

PETITIONER:
BOKARO AND RAMGUR LTD.

Vs.

RESPONDENT:
THE STATE OF BIHAR AND ANOTHER

DATE OF JUDGMENT:
14/03/1962

BENCH:
Ayyangar, N. Rajagopala
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Ayyangar, N. Rajagopala
Aiyar, T.L. Venkatarama
Sinha, Bhuvneshwar P.(CJ)
Gajendragadkar, P.B.
Wanchoo, K.N.

CITATION:
1963 AIR 516 1962 SCR Supl. (3) 831

ACT:
Fundamental right --- Right to hold property - Adjudication as to title pending - Question of infringement, if could arise before such adjudication -- Constitution of India Arts.19(1)(f) 31(1) - Bihar Land Reforms Act 1950 (Bihar 1 of 1950), s. 4(h).

HEADNOTE:

The property regarding which the contention is raised that the fundamental rights of the petitioners under Arts. 19(1)(f) and 31 (1) of the Constitution are alleged to

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have been infringed is a plot of land within the Municipal limits of Hazaribagli with certain buildings and structures thereon, which originally belonged to the Raja of Ramgarh. On January 16, 1948, the Raja leased this property to N for a term of 99 years and sometime thereafter settled his reversionary interest of the property for the benefit of a Trust.

The estate of Ramgarh was notified under s. 3(1) of the Bihar Land Reforms Act for being taken over by the Government of Bihar and in consequence, the estate statutorily vested in the State of Bihar. A notice was issued to N to show cause why the lease executed in his favour should not be set aside under s.4(h) of the act as the lease was executed well within the period specified under s. 4(h). N submitted objections standing that these properties were not covered by s. 4(h). During the pendency of the enquiry N surrendered his leasehold to the trust. The trust leased the property to one 1, who assigned his household interest in the property to the petitioner Company. The present sought to quash the said proceedings under s. 4(h) pending before the Collector wherein an enquiry was having held as to the manner in which the property in, question was being enjoyed by tile Raja of Ramgarh prior to the transfer, by lease for 99 years. The question is whether any fundamental rights of the petitioner have been infringed by the enquiry being held.

Held, that before a party could complain of an infringement

of his fundamental rights to hold property he must establish that he has title to that property and if that title itself is in dispute and is the subject of adjudication in proceedings legally constituted, the cannot obviously put forward any claim based on such title until as a result of that enquiry his title established. It is only thereafter that the question whether his rights in or to that property have been improperly or illegally infringed could arise.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Writ Petition No. 19 of 1961. Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

A. V. Viswantha Sastri and D. N. Mukerjee, for the petitioners.

Bajrang Sahai and S. P. Yarma, for the respondents.

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1962. March 14. The Judgment of the Court was delivered by AYYANGAR J.-We consider that this petition under Art. 32 of the Constitution is entirely devoid of merits and deserves to be dismissed as misconceived as it does not involve any question of the infringement of any fundamental right.

The petition is substantially for the issue of a writ of prohibition directing the Collector of -Hazaribagh not to proceed with an enquiry pending before him under s. 4(h) of the, Bihar Land Act and a writ of certiorari to quash the proceedings. The property regarding which a question is raised that the fundamental rights of the petitioner under Arts.19(1)(f) and 31(1) of the constitution are alleged to have been infringed, is a plot of land within the municipal limits of Hazaribagh in Bihar together with certain buildings and structures thereon. The property originally belonged to the Ramgarh Raj. There is a dispute as to the manner in which this property was being enjoyed by the then proprietors and so we shall at this stage refrain from saying anything about it. On January 16, 1948 the Raja of Ramgarh granted a lease of this property in favour of his younger brother Basant Narain for a term of 99 years. On April 7, 1949 the Raja settled his reversionary interest in the property for the benefit of a Trust under a registered deed of settlement. The estate, of Ramgarh was notified under s. 3 (1) of the, Bihar Land Reforms Act (Bihar I of 1950) for being taken over by the Government of Bihar and in consequence the estate statutorily vested in the State on and from November 3, 1951. Section 4(h) of the Bihar Land Reforms Act enacts:

"The collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or the transfer of any kind of

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interest in any building used primarily as office or kutchery for the collection of rent of such estate or tenure or part thereof, made at any time after the first (day) of January 1946 and if he is satisfied that such transfer was made with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving reasonable notice to the parties concerned to appear and be heard and with the previous sanction of the State Government, annul such transfer, dispossess the person claiming under

it and take possession of such. property on such terms as may appear to the Collector. to be fair and equitable."

It will be noticed that the lease in favour of the Raja's younger brother was dated January 16, 1948 and therefore was well within the period specified in the provision. It was the contention of the State that the buildings on the property which were the subject of the lease dated January 16, 1948 were being used by the Raj primarily as an office or kutcheri for the collection of rent a fact which however was disputed and is a subject of contest in the proceedings now sought to be quashed. On November 27, 1955 a notice was issued to Basant Narain to show cause why the lease executed in his favour on January 16, 1948 should not be set aside under the power conferred upon the Collector by s. 4(h). Basant Narain submitted his objections and stated that the leased properties were not covered by s. 4(b). Before however this enquiry was completed, Basant Narain surrendered his leasehold interest to the assignee of the reversion, viz., the Trust, by a registered deed dated January 1, 1957. Subsequently on June 1, 1959 the Trust which thus became entitled to the entire interest in the property in its turn leased the property to one Bansidhar and about a month later, on July 3, 1959

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Bansidhar assigned his leasehold interest in the property to the petitioner company and that is how the petitioner came upon the scene.

On November 13, 1959 the Collector passed an order cancelling the lease. The petitioner who laid claim to a title to the property under the assignment in its favour dated July 3, 1959, applied to the Collector to set aside his order both on the merits and also on the ground that the order of November 13, 1959 had been passed to its prejudice without giving it an opportunity to make its objections even though by that date it had obtained title to the property and therefore a locus standi to be heard. We are not now concerned with the correctness or otherwise of the contention raised by the petitioner, because the State of Bihar set aside the order of the Collector and directed a re-enquiry and in this re-enquiry the petitioner filed a petition before the Collector on August 9, 1960 setting out its case.

It was during the progress of this last enquiry that the petitioner moved this Court by the present petition for the reliefs which we have already set out. Pausing here it is necessary to add that the constitutional validity of s. 4(h) is not challenged and the case therefore turns on whether the property satisfies the conditions on which the section is attracted. The relief sought in this petition is based on two allegations: (1) that the land on which the buildings stand is raiyati land and therefore could not be taken possession of by the State under the Bihar Land Reforms Act and (2) that the buildings standing thereon were previously used for the residential purpose of the Raja and his family and not as a kutcheri. The enquiry has been proceeding before the Collector in regard to these two points and it may be mentioned that when the petitioner applied to this Court for a stay of proceedings before the Collector,, this Court passed an order permitting the enquiry to continue' though it stayed the passing of

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any order by the State Government. It will thus be seen that if the contention of the State is correct as regards the tenure of the property and as regards the purpose for

which the buildings were used, the title of the State to the property would be made out and the petitioner could have no legitimate grievance. If, on the other hand, the petitioner establishes in the enquiry the case that it has put forward in the petition it is bound to succeed. Thus the question whether petition has any right to the property which it claims depends wholly on questions of fact which are plainly within the jurisdiction of the authorities constituted under the Bihar Land Reforms Act. Before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title itself is in dispute and is the subject of adjudication in proceedings legally constituted, he cannot obviously put forward any claim based on his title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether his rights in or to that property have been improperly or illegally infringed could arise.

In the circumstances we consider that the petitioner can complain of no infringement of its fundamental right, as to justify a petition under Art. 32. The petition is dismissed with costs.

Petition dismissed.

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