

MANU/BH/0090/1984

Equivalent Citation: AIR1984Pat303, 1985(33)BLJR133, 1984()PLJR509

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Writ Jurisdiction Case No. 2105 of 1977

Decided On: 09.05.1984

Appellants:**Baikunth Mandal and Ors.**
Vs.

Respondent:**Sundar Mandal and Ors.**

Hon'ble Judges/Coram:

S.S. Sandhawalia , C.J., S.K. Choudhuri and P.S. Sahay , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Ghosh, Sr. Adv. and Sukumar Sinha, Adv.

For Respondents/Defendant: Braj Kishore Prasad, Sr. Adv., Gopal Shankar, Yogesh Chandra Verma, Bharat Lal and Anjana Prakash, Advs.

For State: Jagannath Jha, Standing Counsel No. 1 and Sangita Das Gupta, Jr. Counsel to Standing Counsel No. 1

JUDGMENT

S.S. Sandhawalia, C.J.

1. Which is the appropriate forum for the exercise of jurisdiction for redemption of usufructuary mortgages under Section 12 of the Bihar Money Lenders Act, 1974, has ultimately come to be the core question in this reference to the Full Bench.

2. The facts would now deserve notice only within the narrow confines of their relevance to the primal issue aforesaid. The proceedings stem from a mortgage executed way back on the 15th of June, 1900, made by Rano wife of Fakira Mandat in favour of Banwari Mandal, predecessor-in-interest of writ petitioners 1 to 4. It is the common case that respondents 1 to 5 preferred an application under Section 12 of the said Act before the Anchal Adhikari, Sultanganj, claiming that the mortgage stood wholly redeemed on the expiry of a period of seven years from the date of its execution, and, therefore, prayed for the restitution of possession to them. It would appear that the Anchal Adhikari issued notice in the matter to the opposite party and fixed 17th December, 1975, for hearing, and on the said date without giving any opportunity to the opposite party to file any rejoinder or lead evidence or produce documents, he heard the parties and ordered that the land should be restored to respondents 1 to 5. Somewhat curiously he thereafter ordered that the record of the case be sent to the Land Reforms Deputy Collector for approval. The writ petitioners thereafter appeared before the Land Reforms Deputy Collector and produced numerous documents before him. But on the 26th of May, 1976, he proceeded to pass a cryptic order stating that he affirmed the order of the Anchal Adhikari, Aggrieved thereby, the writ petitioners on the basis of erroneous legal advice preferred an appeal before the Additional Collector, Ehagalpur, who, however, merely filed the same on the ground that he was not entitled to hear it and the Collector of

the district was only competent to do so. The writ petitioners then preferred a revision before the Collector, Bhagalpur (vide Annexure 4), who proceeded to summarily reject the same on the ground that it had not been presented within 30 days from the date of the order. Pushed from pillar to post, the writ petitioners preferred another revision in the Court of the Commissioner, Bhagalpur Division, who again rejected it on the ground of limitation holding that no adequate reason for taking shelter under Section 5 of the Limitation Act arose.

3. Learned counsel for the writ petitioners whilst ignoring the ancillary issue of condonation of the alleged delay has rightly pressed the focal point that the entire proceedings initiated before the Anchal Adhikari and his recommendation to the Land Reforms Deputy Collector for approval were void ab initio being wholly without jurisdiction

4. Now inevitably taking the first thing first in the context of the frontal challenge that the whole proceedings herein from their very inception were void ab initio and virtually non est in view of the patent infraction of the mandatory statutory provisions, all other ancillary issues would pale into peripheral insignificance. It is, therefore, apt and indeed inevitable to examine this question at the very threshold rather than deviate into matters which would become irrelevant if the said question has to be answered in the affirmative in favour of the writ petitioners.

5. The relevant provision herein is obviously Section 12 of the Bihar Money Lenders Act 1974 (hereinafter referred to as "the Act") and the Rules framed thereunder. One may, therefore, at the very outset read the relevant part of Section 12 ;

"12. Usufructuary mortgages and their redemption. -- Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any agreement, the principal amount and all dues in respect of an usufructuary mortgage relating to any agricultural land, whether executed before or after the commencement of this Act, shall be deemed to have been fully satisfied and mortgage shall be deemed to have been wholly redeemed on expiry of a period of seven years from the date of the execution of the mortgage bond in respect of such land and the mortgagor shall be entitled to recover possession of the mortgaged land in the manner prescribed under the rules.

Provided that if the mortgage bond had been executed before the commencement of this Act nothing in this section shall entitle the mortgagor to claim any accounts or profits from the mortgagee by the reason of the benefit of redemption of the mortgage under this provision".

It is significant to notice that the aforesaid section nor any other provision of the Act itself prescribes the forum for the exercise of jurisdiction. The answer to this question has, therefore, to be sought in the Bihar Money Lenders Rules, 1977 (hereinafter referred to as "the Rules") framed by virtue of Section 47 of the Act. Chapter IV of the said Rules containing Rules 9 and 10 therein in express terms provides for redemption of land by the mortgagor under Section 12. It becomes equally necessary to quote the relevant part of the said Rules in extenso :

"9. Procedure in case of resumption of mortgaged property by a mortgagor from the mortgagee under Section 12 of the Act.--(1) On the expiry of the period of mortgage as mentioned in Section 12 of the Act, the mortgagor shall send a notice in Form M. L. 4 by registered post with acknowledgment

due requiring the mortgagee to deliver possession of the mortgaged property within thirty days from the date of notice.

(2) A copy of the notice shall also be sent by registered post with acknowledgment due by the mortgagor to the Anchal Adhikari within whose jurisdiction the mortgaged property is situated.

10. Filing of application by mortgagor to eject the mortgagee in case of the latter's failure to put the mortgagor in possession.-

(1) If, on the expiry of the period of notice in Form M. L. 4, the mortgagee fails or refuses to deliver possession of the mortgaged property to the mortgagor, the mortgagor shall file an application in Form M. L. 5 to the Collector within whose jurisdiction the mortgaged property or any part thereof is situated, to eject the mortgagee from the mortgaged property.

(2) The application shall bear a court-fee stamp of such value as may be payable for it under the Court-fees Act, 1870 (Act 7 of 1870) for the time being in force for an application and shall be accompanied with the form of notice duly filled in Form M. L. 6 in triplicate.

(3) On receipt of application from the mortgagor for ejecting the mortgagee, the Collector shall issue a notice in Form M. L. 6 to the mortgagee or his legal representative to show cause within thirty days from the date of issue of notice as to why the mortgagor should not be put in possession of the land.

(4) If no cause is shown on or before the date specified in the notice or by such other date as may be extended by the Collector or if the cause shown is, in the opinion of the Collector, not satisfactory, he shall pass an order in writing to eject the mortgagee from the mortgaged property and put the mortgagor in possession and for that purpose he may use such force as may be necessary."

It is now well settled after the dictum in State of U. P. v. Babu Ram Upadhyaya MANU/SC/0312/1960 : AIR 1961 SC 751 that statutory rules validly framed under an Act become a part and parcel of the said Act itself. It is plain from the language of the aforesaid rules that the procedure now inflexibly provided by the statute is that the mortgagor shall send a notice in Form M. L. 4 by registered post requiring the mortgagee to deliver possession of the mortgaged property within thirty days from the date of notice. The form of this notice is itself prescribed by the Rules in detail. Rule 9 (2) then envisages that copy of the notice should also be sent to the Anchal Adhikari within whose jurisdiction the mortgaged property is situated. However, in case of a failure to comply with the said notice, Rule 10 in specific terms prescribes the Collector, within whose jurisdiction the mortgaged property or part thereof is situated, as the forum for filing an application to eject the mortgagee. The rules again meticulously provide the form of an application by the mortgagor for ejecting the mortgagee under Form M. L. 5 to the said rules. Yet again Rule 10 (2) prescribes that such an application shall be accompanied with the form of notice duly filled in Form M. L. 6 in triplicate which is to be issued by the Collector to the mortgagee for ejectment. It is thus manifest that the statutory rules specifically and in detail provide the procedure as also the forum in which an application for ejectment of the

mortgagee has to be filed, namely, the Collector, and equally the forms on which it has to be so filed and the notices which have to be issued to the mortgagee.

6. Again the aforesaid rule prescribing the Collector as the forum for the exercise of jurisdiction under Section 12 of the Act has to be read along with Sub-sections (a) and (b) of Section 2 of the Act These are in the following terms :

"(a) "Anchal Adhikari" means an Officer appointed as such by the State Government."

"(b) 'Collector' includes an Additional Collector, an Additional Deputy Commissioner and any other officer not below the rank of a Deputy Collector specially empowered by the State Government to discharge all or any of the functions of a Collector under this Act."

What is of some significance here is that both Rule 9 (2) and Section 2 (a) envisage the Anchal Adhikari as a separate and distinct entity from the Collector and not as one identical thereto. This calls for somewhat pointed notice because of the tenuous stand sought to be taken on behalf of the respondents and even halfheartedly by learned counsel for the State that Anchal Adhikaris can themselves be Collectors for the purposes of the statute and that the two would merge or be identical in terms. It is not possible to accede to such a stand. Section 2 (b) extends the definition of a 'Collector' to include within it an Additional Collector or an Additional Deputy Commissioner and further any officer not below the rank of a Deputy Collector specially empowered by the State Government to discharge all or any of the functions of a Collector under the Act. It is to be noticed that Section 2 (b) provides a base level by laying down that an officer so empowered specially would not be below the rank of a Deputy Collector. In the light of the aforesaid provisions it is possible that the powers of the Collector and consequently the forum for Section 12 can, in the alternative, be vested in an officer prescribed by Section 2 (b) of the Act. It is in the aforesaid context that the admitted governmental notification issued in this behalf has to be perused which is in the following terms :

"The 27th September 1975 G.S.R. 87 -- In exercise of the powers conferred by Clause (b) of Section 2 of the Bihar Money Lenders Act, 1974 (Bihar Act XXII of 1975) the Governor of Bihar is hereby pleased to appoint all Land Reforms Deputy Collectors to exercise the powers of Collector under Sub-section (3) of Section 7, Section 12 and Section 33 of the Act within the local limits of their respective jurisdiction,"

From the above it would follow that under the Act read with the Rules and the Notification issued under Section 2 (b) the prescribed forum for the exercise of jurisdiction under Section 12 would be the Collector (including an Additional Collector or an Additional Deputy Commissioner) and the Land Reforms Deputy Collector exercising such a power, by virtue of the notification. The answer to this question posed at the outset has, therefore, to be rendered in the aforesaid terms.

7. Once the legal position is settled the rest seems to be plain sailing. It is common ground that the respondent mortgagors instead of resorting to the forum clearly prescribed by the Act and the Rules preferred some kind of application before the Anchal Adhikari of Sultanganj. The latter instead of referring the respondents to the proper forum assumed jurisdiction, which was not even remotely vested in him, and proceeded to take seisin of the matter and after purporting to give notice to the opposite party directed that the land be restored to respondents 1 to 5. Then again

without any warrant of law he forwarded the record of the case to the Land Reforms Deputy Collector for approval. It is manifest on the record that the later hardly applied his mind and passed a cryptic order merely affirming the wholly void direction of the Anchal Adhikari. Even when pointedly pressed, learned counsel for the respondents could not point out any provision of law which warrants such a procedure or to show its conformity with what is inflexibly provided in the clearest terms by the detailed and meticulous statutory provisions on the point. It thus seems to be manifest that the very inception of the proceeding before the Anchal Adhikari and its subsequent forwarding to the Land Reforms Deputy Collector were wholly without the sanction of law and devoid of jurisdiction. The subsequent wranglings including the alleged delay in the proceeding before the Additional Collector, the Collector and the Commissioner (which themselves bristle within infirmities) cannot remotely sanctify the proceeding which appears to us as virtually non est from its very inception.

8 . Consequently this writ petition has to be allowed and the whole impugned proceeding is hereby quashed. In the circumstances, there will be no order as to costs.

S.K. Choudhuri, J.

9. I agree.

P.S. Sahay, J.

10. I also agree.

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