

The Court of Commissioner, Saran Division, Chapra
Misc. Revision No. 44/1997-98
Malti Devi
Vrs.
State of Bihar & ors.

ORDER

10.09.2015- The instant revision petition is directed against the order dated 06.09.1997 passed by Collector, Siwan in Misc. case No. 346/1996-97 and has been initiated again pursuant to the direction given by the Hon'ble High Court while disposing of CWJC No. 2648/2000 on 08.10.2002.

The short facts of this case are that the then DCLR, Siwan during his visit in Maharajganj found that lands of khata No. 407 plot No. 2154, area 3 katha 5 dhur of village Pasnali is a Gairmazarua Aam land over which there were shops and the heirs of ex-landlord have been realising rent from the shop-keepers and hence the DCLR called for a detailed report from C.O. Maharajganj and the C.O. Maharajganj in his report mentioned that the disputed land was a Bazar land and has been vested in the state and there were 8 shops from which heirs of ex-landlord have been illegally realising rent. On the basis of this report, the then DCLR ordered for realisation of Rs. 1,88,650/- being the rent from 01.01.1956, the date of vesting, till the date of order. The heirs of ex-landlord filed an appeal before the Additional Collector, Siwan and the Additional Collector, Siwan set aside the order and remanded the case to the DCLR and who after hearing ordered that the nature of the land has changed and hence he was of the opinion that rent should be fixed with the heirs of ex-landlord according to their share and send the record to the Additional Collector, Siwan for confirmation. Accordingly the Additional Collector, Siwan ordered for realisation of the rent from the heirs of ex-landlord and to deposit the same in the Government Treasury. The heirs of ex-landlord filed a petition before the then Commissioner, Saran who by his order dated 02.11.96 in Revenue Revision No. 49/94-95, Musmat Hiya Bharan Kuar & ors. Vrs Addl. Collector, Siwan & ors., set aside the order and remanded the case to the Collector, Siwan for passing a fresh order. The Collector, Siwan by his order dated 06.09.1997 ordered for realisation of Rs. 1,88,650/- from the heirs of ex-landlord. Against that very order of the Collector, Siwan a revision petition was filed and the then Commissioner by his order dated 06.08.99 decided in favour of petitioner and confirmed the order dated 10.12.92 passed by the then DCLR, Siwan. The private respondents of this petition namely Bhagwati Prasad and others filed a CWJC No. 2648/2000 in the Hon'ble High Court wherein the order dt. 06.08.99 of Commissioner was challenged. However the Hon'ble High Court vide order dated 08.10.2002 allowed the petition and set aside the order dated 11.11.93 passed by Addl. Collector, Siwan as well as the order dt. 06.08.99 passed by the then Commissioner and remitted the case back to the Court of Commissioner for passing fresh order in accordance with law after hearing the parties.

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Heard the parties.

The learned counsel of the petitioners submitted that the petitioners are the heirs of the ex-landlord and there are two plots bearing plot No. 2153 and 2154, plot No. 2154 is recorded as Dih Baskit with house in R.S. Khatiyani and plot No. 2153, area 3 katha 5 dhur stands recorded in R.S. Khatiyani as sahan and it is also recorded that the markets are held on Sunday and Thursday. The sole contention of the petitioner is that the land was in mortgage and while it was in mortgage the mortgagee was allowed of holding market twice in a week but after the mortgage was redeemed, the ex-landlord came in actual possession and abolished the market and used plot No. 2153 as the sahan of the house which was in plot No. 2154. The further contention of the petitioner is that some time before abolition of Zamindari, over a small portion of plot No. 2153 they constructed some shops and some shops were let out on monthly rental to different tenants and some of the shops were in their khas possession and thus, the claim that the land has not vested in the state is correct and they are entitled to retain the land under the provision of section 5 of the Bihar Land Reforms Act-1950. He further submitted that the provision under sub-sec. 2 under sec. 5 of B.L.R. Act makes clear that if the claim of intermediary as to his possession or such homestead or as to the extent so by some homestead in dispute, by any person within three months from the date of such vesting, the Collector shall on application make such enquiry in the matter as he deems fit and pass such order as may appear to him just and proper. No doubt the respondent 5 to 16 have not raise any dispute within three months from the date of vesting hence they have no right to objection. Not only that rightly or wrongly they have been paying rent to ex-landlord and they do not claim permanent tenancy even the landlord could not have made permanent settlement. Respondent 5 to 16 have been paying rent to ex-landlord and now they can not deny the same.

The learned A.G.P. arguing on behalf of the state submitted that respondents Nos. 5 to 16 claim to be tenant by ex-landlord and the land is not vested in the state and it is the state which is entitled to realise the rent and not the heirs of the ex-landlord who are petitioner before this Court.

The learned counsel appearing on behalf of the private respondents Nos. 5 to 16 submitted in detail about the whole sequence of the events leading to coming up this case before this Court under the direction of the Hon'ble High Court. He strongly argued that the impugned order of the Collector, Siwan has never been set aside by the Hon'ble High Court. He further argued that as these respondent were not made party in the case and their interest was highly at stake because they have been paying rent to the Govt. as parcha holder and tenant of the state they approached the Hon'ble High Court in CWJC No. 2648/2001 wherein the order passed by the then Commissioner on 06.08.99 was challenged and the Hon'ble High Court was pleased to set aside the order of the Commissioner passed on 06.08.99. He further argued that under the provision of section 4(A) of the BLR Act, all such lands upon which hat, Bazar was held vested in the State with the abolition of Zamindari and since the plot No. 2153 is recorded in the Khatiyani where Bazar was held twice in a week on Thursday and Sunday also vested in the State. The learned counsel further argued that the impugned order of Collector is

legal and valid having no illegality. He further argued that it has already been settled by a full bench order of Hon'ble High Court and subsequently confirmed by the Hon'ble Apex Court that as per section 7A of BLR Act-1950, all lands on which hat or Bazar was held will not be deemed to be settled with intermediary. He also argued that the Hon'ble High Court on finding that the interest of the shopkeepers who became tenant of the State, whose interest was badly affected by the order of the then Commissioner dt. 06.08.99 set aside the same and directed to dispose of the case after hearing all parties.

Considering the facts and circumstances of the case as well as the materials available on records, written arguments filed by the parties and also on perusal of the orders passed by this court earlier, it seems to me that the only issue remains for consideration as to whether the land in dispute can be treated as a Government land or a land vested in ex-landlord under the provision of Bihar Land Reforms Act. 1950. It is admitted fact by the parties that the land of plot No. 2154 is recorded in the names of ex-landlord in R.S. Khatiyani over which they had their houses. There is no dispute over this plot. The only dispute is regarding plot No. 2153 which is recorded as sahan in R.S. Khatiyani and it is also recorded that market was held twice in a week. It is the case of the petitioner the said land in question was in mortgage for some time and the mortgagee allowed holding of market twice in a week but after the mortgage was redeemed the holding of market was stopped and some shops were constructed by them and some of the shops were let out to the tenant. There is no dispute that the major portion of plot No. 2153 was in possession of ex-landlord and was being used as sahan of their house in plot No. 2154. On the other hand it is the case of respondent No. 5 to 16 that they were tenants of ex-landlord since some time before 1980 and they have been paying rent to ex-landlord even after abolition Zamindari.

The claim of the petitioner is mainly based on the provision of section 5 of Bihar Land Reforms Act-1950. Further in support of their case the petitioners have referred the decision reported in A.I.R. 1973 S.C. at page 1130. From the close examination of sec. 5 of B.L.R. Act and the decisions relied by them it comes out that if a Dih Baskit in the possession of intermediary will be deemed settled by the state with such intermediary and such intermediary shall be entitled to retain possession on the land as tenant under the state free from rent. In case the Dih Baskit is let out on rent for residential purpose it will be settled with ex-intermediary on fair and equitable rent. Thus sec. 5 and the decision relied by the petitioner is of some help but not much, because portion of plot No. 2153 over which there are shops were not for residential purpose.

On the other hand, the case of the respondents No. 5 to 16 is that they are tenant of ex-landlord and the ex-landlord has been realising rent from them illegally since some time before 1980.

From the above discussion the only issue remains for consideration now as to whether the impugned order passed by Collector, Siwan is in conformity with the provision laid down in the relevant section 7A of the Bihar Land Reforms Act-1950 or not. From the bare perusal of the said order it appears that the learned Collector, after

careful consideration of the factual matrix of the case as well as relevant provision of the Act finally came to the conclusion that, the said disputed land is vested in the state as per the entry made in the khatiyā and return filed by the ex-landlord with respect to plot No. 2153. He further held that shops were built on it, the same can not be held as of homestead nature so u/s 7A of the Act said land along with shops vested in the state. Furthermore, the learned Collector also dismissed the claim of the petitioner on the ground that the said disputed plot can not be held to be retained by the petitioner after abolition of Zamindari and they had no right to realise any rent from the shopkeeper and accordingly he directed the C.O. Maharājanj to Collect rent from the shopkeeper and Govt. receipt be issued for that and the rent collected should be deposited in Govt. treasury and confirmation of Govt. be obtained u/s 4H of the BLR Act. Moreover, he also ordered for realisation of the rent received by the legal heirs of Ex-landlord from the date of abolition of Zamindari till the date of order which was calculated to the tune of Rs. 1,88,650/-. As such I find that there is nothing on records nor any fresh averments made by the learned counsel for the petitioners to raise any doubt regarding the correctness, legality or propriety of the findings arrived at by the learned Collector in his order dated 06.09.1997. Even the said order can not be held as contrary to the relevant provisions of the Act. It is almost settled in law as observed by the Hon'ble High Court that:

1. *ex-intermediary is allowed to retain possession subject to payment of rent, where building vests in the state u/s 5 and 7. However buildings falling in the category referred to in section 7A vests in the state absolutely and the benefit of section 5,6 and 7 are not available to the ex-intermediary when vesting is u/s 7A,*
2. *The word Bazar is synonymous with market. Bazar of a proprietor or ex-intermediary will vest absolutely in the State by virtue of the provisions of Section 7A. Ex-intermediary will not be entitled to retain position subject to payment of rent, if any.*
(Musmat Bibi Sayeeda Vrs The State of Bihar, 1985, PLJR 66(F.B.): A.I.R.-1985 Pat-77)

For the aforementioned reasons the impugned order of Collector, Siwan dated 06.09.1997 is sustainable. Accordingly the same is upheld and this revision petition being devoid of any merit is dismissed.

Dictated and Corrected by me.

b/a 10.9.15
Commissioner,
Saran Division, Chapra

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