

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6672 of 1995

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Daya Kant Tanti, son of late Jageshwar Tanti, resident of Jhapra Tola, at present Pastel Nagar within municipal Town of Saharsa, P.S. & District-Saharsa.

.... Petitioner/s

Versus

1. State of Bihar
2. The District Magistrate- cum Superintendent of Municipal Survey and settlement Officer, saharsa.
3. The Charge Officer, Town Survey Settlement, Saharsa.
4. The Anchal Adhikari Saharsa.
5. Gareeb Das Son of late Jugal Das
6. The Assistant Settlement Officer, Saharsa. (Inquiry Section, Saharsa)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinod Shanker Modi
Mr. Manoj Kumar Singh

For the State Mr. Kinkar Kumar, S.C. 27
Mr. Sushant Parveen, A.C. to S.C. 27

For the respondent Mr. Prabhakar Tekriwal
Mr. Shashi Dhar Jha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

10 18-02-2015 Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is challenging the order of Collector dated 16.6.1995 whereby he has directed the Circle Officer, Saharsa to make entry with respect to land appertaining to Khata No. 130, Khesra 3757 and 3758 measuring 1.15 katha and New Khata is 1278 in respect of plot nos. 1230, 1231, 1232 and 1233 and area 17 katha and 15 dhur. The land appertaining to Khata no. 1278, plot No. 1231 area 8 Katha 11 dhur has been

shown as “Anabad Sarvsadharan”.

As per claim of the petitioner, the land was purchased by the petitioner from Late Yugal Das, father of respondent No. 5, who got the settlement of the land through parwan, from Ex land lord in the year, 1924 and 1925 and after that, Ex landlord has also issued rent receipt in his favour and at the time of vesting, the return was filed in the name of Yugal Das, who sold the property in favour of the present petitioner.

As it appears from the record that the land in question is “Pokher”, attached from the Western side of Bhinda, there is a road for the use of general public. At the initial stage, land was recorded in the name of State of Bihar and later on during survey, it was recorded in the name of Dayakant Tanti, the petitioner, which was objected by filing objection by the adjacent raiyat but in absence of the report, the objection was rejected and later on, respondent No. 5 Gareeb Das, who was a Ward Commissioner, filed an application bearing his signature and signature of many other persons before the Collector and Collector initiated a proceeding. It has been claimed by the petitioner that without hearing him, the order has been passed. In exercise of power under 467 of Bihar Survey and Settlement Manual the Collector in view of Circular of 1994 issued by the State Government prohibits



making entry in the name of individual raiyat with respect to Gairmazarua land passed impugned order. Basically the claim of the petitioner is that before passing the order, he was not given opportunity of hearing and ex parte order has been passed so much so that the Collector has wrongly recorded in the order that he had called the petitioner and made enquiry about him and about the nature of land and demanded of supportive documents which he failed but allegations has been made that the Collector at the instance of respondent No. 5 tried to snatch the right of the petitioner with respect to the properties. He has further submitted that the ex- landlord had filed return in favour of petitioner and was granted rent receipt by Ex landlord. Register-2 is also in his favour.

Learned counsel for the State in reply has submitted that the documents attached with this petition are forged as he had obtained order during survey by producing the wrong records, he also submitted so much so, his name has fraudulently been entered into the Register-2.

This court is not deciding the question on merit as it appears that this Court vide order dated 28.01.2015 directed the state to produce the entire records of the case but that has not been produced. Submission has been made the records have not been

received and prayer has been made for time, as this Court has already given sufficient time to produce the record but they have failed to produce the same.

In such view of the matter, the plea of the petitioner that he was not heard and the matter was decided ex parte, is correct so much so order does not show, how the Collector arrived to a finding that the petitioner had obtained the order by playing fraud and Settlement Officer has wrongly passed in favor of the petitioner. Basically this Court is not deciding the case on merit but merely, holding that Collector has passed order without giving any notice to the petitioner.

The order dated 16.06.1995 is hereby set-aside and the matter is remanded back to the Collector, who will pass a fresh order after hearing the petitioner as well as the respondent No. 5.

With this observation, this petitioner is allowed to that extent.

(Shivaji Pandey, J)

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