

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.888 of 2009

With

Interlocutory Application No. 5870 of 2011

And

Interlocutory Application No.6216 of 2011

And

Interlocutory Application No.693 of 2012

And

Interlocutory Application No.6476 of 2015

- =====
1. Most. Sundari Devi, widow of late Sri Krishna Pasi
 2. Most.Kalaktari Devi @ Kalaketari Devi, widow of late Rama Shankar Pasi
 3. Ram Krishna Pasi, son of late Gauri Shankar Pasi
 4. Hare Krishna Pasi @ Hari Krishna Pasi, son of Rama Nand Pasi
- All residents of village-Sonbarsha, police station-Nawanagar, District-Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Revenue and Land Reforms Department, Bihar, Patna.
 2. The Collector, Buxar
 3. The Anchal Adhikari, Buxar
 4. The Officer In-charge, Nawanagar Police Station, District-Buxar.
 5. Suresh Sah Gupta, son of Gauri Shankar Prasad Sah
 6. Vikrama Prasad, son of Mangaru Prasad
 7. Gauri Shankar Prasad, son of Jhingaru Prasad Sah Gupta
- All residents of village-Sonbarsha, police station-Sonbarsha, District-Buxar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Ram Suresh Rai, Sr.Adv.
Mr. Ramesh Jha
Mr. Gaurav Kumar

For the Respondent nos.1to4 : Mr. Dev Kumar Pandey, AC to GP-6

For the Respondent nos.5to7 : Mr.Rama Shankar Pradhan, Sr.Adv.
Mr.Jainandra Kumar

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 13-08-2015

Re.: Interlocutory Application No. 5870 of 2011

The instant interlocutory application, which is in the nature of substitution petition, has been filed on behalf of the petitioners stating therein that during the pendency of the writ petition petitioner no.3- Ram Krishna Pasi died on 12.10.2010 leaving behind his two sons and one widow as his heirs and legal representatives. It has further been stated that his widow Janki Devi is traceless for more

than 20 years. Therefore, vakalatnama has been filed only on behalf of his two sons.

After having heard the parties, the prayer for substitution is allowed. Let the name of deceased petitioner no.3 be expunged from the array of the parties and be substituted by his two sons only, detailed in paragraph-1 of the instant interlocutory application, who have already entered appearance through a lawyer by filing their duly executed vakalatnama. Since widow of the deceased petitioner no.3 is traceless for more than twenty years as per the averments made in the aforesaid interlocutory application, therefore, she shall not be substituted.

The instant interlocutory application stands allowed to the extent indicated above.

Re.:CWJC No.888 of 2009

With

I.A. No.6216 of 2011

And

I.A. No.693 of 2012

And

I.A.No.6476 of 2015

Heard the parties.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondent nos.1 to 4 to protect their interest with respect to the lands bearing khata no.314, khesra no.1145 total area 24 decimals situate at Mauza-Sonbarsha, P.S.-Nawanagar, District-Buxar (hereinafter to be referred to as the 'lands in question'), which were allotted to them by virtue of Basgit Parcha dated 20.03.1984 (Annexure-1) by the respondent Anchal Adhikari, Nawanagar. The petitioners have also prayed that the respondent nos.5 to 7 be restrained from interfering with the possession of the petitioners over the lands in question.



3. It is submitted by the learned senior counsel appearing on behalf of the petitioners that in view of the petition filed on behalf of the petitioners under the provisions of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'Act 1947') read with the provisions of The Bihar Privileged Persons Homestead Tenancy Rules, 1948 (in short 'Rules 1948), Basgit Parcha Case No.3/1983-84 was started and finally they were allotted the lands in question by the order dated 20.03.1984 passed by the Anchal Adhikari, Nawanagar and accordingly, the Basgit Parcha was issued in their favour. A copy of the aforesaid Basgit Parcha has been brought on record as Annexure-1 to the writ petition. It is further submitted that the Basgit Parcha issued in favour of the petitioners were subsequently modified by the order passed by the respondent District Collector, Buxar and the aforesaid modified Basgit Parchas have been brought on record as Annexure-4 series.

4. The grievance of the petitioners is that, despite issuance of aforesaid Basgit Parcha, there was threat at the behest of the respondent nos.5 to 7 for their dispossession from the lands in question. Therefore, they approached the respondent District Collector, Buxar by filing Misc.Case No.117 of 2008, but the District Collector, Buxar is not passing any final order and not issuing any direction to protect the interest of the petitioners. A copy of the petition of Misc.Case No.117 of 2008 has been brought on record as Annexure-5 to the writ petition. It is contended that in the above background, an appropriate direction may be issued to the official respondents so that interest of the petitioners over the lands in question is protected.

5. Per contra, the matter has been contested by the respondent nos.1 to 4 as also by the respondent nos.5 to 7 by filing their separate counter affidavits.

6. Learned AC to GP-6 appearing on behalf of the



respondent nos.1 to 4, by referring to the averments made in the counter affidavit filed on behalf of the respondent no.2, submits that the petitioners have not come with clean hands before this Court. According to him, they are guilty of suppression of material facts and on this ground alone, besides others, the writ petition as a whole is liable to be dismissed. By referring to the order dated 10.05.1985 passed by the respondent Anchal Adhikari, Nawanagar, which has been brought on the record as Annexure-B to the aforesaid counter affidavit, it is submitted that the Basgit Parcha issued to the petitioners in the year 1984 was cancelled by the aforesaid order dated 10.05.1985 for the reasons recorded in that order, but this fact has completely been concealed by the writ petitioners. He further contended that, it is true that the petitioners had filed Misc.Case No.117 of 2008 before the respondent District Collector, Buxar and in that Misc. Case final order was passed on 15.11.2011 (Annexure-I to the aforesaid counter affidavit), whereby the entire matter was remitted back to the respondent Anchal Adhikari with a direction to pass fresh order. He also contended that earlier the Basgit Parcha was issued to the petitioners with respect to plot no.1145, but, on verification, it was found that they were not in possession over that plot of land, and their claim was basically with respect to the plot no.1142. According to him, in that background, the entire matter is required to be decided afresh by the respondent Anchal Adhikari, but no final order has been passed.

7. Learned senior counsel appearing on behalf of the respondent nos.5 to 7, by referring to the averments made in the counter affidavit filed on behalf of the aforesaid respondents, submits that, as per own showing of the petitioners in paragraph no.6 of the writ petition, the lands of plot no.1145 was originally belonging to one Sidhnath Pathak and he had transferred the said land to the ancestor of the respondent nos.5 to 7 way back on 19.02.1980. Yet,



when the Basgit Parcha Case was filed by the petitioners, neither the original land owner Sidhnath Pathak nor the ancestor of the respondent nos.5 to 7 were issued any show cause notice nor they were given any opportunity of hearing. Therefore, according to him, the entire action of the competent authority issuing Basgit Parcha in favour of the petitioners is not sustainable on the ground of violation of the principles of natural justice. He further contended that since the respondent District Collector, Buxar has passed a fresh order on 15.11.2011 in Misc.Case No.117 of 2008 (Annexure-I to the counter affidavit filed on behalf of the respondent no.2), therefore, unless and until the matter is decided afresh by the Anchal Adhikari, Nawanagar there is no question of issuance of any direction for giving any protection to the petitioners with respect to the lands of plot no.1145. He next contended that so far the order dated 25.09.2012 (Annexure-8 to the I.A.No.6476 of 2015) is concerned, that has been passed in violation of order and direction issued by the respondent District Collector, Buxar. Hence, it cannot be sustained in law. Furthermore, once the matter has been remitted back by the respondent District Collector to the Anchal Adhikari, Nawanagar, the proceeding was required to be carried out in accordance with the provisions of the Act, 1947 and the Rules, 1948, but that has not been done by the Anchal Adhikari, Nawanagar. Therefore, it is pleaded that the aforesaid order is also not sustainable in law. Lastly, it was pointed out that though the petitioners were the Parcha holders under the provisions of the Act, 1947, but they have transferred these lands to a third person, which is contrary to the mandate of the Act, 1947. In these backgrounds, it is contended that the writ petition is liable to be dismissed with costs.

8. After having heard the parties at length and on consideration of the materials available on the record, this Court is of the opinion that the entire matter is required to be re-considered and



re-decided by the Anchal Adhikari, Nawanagar from the very beginning. It is true that the Basgit Parcha was issued to the petitioners in the year 1984 vide Annexure-1, but, at that time, no opportunity of hearing was given either to the original land holder or the transferee. Furthermore, the aforesaid Basgit Parcha was cancelled by the order dated 10.05.1985 (Annexure-B to the counter affidavit filed on behalf of the respondent no.2) and that order was never challenged by the petitioners in any subsequent proceeding or before any higher authority/court. However, admittedly, the petitioners themselves filed Misc.Case No.117 of 2008 before the respondent District Collector, Buxar. Taking into consideration the entire facts, the respondent District Collector remitted the matter back to the Anchal Adhikari, Nawanagar for passing a fresh order. In view of the aforesaid remand order dated 15.11.2011 (Annexure-I to the counter affidavit filed on behalf of the respondent no.2), the Anchal Adhikari, Nawanagar was required to proceed afresh under the provisions of the Act, 1947 read with the Rules, 1948 after giving an opportunity of hearing to all concerned, but that has not been done by him. Instead, on altogether different consideration, he passed an order dated 25.09.2012 (Annexure-8 to the I.A.No. 6476 of 2015) and issued certain directions to the karamchari for issuance of rent receipt in favour of the petitioners. Apparently, while passing the aforesaid order dated 25.09.2012 (Annexure-8 to the I.A.No. 6476 of 2015), he has not followed the procedure prescribed under the Act, 1947 and the Rules, 1948 and has also flouted the order dated 15.11.2011 passed in Misc.Case No.117 of 2008 (Annexure-I to the counter affidavit filed on behalf of the respondent no.2) by the District Collector, Buxar.

9. For the reasons recorded above, the entire matter is remitted back to the Anchal Adhikari, Nawanagar for considering and deciding the case of the petitioners vis-à-vis the respondent nos. 5 to 7 in the light of the order dated 15.11.2011 passed in Misc.Case No.117

of 2008 (Annexure-I to the counter affidavit filed on behalf of the respondent no.2) by the respondent District Collector, Buxar. While passing the fresh order, he shall be obliged to follow the procedure prescribed under the Act, 1947 and the Rules, 1948 and before passing any final order he shall further be obliged to give an opportunity of hearing to the petitioners as also respondent nos.5 to 7, besides others.

10. In order to avert any future complication, it is clarified that any transfer made by the petitioners with respect to the lands in question, which were earlier allotted to them vide order contained in Annexure-1 under the provisions of Act, 1947 is held to be illegal and void. The transferee(s) shall not acquire any legal right over the lands in question on the basis of the transfer made by these petitioners. Furthermore, the order dated 25.09.2012 passed in Misc.Case No.8/12-13 by the Anchal Adhikari, Nawanagar, as contained in Annexure-8 to the I.A.No. 6476 of 2015, is also hereby set aside and quashed, so that the Anchal Adhikari, Nawanagar applies his mind independently and dispose of the proceeding afresh in the light of the observations and directions made above.

11. With the aforesaid observations and directions, the writ petition stands finally disposed of. I.A. Nos. 6216 of 2011, 693 of 2012 and 6476 of 2015 are also, accordingly, disposed of.

Arvind/-

(Birendra Prasad Verma, J)

U			
---	--	--	--