

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7044 of 2009

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Nakshtra Mandal, son of late Garbhu Mandal, resident of village and P.O.-
Arazpur, P.S.-Chausa, District-Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Collector, Madhepura
 3. The Circle Officer, Chausa, District-Madhepura
 4. Kuldeep Mandal, son of Adhiklal Mandal.
 5. Sri Kant Mandal, son of Baital Mandal
- Both resident of village-Arazpur, P.S.-Chausa, District-Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Radhey Shyam Prasad
Mr.Santosh Kumar Singh

For the Respondent nos.1to3 : Mr. Avanindra Kumar Jha, AC to AAG-13

For the respondent nos.4 & 5 : Mr. Rajeev Kumar

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

8 18-08-2015

Heard the parties.

The petitioner, claiming to be the purchaser from the original land holder, is aggrieved by the order dated 25.06.2001 (Annexure-1/A) passed in Basgit Parcha Case No.2 of 2000-01 by the respondent Anchal Adhikari, Chausa, whereby the claim of the respondent nos.4 and 5 for issuance of Basgit Parcha with respect to a plot of land bearing khata no.565 appertaining to khesra no. 3750/5820 area 4 decimals has been allowed under the provisions of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'Act, 1947') read with the provisions of Bihar Privileged Persons Homestead Tenancy Rules, 1948 (in short 'Rules, 1948'). The petitioner is also aggrieved by the order dated 11.06.2007 passed in Basgit Parcha Appeal Case No.4 of 2003 (Annexure-1) by the respondent District Collector, Madhepura, wehereby the aforesaid appeal preferred by the petitioner has been dismissed

and the original order dated 25.06.2001 (Annexure-1/A) passed by the Anchal Adhikari, Chausa has been affirmed.

Learned counsel appearing on behalf of the petitioner submits that the petitioner had purchased the land in question from the original land holder Upendra Mandal by a registered sale deed dated 05.07.2000 (Annexure-2), but, before issuance of impugned original order, an opportunity of hearing was not given to the petitioner and, therefore, there has been violation of the principles of natural justice. He further contended that, before passing the final order by the respondent Anchal Adhikari, Chausa, the procedures prescribed under Rule 5 of the Rules, 1948 were not followed. Therefore, on that ground also, the impugned original order dated 25.06.2001 (Annexure-1/A) is not sustainable.

The matter has been contested by the learned counsel appearing on behalf of the respondent nos.4 and 5. According to them, before passing the impugned order dated 25.06.2001 (Annexure-1/A) notice was issued to the land holder, but he did not appear and, therefore, the order was passed by the Anchal Adhikari, Chausa allowing the claim of the respondent nos.4 and 5. However, despite repeated query made by this Court, he has not been able to show that the procedures prescribed under Rule 5 of the Rules, 1948 were followed before passing the impugned final order dated 25.06.2001 (Annexure-1/A).

Learned State counsel appearing on behalf of the respondent nos.1 to 3 submits that despite all efforts the counter affidavit could not be filed on behalf of the official respondents.

After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the entire matter requires re-consideration and fresh decision



from the stage of original authority i.e. the respondent Anchal Adhikari, Chausa. Apparently, a petition was filed on behalf of the respondent nos.4 and 5 for issuance of Basgit Parcha with respect to the land in question, which gave rise to the Case No.02 of 2000-01. Before the final order was passed on 25.06.2001 (Annexure-1/A) the petitioner had already purchased the land in question, but no notice was served upon him. It further appears that the procedures prescribed under Rule 5 of the Rules, 1948 have not been strictly complied with. Though, this issue was raised before the respondent District Collector, but without considering this aspect of the matter, particularly about the compliance of the Rule 5 of the Rules, 1948, he has mechanically rejected the appeal filed on behalf of the petitioner by the impugned appellate order dated 11.06.2007 (Annexure-1).

For the reasons recorded above, the impugned original order dated 25.06.2001 passed in Basgit Parcha Case No.02 of 2000-01 (Annexure-1/A) as also the impugned appellate order dated 11.06.2007 (Annexure-1) passed by the respondent District Collector, Madhepura are hereby set aside and quashed and the matter is remitted back to the respondent Anchal Adhikari, Chausa for deciding the claim of the respondent nos.4 and 5 in accordance with law afresh.

In order to expedite the matter, the petitioner as also the respondent nos.4 and 5 are directed to appear before the respondent Anchal Adhikari, Chausa with a certified copy of the present order within a period of four weeks, whereafter the respondent Anchal Adhikari, Chausa shall proceed further in the aforesaid Basgit Parcha Case No.02 of 2000-01 in accordance with law.

The parties shall be at liberty to raise all the issues of facts and law before the Anchal Adhikari, Chausa, which may be available to them.

The writ petition stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

Arvind/-

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