

MANU/BH/0001/1969

Equivalent Citation: AIR1969Pat1

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

A.F.O.O. No. 181 of 1960

Decided On: 14.10.1966

Appellants:**Maharaja Chintamani Saran Nath Sah Deo**
Vs.

Respondent:**Tikait Pratap Chandra Nath Sah Deo**

Hon'ble Judges/Coram:

R.L. Narasimham , C.J. and R.K. Choudhary and Kamla Sahai , JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: K.B.N. Singh, Janardan Sinha and S.B.N. Singh, Advs.

For Respondents/Defendant: Lalnarayan Sinha, L.K. Choudhury and S.K. Choudhury, Advs.

JUDGMENT

R.K. Choudhary, J.

1. This Full Bench has been constituted for deciding the following questions of law referred by a Division Bench of this Court:

- (1) Whether Section 14 of the Bihar Land Reforms Act applies to the case of rent or rent decree charged upon a tenure under the provisions of Section 60 of the Chhota Nagpur Tenancy Act;
- (2) Whether the applicability of Section 14 of the Bihar Land Reforms Act is excluded by reason of the fact that the charge on the tenure is destroyed on the vesting of the tenure in the State by virtue of the notification under Section 3 of the Bihar Land Reforms Act; and
- (3) Whether the cases reported in 1962 BLJR 928 and 1953 BLJR 779 were correctly decided.

2. The short facts are these: The decree-holder appellant filed a suit for recovery of arrears of rent against the judgment-debtor respondent, who was a tenure-holder, in the year 1949. The estate of the appellant-proprietor as well as the tenure of the respondent-tenure-holder vested in the State of Bihar before June, 1952, under the provisions of the Bihar Land Reforms Act (hereinafter to be referred to as the "Reforms Act"). On the 28th August, 1953, the appellant obtained a decree for recovery of arrears of rent, and levied execution in Execution Case No. 21 of 1956-57, by sale of certain moveables lying in the house of the judgment-debtor, standing crops lying on plots, door leaves, tiles and other materials of the house, and other moveable properties specified in the execution case including compensation money payable to the judgment-debtor under the provisions of the Reforms Act and by arrest

of the judgment-debtor. The judgment-debtor filed objection to the execution on the ground that the decree obtained by the appellant subsequent to the vesting of his estate as well as of the tenure of the judgment-debtor was invalid and the execution case was not maintainable.

The learned Sub-divisional Officer accepted the objection and held that the decree was not executable. The decree-holder has, therefore, filed the present appeal. The appeal was listed for hearing before a Division Bench of this Court, and an argument was advanced before that Bench that Section 14 of the Reforms Act applied to the case of rent or rent decree charged upon the tenure under the provisions of Section 60 of the Chhota Nagpur Tenancy Act (hereinafter to be referred to as the "Tenancy Act"), and that the remedy of the decree-holder was to proceed under Section 14 of the Reforms Act. On behalf of the appellant, it was argued that Section 14 of the Reforms Act had no application to his case, and, in support of this contention, reliance was placed on two Division Bench decisions of this Court in *Thakur Lakshmi Narainji Birajman Mandir v. Umashanker Sinha* 1962 BLJR 928 and *Kameshwar Singh v. Govind Lal* 1963 BLJR 779. It was contended on behalf of the respondent that a subsequent Division Bench of this Court in *Rani Umeshwari Kuer v. Nazmul Hassan*, MJC No. 289 of 1962 (Pat) and its analogous cases took the view that the cases reported in 1962 BLJR 928 and 1963 BLJR 779 required reconsideration in view of the submission of the Counsel appearing for the opposite parties that the charge referred to in Section 65 of the Bihar Tenancy Act, which is equivalent to Section 60 of the Tenancy Act, is covered by the provisions of Section 4 (d) and Section 14 of the Reforms Act, so that a claim made under Section 14 would, undoubtedly, be entertained by the Claims Officer, as, in the opinion of their Lordships constituting that Division Bench, this aspect of the case did not appear to have been considered in the two Division Bench cases of this Court, referred to above. That Bench, therefore, referred the case to be decided by a Full Bench. Later on, all the writ applications filed in those cases were withdrawn and the points remained undecided. The Division Bench hearing this appeal, therefore, referred the above questions of law to be decided by a larger Bench.

3. Under Section 4(a) of the Reforms Act, on the publication of the notification under Sub-section (1) of Section 3, or Subsection (1) or (2) of Section 3A, such estate or tenure, including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, that, bazars, mela and ferries and all other sairati interests as also his interest in all sub-soil, including any rights in mines and minerals, whether discovered, or undiscovered or whether being worked or 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) vest absolutely in the State with effect from the date of vesting free from all incumbrances and such proprietor or tenure-holder ceases to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act.

Section 4(d) of the Reforms Act lays down that no suit shall lie in any, civil Court for the recovery of any money due from such proprietor or tenure-holder the payment of which is secured by a mortgage of, or is a charge on, such estate or tenure and all suits and proceedings for the recovery of any such money which may be pending on the date of vesting shall be dropped. Sub-section (1) of Section 14 of the Reforms Act provides that every creditor, whose debt is secured by the mortgage of, or is a charge on, any estate or tenure or part thereof vested in the State under Section 3 or

3A may, within six months of date of such vesting or the date on which such creditor is dispossessed under the Provisions of Clause (g) of Section 4, or within three months from the date of appointment of the Claims Officer, whichever date is later, notify in the prescribed manner his claim in writing to a Claims Officer to be appointed by the State Government for the purpose of determining the amount of debt legally and justly payable to each creditor in respect of his claim. Sub-section (3) of that Section says that every claim of the nature referred to in Subsection (1) which is not duly notified to the Claims Officer within the time and in the manner mentioned in the said subsection shall be barred. Section 16 of the Reforms Act relates to the determination of the amount to be paid to the claimant according to the principles laid down in that section.

4. Section 65 of the Bihar Tenancy Act lays down that, where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy raiyat, he shall not, be liable to ejection for arrears of rent, but his tenure or holding or part of his holding shall be liable to sale in execution of a decree for the rent of the tenure or holding, and the rent shall be a first charge on the tenure or holding. Section 60 of the Tenancy Act similarly makes the rent a first charge on the tenancy.

5. Section 100 of the Transfer of Property Act lays down that where Immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinafter contained which apply to a simple mortgage shall, so far as may be, apply to such charge. It has further provided that nothing in this Section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

6. Counsel for the respondent has submitted an argument that the charge created under Section 65 of the Bihar Tenancy Act or Section 60 of the Tenancy Act disappears under the provisions of Section 4(a) of the Reforms Act, according to which the tenure vests in the State free from all incumbrances. His argument is that Section 4(a) does not make any difference between a charge created by a contract or a charge created under a statute; the interests of the tenure-holder or the proprietor, as the case may be, vest absolutely in the State free from the charges created by Section 65 of the, Bihar Tenancy Act or Section 60 of the Tenancy Act: and, that being the position, steps for recovery of arrears of rent cannot be taken otherwise than as provided in Section 14 of the Reforms Act. He has also submitted that the charge created under the above provisions of the two Tenancy Acts comes definitely within the purview of "charge" as defined in Section 100 of the Transfer of Property Act; and, in this view of the argument, he has urged that the cases reported in 1962 BLJR 928 and 1963 BLJR 779 have not been correctly decided.

7. On behalf of the appellant, however, an argument has been advanced that the question of the destruction of the charge created under the Tenancy Acts, referred to above, on the vesting of the estate of the proprietor or the tenure of the tenure-holder in the State under the provisions of the Reforms Act, does not arise, in view of the subsequent enactment of the Bihar Recovery of Arrears of Rents of Outgoing Proprietors and Tenure-holders (Vested Estates and Tenures) Act, 1953 (Bihar Act III of 1953). It has further been submitted that, even if the above Act would not have

been enacted, the charge created under the two Tenancy Acts was not contemplated to be destroyed under Section 4(a) of the Reforms Act. It has been argued that the nature of the charge created under the Tenancy Acts is absolutely different from the charge defined in Section 100 of the Transfer of Property Act.

8. In my opinion, the argument advanced by learned Counsel for the appellant is well founded and must be accepted as correct. The Legislature, while enacting Bihar Act III of 1953, was well aware of the provisions of Section 4(d) of the Reforms Act, according to which no suit could proceed for enforcing the charge on the tenure which had vested in the State and the person having the charge had to take recourse to Section 14 of the Reforms Act for recovery of the money covered by the charge. If, by enacting those two sections in the Reforms Act, the Legislature intended to bring the charge created under the Tenancy Laws within the purview of those two sections of the Reforms Act, Bihar Act III of 1953 would not have been enacted at all. The preamble of Bihar Act III of 1953 says that Act to be an Act to provide facilities for the recovery of arrears of rents, including royalties, cesses and interest, due to an outgoing proprietor or tenure-holder of an estate or tenure vested in the State of Bihar in consequence of the operation of the provisions of the Reforms Act.

Sub-section (1) of Section 3 of Bihar Act III of 1953 says that, where an estate or tenure of a proprietor or tenure-holder vests in the State in consequence of the operation of the provisions of the Reforms Act, the outgoing proprietor or tenure-holder of such estate or tenure may, if he so desires, at any time within three months from the 17th day of December, 1952, or from the date of vesting, whichever is later, make to the Collector in the prescribed manner, an application in the prescribed form requesting that all arrears of rents, including those for which a decree has been passed by a competent court, due to him from tenants or lessees of such estate or tenure for any period prior to the date of vesting, which were recoverable by him in respect of such estate or tenure and the recovery of which is not barred by any law of limitation, may be recovered by the State Government and that, out of the actual collection of such arrears of rents, a sum equivalent to fifty per centum may be delivered to him, after deducting therefrom the arrears of cesses, including interest, referred to in Section 4, and the remainder retained by the State Government to meet the cost of collection and other incidental expenses incurred by it in connection therewith.

Sub-section (7) of that Section states that the amount of the arrears of rent recoverable by the State Government under this Act shall be deemed to be a public demand payable to the Collector and shall be recoverable under the procedure provided in the Bihar and Orissa Public Demands Recovery Act, 1914.

Sub-section (8) of that Section is very important. It lays down that, notwithstanding any application made by an outgoing proprietor or tenure-holder under Sub-section (1) of Section 3, such proprietor or tenure-holder may, until the application has been admitted by the Collector under Clause (a) of Sub-section (5), sue the defaulting tenant or lessee under the provision of any other law for the time being in force for any arrears of rent included in the application. Section 5 of that Act provides that no suit shall be brought in any Civil Court in respect of any order passed by the Collector under the Act in respect of any matter relating to the method of collection or the correctness or otherwise of the amount collected or the payment of any amount to a proprietor or tenure-holder. There is a proviso to this Section which is very important. It lays down that no order of the Collector rejecting an application under Clause (b) of Sub-section (5) of Section 3 shall be deemed to bar the jurisdiction of

the Civil Court from entertaining a suit for the recovery of the arrears of rents in respect of which such application was made.

This Act, therefore, definitely recognises the rights of the outgoing proprietor or tenure-holder to sue for recovery of arrears of rent from the defaulting tenant. Such a provision could not have been made in this Act, if the realisation of rent being a charge on the tenure or holding was intended to be covered by Sections 4(d) and 14 of the Reforms Act, In this view of the matter, it is abundantly clear that the proprietor was not required in law to go to the Claims Officer under Section 14 of the Reforms Act for recovery of the arrears of rent.

9. The charge created under Section 65 of the Bihar Tenancy Act or Section 60 of the Tenancy Act is, in my view, not such a charge which could be destroyed because of Section 4(a) of the Reforms Act. Even if a provision like Section 4(a) of the Reforms Act would not have been in that Act, the charge under Section 60 of the Tenancy Act in the present case would have been destroyed on cessation of the relationship of landlord and tenant between the parties. It is too well established by now that in order to have the rent a charge on the tenure or holding, the relationship of landlord and tenant must exist at the time of the suit as well as at the time of the decree and the execution of that decree. If the relationship of landlord and tenant ceases to exist even prior to the execution of the decree, the decree has not the force of a rent decree and the charge created by the Tenancy laws cannot be enforced.

If any authority is needed, reference may be made to a Privy Council decision in Arthur Henry Forbes v. Maharaj Bahadur Singh MANU/PR/0053/1914 : AIR 1914 PC 111. It was pointed out by their Lordships in that case that, to acquire the right which Section 65 of the Bengal Tenancy Act gives, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure must have the landlord's interest vested in him. In other words, the right to bring the tenure or holding, as the case may be, to sale exists so long as the relationship of landlord and tenant exists. Their Lordships further pointed out as follows :--

"It seems to their Lordships clear on an examination of the different sections bearing on the subject that the right to bring the tenure or holding to sale under Section 65 appertains exclusively to the landlords, and that a person to whom certain rents are due, and who obtains a decree therefore after he has parted with the property in which the tenancy is situate, has no such right. The contrary view, their Lordships think, would give rise to a very anomalous situation. A zamindar to whom certain arrears are due, as in the present case, may sell his property, without assigning, for purposes of his own, the back-rents as he is entitled to do; he may then sue for those back-rents; before any decree is made in this suit, the tenant falls into arrears to the new landlord who brings a similar suit. Both the ex-landlord and the present landlord obtain decrees for their respective arrears. In whose decree and on whose application is the tenure to be sold? The question admits of only one answer -- that it is the existing landlord alone who can execute the decree; the ex-landlord is an outsider, and, whilst he can execute his decree against the debtor as a money decree, he has no remedy against the tenure itself."

Their Lordships also observed that the conception that either from the nature of the debt being arrears of rent, or the decree being for arrears of rent, the tenure becomes ipso facto hypothecated so to speak for the debt and that consequently the person to

whom the debt is due, although he has ceased to be the landlord, and is, to all intents and purposes, so far as other rights and obligations under the law are concerned, a total stranger to the property with which those rights and obligations are inseparably connected, he has the special remedy given to the landlord to recover arrears attached to the tenure, seemed to their Lordships untenable, for the charge created by Section 65 is clearly in favour of the landlord.

In a Bench decision of this Court, to which I was a party, in *Mathura Prasad Singh v. Binda Prasad Sinha* 1961 BLJR 38 the same view was taken, and it was held that, in order to acquire the right which Section 65 of the Bihar Tenancy Act gives for sale of the holding, not only the person obtaining the decree must be the landlord at the time of the passing of the decree but the person seeking to execute the decree by sale of the holding must have the landlord's interest vested in him at the time of the execution case and that the right to bring the holding to sale exists only so long as the relationship of landlord and tenant exists, and it is the existing landlord alone who can execute the decree as a rent decree. It was further pointed out that this principle applies equally to a case where a landlord ceased to be a landlord after he obtains a decree for arrears of rent and before he seeks to enforce it against the tenure or holding. A Special Bench of the Calcutta High Court in *Krishna Pada Chatterjee v. Sm. Manada Sundari Ghose*, MANU/WB/0003/1932 : AIR 1932 Cal 321 also took a similar view and there also it was held that, in order to acquire the right which Section 65 of the Bengal Tenancy Act gives, not only the person obtaining the decree must be the landlord at the time but the person seeking to execute it by sale of the tenure or holding must have the landlord's interest vested in him that the right to bring the tenure or holding to sale exists so long as the relationship of landlord and tenant exists and that it is the existing landlord alone who can execute the decree, applies equally to a case where a landlord ceases to be landlord after he obtains a decree for arrears of rent and before he seeks to enforce it against the tenure or holding as to a case where he ceases to be landlord before he institutes his suit for rent. In either case there is no relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced. The right to bring the tenure or holding to sale exists so long as the relationship of landlord and tenant exists.

It would be unreasonable to allow a landlord to file his petition for execution, part with his interest and still claim the benefits of Chapter 12 of the Act in respect of the subsequent sale. The sale is as much the act of the Court as the issue of the sale proclamation. The question is one between landlord and third parties for even a sale under money decree will pass the tenants' interest. It was further pointed out that the principle of the statute is that only the landlord can bring the holding to sale and this involves that a sale held after his charge has ceased does not pass the holding as distinct from the tenants' right, title and interest therein. In *Ramkali Kuer v. Ram Bujhawan Singh* MANU/BH/0014/1952 : AIR 1952 Pat 42, a Bench of this Court held that a suit for arrears of rent is a suit of a double character. It is ordinarily a suit to enforce the charge upon the holding which is created by the provisions of Section 65 of the Bihar Tenancy Act; and a decree which has the effect of enforcing this charge can only be made when the plaint is framed in such a manner as to comply exactly with the provisions of Section 148 of the Bihar Tenancy Act. The suit is also a suit to enforce the personal liability of the tenant to pay a certain sum of money to the landlord and a decree may be made enforcing this liability where a decree cannot be made enforcing the charge under Section 65 of the Act.

From the authorities quoted above, it is manifest that a landlord has got a right to

recover arrears of rent by enforcing the charge on the tenure or the holding. He may also, without claiming to enforce the charge or where he is not entitled in law to enforce the charge, on account of cessation of the relationship of landlord and tenant, or on any other ground sue the tenant on the personal covenant to pay the rent. Such a suit obviously cannot be barred under Sections 4(a) and 4(d) of the Reforms Act, and the recovery of the arrears of rent, after obtaining a decree for the same by execution against the right, title and interest of the tenant in any property is not controlled by Section 14 of the Reforms Act.

10. It is true, as rightly urged by Mr. Lalnarayan Sinha for the respondent, that neither Sub-section (8) of Section 3, nor the proviso to Section 5 of Bihar Act III of 1953, can be construed as an independent provision conferring right on an ex-landlord to recover arrears of rent as if it were a charge on the holding or tenure, as the case may be, if there is no such right under the law for the time being in force dealing with the subject. But here we are concerned with the question of examining the true scope and content of clauses (a) and (d) of Section 4 and Section 14 of the Reforms Act, especially the true meaning to be given to the word "charge", occurring in Clause (d) of Section 4 and Section 14 of that Act. If the expression "charge" be construed in the wider sense, as urged by Mr. Lalnarayan Sinha, so as to include a charge created either under Section 60 of the Tenancy Act or Section 65 of the Bihar Tenancy Act, the Legislature could not possibly have made such a provision as is found in Sub-section (8) of Section 3 or the proviso to Section 5 of Bihar Act III of 1953. Aid can, therefore, be taken of these provisions with a view to clear any ambiguity that may be found in the aforesaid provisions of the Reforms Act, as disclosing the legislative intent.

11. In 1962 BLJR 928 the appellant brought a suit against the respondent for recovery of mokarrari rent on the basis of a registered mokarrari deed. During the pendency of the suit, the proprietary interest of the intermediary vested in the State of Bihar on the 30th March, 1955, under the provisions of the Reforms Act and the tenure-holder's interest of the judgment-debtor vested in the State on the 1st May, 1954. The suit, however, was decreed on the 17th January, 1955, and the appellant filed an application for the execution of that decree on the 24th June, 1956. An objection was raised on behalf of the respondent as to the execution of the decree, and it was held by the executing Court, the learned Subordinate Judge, that, the decree obtained by the appellant was a nullity in view of Section 4(d) of the Reforms Act and the execution case could not, therefore, proceed and the appellant had the sole remedy of realising the amount of the decree from the compensation which might be allowed under Section 14 of the Reforms Act. It was held in that case that a suit for mokarrari rent did not fall within the purview of Section 4(d) of the Reforms Act, and the reason was that the "charge" referred to in Section 65 of the Bihar Tenancy Act was not such a "charge" as is defined in Section 100 of the Transfer of Property Act. It was further pointed out that the expressions "charge" and "mortgage" in Section 4(d) of the Reforms Act should be construed with reference to the provisions of the Transfer of Property Act where the same expressions have been used; and if the language of Section 4(d) of the Reforms Act is interpreted in the context of the provisions of the Transfer of Property Act, it is manifest that a suit for mokarrari rent is not hit by the mischief of Section 4(d) of the Reforms Act.

It was further held that the appellant did not have the status of a landlord at the time of passing of the decree and so the decree he obtained was not a rent decree and there was no charge created under Section 65 of the Bihar Tenancy Act. It followed that Section 14 of the Reforms Act had no application to that case and the Claims

Officer had no jurisdiction to proceed under Section 14 of the Reforms Act and make an order for compensation under the provisions of that section. Their Lordships further held that the claim was entertainable under Section 14 of the Reforms Act only if the creditor had a debt which was secured by a mortgage of, or was a charge on, the estate or tenure which had vested under Section 3 of the Reforms Act, and that was a condition precedent to the jurisdiction of the Claims Officer for proceeding under Section 14 of the Reforms Act; and, in the absence of that condition, the Claims Officer had no jurisdiction to make an order for compensation under that section.

Following the above decision, the same view was taken by another Bench of this Court in 1963 BLJR 779. Those two cases have taken the view that the charge created under Section 65 of the Bihar Tenancy Act, which is equivalent to Section 60 of the Tenancy Act, does not come within the purview of "charge" defined in Section 100 of the Transfer of Property Act. This view, if I may be permitted to say with due respect, is the correct view, and I have not been able to find out any reason to differ from that view. It may be noted here that Bihar Act III of 1953 does not appear to have been brought to the notice of their Lordships in those two cases, on the basis of which alone the non-applicability of Section 4(d) and Section 14 of the Reforms Act could have been decided. The correctness of the decisions in those cases is further supported by the provisions of Bihar Act III of 1953, which, as already observed, has made provisions for recovery of arrears of rent by the outgoing landlords, making it perfectly clear that proceedings for recovery of such arrears of rent are not controlled by Sections 4(d) and 14 of the Reforms Act.

12. As a result of the above discussions, the law on the point appears to me to be clear that Section 14 of the Bihar Land Reforms Act does not apply to the case of rent or rent decree charged upon a tenure under the provisions of Section 60 of the Chota Nagpur Tenancy Act, and the two Division Bench cases of this Court reported in 1962 BLJR 928 and 1963 BLJR 779 were correctly decided. I, therefore, answer question No. 1 in the negative and question No. 3 in the affirmative. In view of the decisions on those two questions, question No. 2 does not arise for consideration, and I, therefore,

do not propose to answer that question.

13. The case will now go back to the Division Bench for disposal.

R.L. Narasimham, C.J.

14. I agree.

Kamla Sahai, J.

15. I agree.

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