

State Of Bihar And Ors. vs Dulhin Shanti Devi on 25 April, 1961

Equivalent citations: AIR1967SC427, 1962(0)BLJR104, AIR 1967 SUPREME COURT 427

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Bench: B.P. Sinha, A.K. Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar, J.R. Mudholkar

JUDGMENT

K.C. Das Gupta, J.

1. This appeal is against an order of the Patna High Court directing the issue of a writ of certiorari on the application of the respondent under Article 226 of the Constitution, that though she as the raiyat in possession of the plots mentioned in the application had the right to hold Mela thereupon the Revenue authorities were proposing to settle the right to collect tolls from the Mela and her objections had been rejected. Admittedly the ex-proprietor of the estates in which these lands lay was her husband, and while she claimed that there was a bona fide settlement of these lands with her in raiyati by her husband the Revenue authorities disregarded the settlement and proceeded on the basis that these lands were the Bakasht lands of the proprietor himself. The High Court did not find it necessary to consider the question whether the settlement was merely a paper transaction or a real settlement with the petitioners. It was of opinion that even assuming that the lands were Bakasht of the proprietor the State Government had no right to hold Melas thereupon. In that view the High Court directed the issue of a writ in the nature of certiorari quashing the orders of the Revenue officers.

2. Against this decision the State of Bihar and its officers have filed the present appeal after obtaining special leave.

3. In 1959, after the special leave was obtained the Bihar Legislature amended the Bihar Land Reforms Act and as we have decided in State of Bihar v. Rameshwar Pratap Narain Singh, C.A. Nos. 27/60, 574/60, 351/59, 92/60, 285/60 and Writ Petns. Nos. 20 and 106/60: , in which judgment has been pronounced this day the consequence of the amendment is that the State had and the proprietor had not with effect from the date from the vesting of the "estates" in the State, the right to hold Mela on the bakasht lands of the proprietor.

4. The position, therefore, is that if the alleged settlement by the proprietor Shri Narendra Prasad Narain Singh in favour of his wife was a mere paper transaction the State has the right to hold Melas on the lands in question and the respondent Dulhin Shanti Devi has not got such right. If, on the

other hand, the alleged settlement of a raiyati right on the lands in her favour was real and bona fide transaction the vesting of the estate in the State of Bihar would in no way affect her right to hold the Mela on the lands.

5. The High Court found it unnecessary to examine this matter, as on the law as it stood before the amendment in 1959, it had no difficulty in holding that whether the settlement was real or not, Government could not interfere with the petitioner's right to hold Mela on the lands. On the law as it now stands, the question whether the settlement was benami or not becomes important. Proceeding, however, on the well established principle that the apparent state of things should be taken to be the real state of things, unless the contrary is shown, we think that on the materials on the record, the petitioner Shanti Devi should for the purpose of the present petition, be held to have become genuinely a raiyat under her husband, before the date of vesting. The order of the High Court issuing the writ of certiorari in her favour should, therefore, stand.

6. The appeal is dismissed with costs. It would, however, be open to the State and its officials to establish in appropriate proceedings before a competent Court, that the settlement of 1944 in favour of the respondent is sham and nominal and was not intended to convey any real title to the lands.