar Land Reforms Act was illegal and without holding an inquiry or investigation. However, it has not been disputed that the land in question were recorded as Gair Mazarua Malik in the cadastral survey record of right in the name of ex-landlord but it is stated that the land in question never come in cultivating possession of any one because it is a bed of river. The case of the respondent State is that the land is public land and the entire settlement made by the ex-landlord and the opening of jamabandi in favour of the settlee and subsequently in favour of the petitioners are on the basis of wrong finding of the revenue authorities.

6. Admittedly the land was recorded in the survey record of right as Gair Mazarua Malik in the name of the ex-landlord who settled the land in favour of the vendor of the petitioner Ram Kewal Sahu. The ex-landlord submitted his return showing Ram Kewal Sahu as settlee and jamabandi was opened in his name. The genuineness of the record of right, the settlement made in favour of Ram Kewal Sahu and the jamabandi opened in his name was never challenged by the state of Bihar rather in all the proceedings initiated at the instance of Baij Nath Prasad and respondent No. 7 the authorities of the State decided all those proceedings in favour of the petitioner. It is well settled that once jamabandi opened in favour of a person and that continued for a number of years, it can be cancelled only by initiating a proceeding by the Collector under Section 4(h) of the Bihar Land Reforms Act. Reference may be made to a division bench decision of the Patna High Court in the case of Harihar Singh v. Additional Collector, 1978 BBCJ 323.

7. Besides the above the interesting point of the case is that the impugned proceeding being Miscellaneous Case No. 40/93-94 was initiated at the instance of respondent No. 7 before the Circle Officer Nagaruntari. The proceeding continued before the Circle Officer. The Circle Officer by order dated 18.5.1994 recommended for cancellation of Jamabandi and referred it to land reform Deputy Collector, Nagaruntari. The Land Reform Deputy Collector with his note sent the file to Sub-Divisional Officer, Nagaruntari who in his turn sent the file to the Additional Collector with his recommendation. The Additional Collector by order

dated 21.7.1994 considered the report of the Circle Officer and sent the file to the Collector with his recommendation for cancellation of jamabandi. The Collector without application of mind and without giving opportunity of hearing to the petitioner accepted the recommendation of the Additional Collector by putting simply his endorsement 'swikrii'. As discussed above once jamabandi is created and it continued for long years it can be disturbed only by initiating a proceeding by the Collector under Section 4(h) of the Bihar Land Reforms Act. The impugned order in the form of approval by the Collector is nothing but total non-application of mind and on this ground alone the impugned order is liable to be quashed.

8. Taking into consideration the entire facts and circumstances of the case I am of the opinion that the impugned order passed by the Collector cannot be sustained in law. It is held that jamabandi once opened and continued for a number of years can be re-opened only in accordance with the provisions of Bihar Land Reforms Act and it could not have been initiated at the instance of respondent No. 7 particularly when several earlier proceedings at the instance of respondent No. 7 was finally rejected by the authorities of the State.

9. For the aforesaid this writ application is allowed and the impugned order isquashed.

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