

IN THE HIGH COURT OF JUDICATURE AT PATNA

Arun Kumar Verma

v.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 18263 of 2022

16 May, 2023

[Hon’ble Mr. Chief Justice K.Vinod Chandran & Hon’ble Mr. Justice Anil Kumar Sinha]

Issue for Consideration

Whether clause 3(ii)(Gh) of a Government Resolution dated 11.11.2014 bearing no. 924 is unconstitutional?

Headnotes

Constitution of India, 1950—Article 226—there are several farmers who are in continuous possession and enjoyment of lands for much more than 30 years, even since prior to coming into force of the Bihar Public Land Encroachment Act in the Year, 1956—resolution regulates settlement of gair majarua aam land and prescribes conditions for acquisition of title by way of adverse possession.

Held: Determination of adverse possession is individual-specific and fact-dependent—petitioner has not been able to make out any case for proceeding further in the matter by invoking extraordinary, discretionary jurisdiction under Article 226 of the Constitution of India, 1950—liberty was left open to aggrieved individuals to raise claim of adverse possession in appropriate proceedings—writ dismissed. (Paras 3, 10, 11)

Case Law Cited

Institute of Law & Ors. vs. Neeraj Sharma & Ors **2015 (1) PLJR 32 (SC)**; State of Bihar & Ors. vs. Harendra Nath Tiwary reported in **(2015) 1 PLJR 606**—Distinguished; Mangru Singh & Ors. vs. State of Bihar & Ors., **2005 (4) PLJR 654**; Vijay Kumar Prasad vs. State of Bihar & Ors., **2017 (1) PLJR 818**—Not binding precedents.

List of Acts

Constitution of India, 1950.

List of Keywords

Adverse possession, Public Interest Litigation, acquisition of land.

Case Arising From

From Clause 3(ii)(Gh) of a Government Resolution dated 11.11.2014 bearing no. 924.

Appearances for Parties

For the Petitioner: Mr. Ram Pravesh Sharma, Advocate; Mr. Mrityunjay Kumar, Advocate.

For the Respondents: Mr. Sajid Salim Khan SC-25 Advocate.

Headnotes Prepared by Reporter: Abhas Chandra.

Judgment/Order of the Hon’ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18263 of 2022**

=====

Arun Kumar Verma, Son of Harihar Prasad Verma, resident of Village- Shiv Nagar, Telihar, Police Station- Beldour, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue Land Reforms, Bihar, Patna.
2. The Additional Chief Secretary, Department of Revenue and Land Reforms, Bihar, Patna.
3. The District Magistrate, Khagaria.
4. The Survey Settlement Officer, Khagaria.
5. The Circle Officer, Beldour, Khagaria.
6. The Circle Officer, Choutham, Khagaria.
7. The Circle Officer, Gogri, Khagaria.
8. The Circle Officer, Parbatta, Khagaria.
9. The Circle Officer, Mansi, Khagaria.
10. The Circle Officer, Khagaria, Khagaria.
11. The Circle Officer, Allouli, Khagaria.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                  |
|----------------------|---|----------------------------------|
| For the Petitioner/s | : | Mr. Ram Pravesh Sharma, Advocate |
|                      |   | Mr. Mrityunjay Kumar, Advocate   |
| For the Respondent/s | : | Mr. Sajid Salim Khan SC-25       |

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)**

**Date : 16-05-2023**

1. The writ application has been filed as a Public Interest Litigation (PIL) seeking a declaration regarding unconstitutionality of clause 3(ii)(Gh) of a Government Resolution dated 11.11.2014 bearing no. 924, which reads as follows:



"3(ii)(घ) उपरोक्त (क), (ख) एवं (ग) की स्थितियों छोड़ कर किसी गैर मजरूआ मालिक भूमि पर किसी का दखल कब्जा पाया जाता है तो adverse possession के तर्क को स्थापित करने के लिए दावा कर्त्ता को यह दिखाना होगा कि उन्होंने अथवा उनके पूर्वजों ने कब प्रश्रुत भूमि के वास्तविक मालिक अथवा उनके पूर्वजों को बेदखल किया ताकि adverse possession के Statutory period की गणना हेतु प्रारम्भ की तिथि निर्धारित की जा सके।

सरकार के विरुद्ध adverse possession के आधार पर स्वत्त्व (Title) निर्धारण के लिए Limitation Act, 1963 के Article 112 में निहित प्रावधान के अनुसार 30 (तीस) वर्षों की अवधि पूरी होनी चाहिए परन्तु मात्र भूमि पर कब्जा, चाहे वह कितनी भी लम्बी अवधि की हो, भू-धारी को विधिक अधिकार नहीं सृजित करता यदि यह सरकार द्वारा दिया गया grant नहीं हो। ऐसी लम्बी अवधि तक भूमि पर कब्जा केवल किसी अन्य व्यक्ति के विरुद्ध उसके विधिक अधिकार की रक्षा करता है।

सक्षम प्राधिकार को समय के विभिन्न बिन्दुओं के सापेक्ष स्पष्ट, पूर्ण एवं निश्चित साक्ष्यों पर निर्भर करना होगा। राजस्व पंजियों में प्रविष्टी यदि किसी दावाकर्त्ता के भूमि पर धारिता को प्रकट करती है तो उसे सही माना जा सकता है। कोई दावाकर्त्ता अपने दावा को अभिलेख, लगान रसीद, जमीनदारी रिटर्न आदि से इसे स्थापित कर सकता है। यदि कोई दावाकर्त्ता इसे साबित करता है, अर्थात् उसकी लगातार तीस वर्षों से धारिता प्रमाणित होती है तो तीस वर्षों की अवधि की समाप्ति के बाद, उसका स्वत्त्व (title) चिरभोग (Prescription) के तहत निर्मित होगा और इस प्रकार वह रैयत की परिभाषा के अन्तर्गत आएगा।

परन्तु यदि अवैध दखलदार सुयोग्य श्रेणी के भूमिहीन हैं, तो उनके साथ सरकारी परिपत्र के अनुसार निर्धारित सीमा तक ज़मीन की बन्दोबस्ती



कर दी जाएगी एवं तदुपरान्त ज़मीन रैयती मानी जायगी।"

English translation reads as follows:

*"3(ii)(Gh) Leaving aside the situations of 'A', 'B' and 'C' aforesaid, if someone is found to be in possession of a gairmajarua owner's land, then to establish the argument of adverse possession, the claimant will have to show when he or his forefathers dispossessed the actual owner from the land in question so as to determine the date of commencement for computing the statutory period of adverse possession.*

*For determining the title of adverse possession against the government, a period of 30 years should be completed as per provision contained in Article 112 of the Limitation Act 1963, but only the possession over the land, no matter how long the period may be, does not create the legal right of the land holder, if it is not a grant given by the government. The possession over the land for such a long period protects his legal right only against any other person.*

*The competent authority has to rely on clear, complete and definite evidence relating to different points of time. If the entry in the revenue registers reveals the holding on the land of a claimant, then it can be considered correct. Any claimant can establish it with record, land receipts and zamindari return. If a claimant proves this, his holding is proved for thirty continuous years, then after the expiry of the period of thirty years, his title will be created under prescription and thus he will come under the definition of raiyat.*

*But if the illegal occupiers are landless or eligible*



*category, then according to the government circular land will be settled with them to the prescribed extent and thereafter the land will be considered as raiyati tenant land."*

2. The writ petitioner wants issuance of consequential direction to treat all persons in continued possession of *gair majarua aam land*, to be "*Raiyat*" of the land in question; and also seeks withdrawal of the restriction imposed on sale and purchase of this category of land.

3. The brief factual background, as per petitioner's case, is that there are several farmers who are in continuous possession and enjoyment of lands for much more than 30 years, even since prior to coming into force of the Bihar Public Land Encroachment Act in the Year, 1956. Placing reliance on Articles 111 and 112 of the Limitation Act, the writ petition seeks to assert rights arising of continued possession of such farmers over the pieces of Government lands in their continued possession for long more than 30 years. It also seeks to assert the right to have such land mutated in favour of such occupants who are in continued possession over such a long period of time.

4. We have examined clause 3(ii)(Gh) of the Resolution, which as per submission of the petitioner's counsel,



is unconstitutional. This Court would observe that whether a particular farmer fulfills the requirement for raising the plea of adverse possession and asserting his right in respect of any land, is an issue which is to be decided with reference to the individual's claim based on facts which would be distinct and unique to every individual. We thus leave it open to the individuals to raise such a plea in appropriate proceedings before the appropriate forum.

5. No issue of public interest has been espoused warranting issuance of a sweeping declaration as has been sought in the instant writ proceedings in exercise of discretionary extraordinary writ jurisdiction.

6. Learned counsel for the petitioner has placed reliance on certain decisions. In the case of *Institute of Law & Ors. vs. Neeraj Sharma & Ors.* reported in *2015 (1) PLJR 32 (SC)*, we find that the Hon'ble Apex Court was considering huge loss to the public exchequer as reported by the Audit Department in allotment of property belonging to the Union Territory of Chandigarh Administration at throwaway prices. The Apex Court found that settlement was done without following the mandatory procedure for allotment of land. The Hon'ble Apex Court taking note of the fact that loss to the public



exchequer could have been avoided, if the land in question had been settled by way of public auction for eligible persons has interfered in the matter. We find no such issue being raised in the instant writ proceedings. The petitioner, therefore, cannot be permitted to place reliance on judgment of the Hon'ble Apex court in the case of *Institute of Law* (supra) as the facts in the instant case are totally different and the judgment of Hon'ble Supreme Court has no application here.

7. Insofar as decision in the case of *State of Bihar & Ors. vs. Harendra Nath Tiwary* reported in (2015) 1 PLJR 606, this Court finds that in that case, the co-ordinate Bench was dealing with an intra-court appeal arising out of writ proceedings by individuals, who had challenged cancellation of their *Zamabandi*, by raising a plea that *Zamabandi* was created in favour of the petitioner in 1946 and that it cannot be interfered with after seven decades. The competence of the Collector to cancel the *Zamabandi* in view of the provisions contained in the Bihar Land Mutation Act 2011 was also raised by the petitioner (individual), and not by way of a PIL.

8. The other two decisions, reported in (2005) 4 PLJR 654 (*Mangru Singh & Ors. vs. the State of Bihar & Ors.*) and (2017) 1 PLJR 818 (*Vijay Kumar Prasad vs. the*



*State of Bihar & Ors.*), relied upon by the petitioner's counsel are judgments of a hon'ble Single Judge and are not binding precedents for this Court.

9. It is, however, to be noted that in these two cases also, petitioners were aggrieved individuals who had approached this Court.

10. In view of consideration above, we find that petitioner has not been able to make out any case for proceeding further in the matter by invoking extraordinary, discretionary jurisdiction under Article 226 of the Constitution of India.

11. Leaving it open for any individual to assert his/her grievances in appropriate proceedings in accordance with law, the writ is dismissed.

(K. Vinod Chandran, CJ)

( Madhuresh Prasad, J)

SUMIT/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 19.05.2023 |
| Transmission Date | NA         |

