

Md.Rahmat Ali, and anr. Vs. State of Bihar, and ors.

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Court : Patna

Decided On : Oct-28-2010

Judge : Smt. Sheema Ali Khan, J.

Acts : Bihar Land Reforms Act - Section 4(a)

Appeal No. : CIVIL WRIT JURISDICTION CASE No.4534 OF 1995

Appellant : Md.Rahmat Ali, and anr.

Respondent : State of Bihar, and ors.

Advocate for Def. : Mr. Anil Kumar Jha, Adv.

Advocate for Pet/Ap. : Mr. Yogendra Mishra; Mr. U.K. Choudhary, Adv.

Judgement :

1. The petitioners have challenged the order of the Sub-divisional Officer, Jhanjharpur, contained in Annexure-7 by which lands appertaining to Khata No. 490, Plot No. 1486 (old), R.S. Plot No. 1973, measuring 1 Bigha, 10 Kathas and 9 Dhurs which is a Pokhar, has been transferred to the Fisheries Department for recording it as a Sairat. The said transfer was made on the basis of a report of the Circle Officer.
2. The petitioners' case is that 15 Kathas and 4 Dhurs of the lands mentioned aforesaid were settled on 7.8.1943 to the petitioners' father Md. Ali. Rent receipts were granted by the ex-landlord in favour of the petitioners' father. One such

receipt has been annexed and marked as Annexure-2/1. It is also stated that on 18.4.1993, the remaining 15 Kathas and 4 Dhurs was also settled in favour of the petitioners' father. It is stated that the petitioners' father submitted return and his name was recorded by the State in Register II. The petitioners claim that they have been granted rent receipts by the State of Bihar right up till 1994. On the basis of the aforesaid facts, it is argued that they, the petitioners, will be entitled to retain the possession of the tank in question by virtue of the provisions of Section 4(a) of the Bihar Land Reforms Act which reads as follows:

"4(a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of building comprised in such estate or tenure and primarily as office or cutchery for the collection of rent of such estate or tenure and his interests in trees, forests, fisheries, jalkars, hats, bazaars, [mela] and ferries and all other sairati interests, as also his interest in all sub-soil including any rights in mines and minerals whether discovered or undiscovered or whether been worked or not inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under raiyats) shall with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or other than the interests expressly saved by or under the provisions of this Act."

3. The petitioners' claim that raiyats rights over a particular piece of land be it a Sairat, Jalkar or Hat would not vest in the state of Bihar.

4. A counter affidavit has been filed on behalf of the State wherein it is stated that the petitioners are not in possession of the tank, that only two rent receipts have been granted in their favour, and that the petitioners' father's name is not entered in Register II. Therefore, the State supports the order contained in Annexure-7 by stating that all lands especially those appertaining to Jalkars, Hats, Bazar, Sairat vest in the State of Bihar and the petitioners would not be entitled to retain those lands by virtue of the said settlement.

5. The documents in support of the petitioners' case have not been produced in Court and the State in fact has not passed any order or examined the case of the

petitioners vis a vis his pleadings. In fact, petitioners have not approached the appropriate authority for the purposes of getting a declaration that the lands in question are in their possession and the name of their father has been recorded in the revenue records.

6. In view of the aforesaid facts, the petitioners are given liberty to approach the appropriate authority within a period of two months on receipt of a copy of this order. The appropriate authority i.e. the D.C.L.R., Jhanjharpur should examine the matter after calling for the records and pass an appropriate order as expeditiously as possible. The question of possession should be determined by the D.C.L.R., Jhanjharpur by conducting a spot enquiry, and after taking and recording the evidence of the villagers in presence of the petitioners, which should be duly signed by the party concerned.

7. This writ application is disposed of with the aforesaid observations and directions.

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