

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7977 of 1992

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1. (a) Durgawati Devi W/o Gurucharan Pd. Keshari and D/o deceased Matroo Sah, resident of Mohalla-Raipur char, PS-Sasaram, District-(Sasaram), Rohtas.
(b) Madhumati Devi W/o Sheo Kumar Keshari and D/o Matroo Sah, resident of Mohalla-Masaurhi, PS-Masaurhi, District, Patna.
(c) Meera Devi W/o Shri Krishna Pd. Keshari and daughter of Late Matroo Sah, resident of Mohalla-Devi-Ashtan Kirana Shop, Arrah, PS-Arrah, District-Bhojpur.
(d) Madhuri Keshari Wife of Anirudh Pd. Keshari, and daughter of Late Matroo Sah, resident of Prabhat Medical Agency, Shivganj- Arrah, PS-Arrah, District-Bhojpur.
2. Cheddi Prasad Keshari son of Matroo Sah, resident of village-Stuarganj, PS-Mohania, District-Bhabua.
3. Pawitra Devi wife of Matroo Sah, resident of village-Stuarganj, PS-Mohania, District-Bhabua. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Bhabhua
3. Circle Officer, Mohania, PS-Mohania, District-Bhabua.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 7116 of 1995

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1. (a) Fula Kuer @ Fulwa Devi W/o Late Barhu Mallah, resident of Mohalla Stuwarganj, Mohania, P.O.+P.S.- Mohania, District- Kaimur.
(b) Chandrawali Devi W/o Satya Narayan Chaudhary and D/o Late Barhu Mallah resident of Mohalla- Sheoganj, P.S.+P.O.- Dehri, Distt.- Rohtas.
(c) Prabha Devi W/o Awadhesh Choudhary and D/o deceased Barhu Mallah resident of Banjari, Distt- Rohtas.
(d) Indu Devi W/o Sanjay Choudhary and D/o Deceased Barhu Mallah, resident of Naubatpur, Distt- Varanasi (U.P.)
(e) Lalmuna Devi W/o Sewak Choudhary and D/o Deceased Barhu Mallah, resident of Naubatpur, Distt.- Varanasi (U.P.)
(f) Binda Devi W/o Ashok Choudhary and D/o Deceased Barhu Mallah, resident of village- Sohadawara, P.S.- Saiyadra , Distt- Chandauli (U.P.)
(g) Nanda Devi W/o Krishna Choudhary and D/o deceased Barhu Mallah, resident of Makarain, Distt.- Rohtas.
(i) Asha Devi W/o Surendra Choudhary and D/o deceased Barhu Mallah, resident of Japla, Distt.- Palamu
(j) Ranju Kumari (minor) D/o Deceased Barhu Mallah, resident of Mohalla-Stuwarganj, P.S.+P.O.- Mohania, Distt.- Kaimur (Bhabhua).
2. (a) Sushila Kuer W/o Late Bhagwan Chaudhary
(b) Sahil Kumar Choudhary S/o Late Bhagwan Choudhary
(c) Sushil Kumar Choudhary
(d) Bittu Kumar Choudhary, both minor sons of Late Sri Bhagwan Choudhary under the guardianship of her mother, Sushila Kuer.
(e) Soni Devi
(f) Priya Devi all D/o Sri Bhagwan Choudhary (Deceased)

(g) Priyanka Kumari

(h) Juli Kumari

(i) Rupa Kumari

(j) Sanju Kumari,

All minor D/o Late Sri Bhagwan Choudhary under the guardianship of her mother Sushila Kuer, all resident of Mohalla- Stuwarganj Mohania, P.S.+P.O.- Mohania, Distt.- Kaimur (Bhabhua)

3. (a) Shukhamani Kuer W/o Late Ram Bachan Choudhary

(b) Sadan Choudhary

(c) Mohan Choudhary, both sons of late Ram Bachan Choudhary

(d) Taramuni Kuer W/o Late Murari choudhary and Daughter in law of Late Ram Bachan Choudhary

(e) Sanjay Choudhary

(f) Ajay Choudhary

(g) Vijay Choudhary

All grandsons of deceased Ram Bachan Choudhary

(h) Rinku Kumari (Minor) grand daughter of Late Ram Bachan Choudhary under the guardianships of her mother Tara Muni Kuer,

All are residents of Mohalla- Stuwarganj, P.S.+P.O.- Mohania, District- Kaimur (Bhabhua)

(i) Pushpa Devi W/o Dinesh Choudhary and D/o Late Ram Bachan Choudhary Resident of Dehri Town, District- Rohtas

(j) Shakuntala Devi W/o Jai Shri Choudhary and D/o late Ram Bachan Choudhary resident of village- Saraiyan, P.S.- Durgawati, District- Kaimur, (Bhabhua).

4. Ram Lochan Choudhary

5. Sheo Lochan Choudhary

6. Nanhak Choudhary @ Nand Kishore Choudhary Sons of Late Ram Deni Mallah, all residents of Mohalla Stuwarganj, Mohania, P.S.- and P.O.- Mohania, District- Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Collector of Bhabua.

3. Sub-divisional Officer, Mohania, District- Bhabua

4. Circle Officer, Mohania, District-Bhabua

.... Respondent/s

Appearance :

(In CWJC No. 7977 of 1992)

For the Petitioner/s : Mr. Mr. Baxi S.R.P. Sinha, Sr. Adv.

Mr. Achhaibar Singh, Adv

For the Respondent/s : Md. Anisul Haque, AC to AAG-9

(In CWJC No. 7116 of 1995)

For the Petitioner/s : Mr. Mr. Baxi S.R.P. Sinha, Sr. Adv.

Mr. Achhaibar Singh, Adv

For the Respondent/s : Md. Anisul Haque, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 02-02-2015

Heard learned counsel for the petitioners and learned

counsel for the State.

CWJC No. 7977 of 1992 (Durgawati Devi & Ors vs. The State of Bihar) and CWJC No. 7116 of 1995 (Fula Kuer @ Fulwa Devi & Ors. Vs. the State of Bihar & Ors.) have been filed with respect to the same piece of land in which common question of law has been raised and are being disposed of by a common order.

In CWJC No. 7977 of 1992, petitioners have challenged the impugned order dated 13th April 1999 (Annexure-7) passed in Objection Case No. 2/1992-93 by Anchaladhikari and the order of the Collector dated 30th June 1992 (Annexure-10) passed in Encroachment Appeal No. 2/1992 whereby the Circle Officer as well as the Collector, Appellate Authority rejected the claim of petitioners and directed for removal of structure from the land in question.

As per the claim in both the cases, the disputed land is appertaining to cadastral survey Khata No. 76, Plot No. 38, Area 1.87 acres and as per the claim of the petitioners three structures have been constructed over the land in question which is as follows:

First structure has been constructed over two decimals of land. Dimension of the first structure is as follows:-

“13 feet from the East to West and 66 feet long from North to South.”

Second structure's dimension is 16 feet from North to

South and 25 feet from East to West, Area 3.4 decimal.

Dimension of third structure is North to South 30 feet and East to West 17.5 feet.

As per the petitioners, the land in question was recorded in the name of ex-landlord, Dulhin Kanchana Kuer (Annature-1 to the writ application) there the land has been shown as Gair Majarua Malik and the nature of the land is Pokhar. The said land was settled by ex-landlord in favour of Ramdeni Mallah and Dasai Mallah.

To substantiate the claim over the land, in the year 1929 the rent reduction schedule was prepared by the State of Bihar in the name of Dasai Mallah (Annexure-2) and at the time of vesting, the return was filed by the ex-landlord in favour of Ramdeni Mallah (Annexure-3).

From perusal of the record it appears that certain portion of the records has been written in Hindi and certain portion has been written in English.

At the time of revisional survey, Plot No. 38 has been divided in three plots i.e. in plot Nos. 74, 43 and 74/799.

Plot No. 43 and Plot No. 74/799 were prepared in the name of the State of Bihar whereas Plot No. 74 has been prepared in the name of Dasai Mallah and Ramdeni Mallah.

Against entry made with respect to Plot Nos. 43 and



74/799, Dasai Mallah and Ramdeni Mallah filed an application before the Settlement Officer under section 103(A) (3) of the B.T. Act which was registered as MJC No. 3960 of 1960 and the Settlement Officer vide order dated 31st May 1967 allowed the same in favour of the petitioners and directed for making necessary correction. Against the order dated 31st May 1967, the Circle Officer filed a review application which was dismissed on 27th November 1967 with the liberty to file an appeal against the order of the Settlement Officer but no appeal was filed against the order of the Settlement Officer and thereby it has reached to its finality.

From Dasai Mallah, the land was purchased by Matroo Sah and thereafter, Matroo Sah, Durgawati Devi and Cheddi Pd. Keshari became land owner of the said land.

It has further been submitted that in the consolidation proceeding, the land was recorded in the name of Cheddi Pd. Keshri which has attained to its finality (Annexure-6) and thereafter, a land encroachment proceeding was initiated against Cheddi Pd. Keshari and Durgawati Devi for illegal encroachment of the land and the name of Cheddi Pd. Keshari is at serial No. 3 and the name of Matroo Sah is at serial No. 26.

Against the order of the Circle Officer, an appeal was filed by Matroo Sah which was also dismissed by the Appellate

Authority vide Annexure-10 to the writ application.

The State has altogether filed three counter affidavits. In the counter affidavit, it has been disputed by the State that the land was ever settled with Dasai Mallah and Ramdeni Mallah. It has further been stated that the return is a forged document, Annexure-A to the supplementary counter affidavit has been prepared in the year 1912 shows the land as Gair Majarua Majkur and the nature of the land is Pokhar.

The order dated 22nd December 1969 (Annexure-B to the supplementary counter affidavit) has been passed in MJC No. 3960 of 1966 from where it appears that the State has taken a plea that the land in question is a sairat and the same was settled with different fisherman, on different occasion. It also appears from Khata Nos. 23 and 29 of Registered-II that Some interpolation has been made in Register II with respect to Khata Nos. 23 and 29. It has further been submitted, in fact, the petitioners have given up all claims with respect to Plot No. 43 which has been carved out from Plot No. 38 and 76, rent receipts are forged and fabricated, even mahadnama has been shown to have been cancelled. Rent receipt has been cancelled in Miscellaneous Case No. 91 of 1968 in respect of Plot No. 38 has been upheld at the appellate stage by the DCLR produced the Sairat Register showing said pokhar was settled by the State. A proceeding



under section 144 of the Code was started against the petitioners in which, the State has been shown in possession of the land. In pursuance thereof, the claim of Ramdeni Mallah was rejected so much so Register II, Annexure-C to the supplementary counter affidavit also shows that the land has been recorded as Anabad Sarkar. In the affidavit, claim has been made, Desai Mallah was never in possession of land or pokhar. A 2nd supplementary counter affidavit has been filed by the State where it has been specifically stated that this plot is a sairat and after the policy decision, it has been transferred to the Fisheries Department and the D.F.O.-cum-C.E.O. from time to time has been settling the pokhar to different persons.

The counsel for the petitioners submits that though petitioners filed all documents before the C.O. as well as the Appellate Authority, by neither of them considered their case and the defence taken by the petitioners has not been discussed by the Appellate Authority and so much so, he has submitted that certain documents which are in favour of the petitioners, have been ignored by the Appellate authority who abruptly arrived to a finding that appeal is not maintainable.

The State has however stated that the Appellate Authority elaborately dealt with the matter and passed the order.

Having considered the rival contentions of the parties, in

para 21 and 22 of the writ application it has been stated that the petitioners have filed a detailed show cause along with the records to support their contention. Here the document, that has been filed by the petitioners, is quite variance to the document that has been filed by the State and it is incompatible to each other.

The State has although taken plea that the land was never settled to Dasai Mallah and Ramdeni Mallah which has been disputed as aforesaid, the State has also doubted the correctness of the return. It has been contended by State that the land in question as per the petitioners, cannot be said to be an agricultural land and cannot be a matter of consolidation proceeding that has been taken in the first counter affidavit.

Of course, the State is right that only the agricultural land shall be matter of consolidation proceeding any other land having no nexus with the agricultural cannot be subject matter of consolidation proceeding.

In such view of the matter, this Court does not find any error in the order of appeal but it will be ends of justice, in view of disputed question of facts and disputed documents produced by the parties, this Court cannot give any positive finding either in favour of the petitioners or in favour of the State.

In such view of the matter, the present writ application

does not survive. However, liberty is given to the petitioners, if so advised, they may file a suit before the competent civil court.

If such suit is filed within two months from the date of receipt/production of a copy of this order, during that period the authority will not go for demotion of structure but thereafter it will be subject to interim order if any within that period. If no such order is obtained by the petitioners within the aforesaid period, the State will have liberty to proceed in accordance with law.

Accordingly, this petition (CWJC No. 7977 of 1992) is disposed of.

With respect to CWJC No. 7116 of 1995 (Fula Kuer @ Fulwa Devi & Ors.), it appears that petitioners had never taken steps either before the Circle Officer or before the Appellate Authority and straightway they have approached this Court.

This Court does not find any merit in this application (CWJC No. 7116 of 1995) and the same is accordingly dismissed without any liberty.

(Shivaji Pandey, J)

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