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SMT. LABANYA BALA DEVI AND ORS.

v.

THE STATE OF BIHAR PATNA SECRETARIAT,
PATNA AND ORS.

B

SEPTEMBER 7, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Bihar Land Reforms Act, 1950 : Sections 3(1), 4 and 6(1)(b)—Raiyati right—Settlement from erstwhile zamindar—Land used for agricultural purposes—Pre-existing right—Whether extinguished and land vested in Government.

D

The appellants/plaintiffs filed a suit for declaration that the appellant had a Raiyati right over certain plot of land. The Trial Court decreed the suit. On appeal the District Judge held that the land in question stood vested in the State under Section 4 of the Bihar Land Reforms Act, 1950 and dismissed the suit. This was confirmed by the High Court.

E

In this appeal, it was contended that in 1943 the appellant had a settlement from the erstwhile zamindar of the said land which was used for agricultural purposes and therefore the said land was raiyati land.

Dismissing the appeal, this Court

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HELD : The saving by Sec. 6(1)(b) of the Bihar Land Reforms Act, 1950 is only of the land actually used for agricultural purposes in a State or a tenure of a lessee or a temporary lessee and directly in his possession and cultivated by himself with his own stock by his own servants or by hired labour or with hired stock that the land stands excluded and Raiyati rights has been confirmed statutorily subject to the terms contained therein. The tank is said to be settled by the land holder in favour of the appellant, thereby the tank was not saved. Thus the tank stands vested in the State absolutely free from all encumbrances and that, therefore, the contract even if any was nullified by *non-obstante* clause in clause 4. There by the pre-existing rights, if any, have been extinguished and stood divested. Therefore, the appellant cannot claim any rights on the basis of the agreement which formed basis for declaration sought for. [213-B-C]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4124 of 1984 A

From the Judgment and Order dated 18.3.82 of the Patna High Court in A.D. No. 76 of 1974.

K.N. Rai for the Appellant. B

B.B. Singh for the Respondent.

The following Order of the Court was delivered :

The appeal by Special leave arises for the appellate decree No. 76 of 1974 dated March 18, 1982 of the Division Bench of the High Court at Patna. The appellants/plaintiffs laid the suit in the Court of the Subordinate Judges in Title Suit No. 23 of 1970 for a declaration that the appellant has a Raiyati right over plot No. 1972 & 1973 i.e., tank and tankail situated in village Bihulia in Khata No. 61 described in Schedule B of the Plaint and for confirmation of possession over the same. Though the trial court by decree dated February 21, 1972 decreed the suit holding that the appellant has the Raiyati right over the plot described in Schedule B. property and for his possession on appeal the Addl. District Judge Dhanbad, By Judgment and decree held that the Scheduled 'B' land stood vested in the State under Sec. 4 of the Bihar Land Reforms Act 30, 1950 (for short the 'Act') accordingly dismissed the suit and in the second appeal it was confirmed by the High Court. C D E

It is contended for the appellant that in 1943 the appellant had a settlement from the erstwhile zamindar of the plot described in Schedule B land which was used for agricultural purposes and that, therefore, it is the raiyati land and the trial court rightly granted the decree. The High Court and the Distt. Court had not properly considered the purpose of the settlement made to the appellant and accordingly dismissed the suit of the appellant. We find no force in the contention, under Sec.3 (1) of the Act the State Government has been vested with the power to declare and get a notification published in the State Gazette that the estates or tenures of a proprietor or tenure holder specified in the notification, have ceased to and become vested in the State. On and from the date of the notification so published the consequences have been specified in Sec. 4 of the Act. It provides that : F G H

A "Notwithstanding any thing contained in any other land for the time being in force or any contract _____ on the publication of the notification under Sub-s. (1) of Sec. 3 _____ the following consequences shall ensure and shall be deemed always to have ensured, namely :—

B (a) Such estate or tenure including the interest of the proprietor or tenure-holder in any building or part of building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such a State or tenure and his interests in trees, forests, fisheries, Jalkars, hats, bazars (mela) and ferries and
 C all other sairati interests, as also his interest in all sub-soil including any rights in mines and minerals, whether been worked on 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
 D absolutely in the State free from all encumbrances and such proprietor tenure- holders shall cease to have any interests in such estate or other the interest expressly saved by or under the provisions of this Act".

E By operation of Sec. 4 such estate or tenures including the interest of the proprietor or tenure holder in such estate or tenure and his interest in trees, forests, fisheries, Jalkars, Hats Bazars (mela) and ferries and all other sairati interests as also his interests in all sub-soil including any rights in mines and minerals etc., other than the interest of a raiyats or under raiyats shall w.e.f. the date of vesting, vest absolutely in the free from all
 F encumbrances and such proprietor or tenure holder shall ceases to have any interests in such estate or other then the interests expressly saved by or under the provisions of the Act. Sec. 6(1)(b) is one of the savings which postulates that "*On and from the date of vesting all lands used for agricultural or horticultural purposes* which were in khas possession of an intermediary on the date of such vesting, including in clause (b) that lands used for
 G agricultural _____ and held in the direct possession of a temporary lessees of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock _____ shall subject to the provisions of Sects. 7-A and 7-B be deemed to be settled by the State with such intermediary and he shall be entitled to retain
 H possession thereof and hold them as a raiyats under the State having

occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner thereby. The saving by Sec. 6(1)(b) is only of the lands actually used for agricultural purposes in a State or a tenure of a lessee or a temporary lessee and directly in his possession and cultivated by himself with his own stock by his own servants or by hired labour or with hired stock that the land stands excluded and raiyati rights has been confirmed statutorily subject to the terms contained there in. The tank is said to be settled by the land holder in favour of the appellant thereby the tank was no saved. Thus the tank stands vested in the state absolutely free from all encumbrances and that, therefore, the contract even, if any, was nullified by *non-obstante* clause in clause 4. Thereby the pre-existing rights, if any, have been extinguished and stood divested. The appellant cannot claim any rights on the basis of the said agreement which formed basis for declaration sought for. Under those circumstances the trial court is clearly in error in granting the declaration. The District court rightly reversed the decree, the High Court though had not gone into this question, for the reasons we set out, we confirm the decree and judgment of the High Court but in the circumstances parties are directed to bear their own costs.

G.N.

Appeal dismissed.