

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8869 of 1998

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Surendra Singh son of Sri Singh, resident of village-Kartaha Burzurg, Police Station-Lalganj, District Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Vaishali,
3. Deputy Collector, Land Reforms, Vaishali
4. Circle Officer, Lalganj, District Vaishali
5. Krishna Devi wife of Saryug Singh,
Resident of village-Kartaha Buzurg, Police Station Lalganj, District Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.
 Mr. Lakhan Chandra Roy, Adv.
 Mr. Anju Narain, Adv.

For the Respondent/s : Mr. Rajeev Kumar Singh, G.P.2
 Mr. Uday Bhanu Roy, Adv.

For the private respondent: Mr. Anant Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-07-2015

Heard Mr. Rajendra Narain, learned Senior Counsel for the petitioner, Mr. Rajeev Kumar Singh, G.P.2 for the State and Mr. Anant Kumar learned counsel for the private respondents.

This writ petition has been filed praying for issuance of a writ in the nature of certiorari for quashing the order dated 7.9.1998 passed by the Collector, Vaishali in Misc. Case No.230 of 1998-99, a copy of which is placed at Annexure-6 to the writ petition whereby the Collector, Vaishali has directed for rehearing of the claim put forth by the private respondent seeking relief under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter

referred to as 'the Act').

The issue revolves around a piece of land bearing Khata No.576 Khesra No.2369 admeasuring 0.72 decimals situated in village Kartaha in the district of Vaishali. The private respondent seeking relief over 4 decimals of the said land filed an appropriate application before the Circle Officer, Lalganj giving rise to Case No.5 of 1994-95 and prayed for issuance of a *Basgit purcha* in relation thereto. The claim was allowed and the writ petitioner being aggrieved moved the Collector, Vaishali under Section 21 of 'the Act' giving rise to Misc. Case No. 139 of 1994-95. The matter was heard and the Collector, Vaishali in consideration of the evidence on record which reflected that the private respondent held ownership to several plots of land as well as residential house, was of the opinion that the claim allowed by the Circle Officer was not sustainable and thus set aside the same vide order passed on 26.6.1998/8.8.1995 placed at Annexure-4 to the writ petition. Another application was filed by the petitioner seeking ejectment of the private respondent from the homestead constructed on the said piece of land giving rise to Misc. Case No. 126 of 1995-96 and the Collector, Vaishali by order dated 1.9.1997/23.9.1997 placed at Annexure-5 found substance in the prayer made by the writ petitioner and directed the private respondent to vacate the homestead within 3 months of the order and hand over the possession thereof to



the petitioner. The records of the present proceeding reflect that the private respondent filed a second miscellaneous case giving rise to Misc. Case No.230 of 1998-99 and the Collector, Vaishali vide order passed on 7.9.1998 found the case fit for rehearing and directed the Deputy Collector Land Reforms to hold a spot enquiry and being aggrieved the petitioner is before this Court.

The writ petition was heard by a bench of this Court on 24.8.1999 and when this Court while issuing notice to the private respondent stayed the operation of the order dated 7.9.1998 passed by the Collector, Vaishali impugned at Annexure-6. The writ petition was admitted on 7.2.2000 and when the interim order passed on 24.8.1999 was directed to remain in operation.

Mr. Rajendra Narain, learned Senior Counsel for the petitioner with reference to the *khatiyani* prepared in the name of the father-in-law of the private respondent placed at Annexure-3 has submitted that this single piece of document itself would reflect that the private respondent was not entitled to any relief under 'the Act' since her family held several plots of land and thus were not entitled to the protection under 'the Act'. He submits that this fact has been taken note of by the Collector, Vaishali in the order dated 26.6.1995/8.8.1998 and there is a conclusive finding by the Collector, Vaishali that the private respondent did not come within the definition



of a 'privileged person' for grant of relief so provided to her by the Circle Officer and the order of the Circle Officer was set aside. He further submits that the Collector, Vaishali did not stop at that rather even found merit in the prayer of the petitioner for ejectment of the private respondent vide order passed in Misc. Case No. 126 of 1995-96 placed at Annexure-5.

On the strength of the documents on record and the conclusion of the Collector, Vaishali it was submitted that there arose no fresh circumstance nor there is any material on record warranting a review of the conclusive finding of fact nor the statute empowers the Collector to rehear a concluded matter. With reference to a Division Bench judgment of this Court rendered in the case of **Nagina Sah versus Rajpati Devi** reported in **1979 BLJR 453** he submits that the entitlement of a person claiming relief under 'the Act' has been explained by the Division Bench and in paragraph 11 of the judgment it has been categorically held that if a person is found to be holding plots of land or a homestead, he cannot claim to be a 'privileged person' under 'the Act' or be entitled to any relief under the said statute. He thus submits that the conclusion of the Collector, Vaishali as reflected from the orders placed at Annexures- 4 and 5 is supported from the judicial pronouncement of this Court and in which view of the matter there was no occasion for the Collector, Vaishali for

rehearing of the matter which even otherwise is not permissible under law.

Though Mr. Singh who has appeared for the State and Mr. Anant Kumar appearing for the private respondent attempted to justify the impugned order but in view of the conclusive finding of fact by the Collector, Vaishali as to the entitlement of the private respondent to the privilege under 'the Act' and in view of the law settled by the Division Bench of this Court in the case of **Nagina Sah** (supra), in my opinion the order passed by the Collector, Vaishali in directing for rehearing of the matter besides being illegal is also unwarranted and impermissible in law. The order nowhere discusses the material which has prompted the Collector, Vaishali to order for rehearing of the matter which even otherwise is not permissible in law. The provisions of Section 21 of 'the Act' though empowers the Collector of the district to reopen any matter adjudicated upon by a Collector under 'the Act' but in so far as the present case is concerned, since the orders declining to give relief to the private respondent has been passed by the Collector of the district himself, he cannot exercise the revisional jurisdiction so vested in him under section 21 of the 'the Act'. There is neither any facts available on record which can justify the order passed by the Collector nor the statutory provisions governing the act permit him to do so. It is in consideration of such

position that the interim protection was granted to the petitioner at the stage of admission continues till date. The order dated 7.1.1998 passed by the Collector in Misc. Case No.230 of 1998-99 in the circumstances discussed hereinabove is per se illegal and cannot be upheld.

In result the entire proceedings arising from Misc. case No. 230 of 1998-99 including the order dated 7.1.1998 of the Collector, Vaishali is set aside. The writ petition is allowed.

The interim order dated 24.8.1999 stands confirmed.

Let a writ issue accordingly.

(Jyoti Saran, J)

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