

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15737 of 2013

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Bibi Amina W/O Late Ashfaq, R/O Village - Akbarpur Baink, P.S.
Beeraul, District - Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Darbhanga
3. The Deputy Collector, Land Reform, Darbhanga
4. The Circle Officer, Beeraul, District - Darbhanga
5. Shekhjaseem S/O Shekh Jeenat, R/O Village - Akbarpur Baink, P.S.
Beeraul, District - Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar

For the Respondent No.1 to 4 : Mr. Nishant Kumar Jha, AC to GP-21

For the Respondent No. 5 : Mr. Gajendra Pd. Yadav

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 08-12-2015

Heard the parties.

The petitioner is aggrieved by the order dated 20.02.2013 passed in Case No. 21 of 2012 by the respondent Circle Officer, Beeraul, Darbhanga, whereby the aforesaid case filed on behalf of the respondent no.5 has been allowed and a direction has been issued for removal of encroachment allegedly made by the petitioner.

Learned counsel appearing on behalf of the petitioner submits that the impugned order is liable to be set aside and quashed by this Court on the ground of violation of the rules of natural justice, besides on merits. According to him, before passing the impugned order, reasonable opportunity of hearing was not given to the writ petitioner.

Learned counsel appearing on behalf of the respondent no.5 and the learned State counsel appearing on behalf of the respondent no. 1 to 4, on the other hand, have opposed the prayer.

According to them, the order is appealable under the provision of The Bihar Public Land Encroachment Act and; therefore, the writ petition is liable to be dismissed.

After having heard the parties and on going through the records including the impugned order, this Court is of the considered opinion that the matter requires reconsideration and fresh decision by the respondent Circle Officer, Beeraul, Darbhanga. From the plain reading of the impugned order dated 20.02.2013, it appears that homestead parcha was granted to the private respondent no. 5 in the year 1989-90, but before passing the aforesaid order all the concerned persons were not heard, though the petitioner claims to have purchased the aforesaid land through a registered sale deed. Furthermore, if the parcha was granted to the private respondent no. 5 in the year 1989-90, then the respondent Circle Officer, Beeraul, Darbhanga, had no occasion to pass the impugned order. If the private respondent No. 5 was at all aggrieved on account of his dispossession from the lands in question by the petitioner, then he could have taken recourse to the provisions of The Bihar Land Disputes Resolution Act, 2009, which has not been done in the present case and under that Act, the Circle Officer is not the prescribed authority to pass any order. From reading of the whole impugned order, this Court does not find as to under which provision of law the impugned order was passed by the respondent Circle Officer, Beeraul, Darbhanga. He has not indicated in the impugned order as to how he is exercising his powers in favour of the private respondent no. 5. Apparently, the case of the petitioner was not considered by the respondent Circle Officer while passing the impugned order.

For the reasons recorded above, the impugned order

dated 20.02.2013 passed in Case No. 21 of 2012 by the respondent Circle Officer, Beeraul, Darbhanga (Annexure-3), is hereby set aside and quashed and the matter is remitted back to the respondent Circle Officer, Beeraul, Darbhanga with a direction to decide the aforesaid case afresh strictly in accordance with law after giving an opportunity of hearing to all concerned.

In order to expedite the matter, the petitioner and the respondent no. 5 are hereby directed to appear before the respondent Circle Officer, Beeraul, Darbhanga with a certified copy of the present order within a period of one month from today, whereafter the respondent Circle Officer, Beeraul, Darbhanga shall proceed further for deciding the aforesaid case afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned including the writ petitioner and the private respondent no. 5.

The parties shall be at liberty to raise all the issues of facts and law with respect to the lands under dispute before the respondent Circle Officer, Beeraul, Darbhanga.

The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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