

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10427 of 1992

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Md. Ali Raza, Son of Late Md. Serajuddin, resident of Village – Tirskund, Police Station – Forbesganj, District – Araria.

.....**Petitioner**

Versus

1. The State of Bihar.
2. The Collector, Araria.
3. Deputy Collector, Land Reforms, Araria, District – Araria.
4. Additional Collector, Araria at Purnea.
5. Sub-Divisional Officer, Forbesganj, Araria.
6. Anchal Adhikari, Forbesganj, District – Araria.

.....**Respondents**

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Appearance :

For the Petitioner	:	Mr. Ashok Kumar Mallick, Advocate
		Mr. Kaushal Kumar, Advocate
For the State	:	Mr. Bhaskar Shankar, Advocate (AC to GP-16)
For the Intervener	:	Mr. Satish Chandra Jha, Advocate
		Mr. Kameshwar Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 19-03-2015

Interlocutory Application No. 1059 of 2013:

The aforesaid interlocutory application has been filed by

Md. Nural Hoda and Samsud Hoda, both sons of Late Md. Suleman, seeking intervention in the present writ application in

support of the prayer made in the writ application. Such intervention application cannot be allowed.

The interveners, however, shall have liberty to approach the Collector for redressal of their grievances in this matter.

Accordingly, Interlocutory Application No. 1059 of 2013 is rejected.

Heard the parties.

Despite the fact that the notice of the present writ application was accepted on behalf of the State-respondents way back in the year 1992, no counter affidavit has been filed. This Court has, thus, no option that to proceed on the basis of the averments made in the writ application and the documents brought on the record with the writ application.

This writ application has been filed under Article 226 of the Constitution of India seeking direction commanding the respondent authorities to restore the ancestral lands of the petitioner to him which has been wrongly recorded in the name of the State of Bihar.

It has been averred in the writ application that the lands, appertaining to Khata No. 629, Plot Nos. 336, 340, 293, 334 and 41 having total area of 10.26 acres, corresponding to Cadastral Survey Khata No. 138, Plot Nos. 345, 347, C.S. Khata No. 130,

Plot No. 203, Khata No. 148, Plot No. 344 and Khata 157, Plot No. 26 situate in Mouza Tirskund under Forbesganj Anchal, are the ancestral lands of the petitioner which was recorded in the name of Late Bala Mandal, S/o Tahu Mandal in the Cadastral Survey Khatian published in the years 1904 – 1905.

It is the petitioner's further case that after his death, his heirs came into possession over the said lands and after vesting estate of ex-landlord, the ancestors of the petitioner were granted rent receipt of the land on basis of Khewat return submitted by the ex-landlord. It has been asserted in Paragraph No. 6 of the writ application that during Revisional Survey Operation, the lands were recorded in the name of Md. Serajuddin and Md. Suleman, the father and the uncle of the petitioner, since they were continuing in peaceful possession over the lands in question, but the said lands were wrongly recorded in the name of State of Bihar.

It has further been asserted that the ancestors of the petitioner did not know about such entry and when the ancestors of the petitioner learnt about the wrong entry, made in the name of State of Bihar, Md. Serajuddin and Md. Suleman, the father and the uncle of the petitioner filed Title Suit No. 14-576/64 for declaration of title and confirmation of possession over the said



lands after due service of notice under Section 80 of the Code of Civil Procedure. In the meanwhile, the Revenue and Land Reforms Department, Government of Bihar, issued Memo No. 6730 dated 13.11.1973 admitting therein that some of the lands belonging to the farmers had wrongly been recorded in the name of the State of Bihar in the last Revisional Survey. Through the said Memo No. 6730 dated 13.11.1973, the Department requested the Revenue Authorities to examine such cases and where the lands belonging to the farmers had wrongly been recorded in the name of State of Bihar, curative measures should be taken and such lands be recorded in the name of the concerned farmers.

It is the case of the petitioner that in the light of said decision of the State Government, he filed an application for restoration of the said lands and for the purpose of creating Jamabandi in his name before the Araria Anchal Adhikari, Forbesganj, claiming the lands as his ancestral lands. He also claimed that he was in continuous possession over the said lands for years together. The Anchal Adhikari, on receipt of the application, said to have sent it for enquiry to the concerned Halka Karmchari who after enquiry found the claim of the petitioner to be genuine. According to the petitioner, the said



Halka Karmchari submitted his report through Circle Inspector, who also found the claim of the petitioner to be genuine. The Anchal Adhikari after submission of the said report is said to have made personal verification and upon perusal of the relevant papers with respect to the title of the petitioner in respect of the said lands, recommended for restoration of the same in the name of the petitioner vide order dated 18.05.1984 and submitted its approval before the Land Reforms Deputy Collector, Araria.

The Deputy Collector, Land Reforms, Araria is said to have passed an order for restoration of the lands in the name of the petitioner on 04.01.1989 in Restoration Case No. 3/84-85/55-56 and submitted the record for approval before the Additional Collector, Purnea through Sub-Divisional Officer, Araria (Annexure-2). It has further been stated that during the pendency of the said Title Suit No. 14-576/64 in the court of learned Sub-Judge Munsif, Araria, a portion of the land measuring total area of 3.76 acres was settled inadvertently with one Khikhra Paswan, S/o Govind Paswan and Jagdish Das, S/o Somi Das of village – Triskund in respect of the lands of R.S. Khata No. 629, Plot No. 334. It has been asserted that settlement Purchas to none of the settlees could be issued and they never came over the possession of the lands. The Deputy Collector,



after taking note of all these facts in his order dated 04.01.1989, recommended that entire area of 10.26 acres of land be restored to the petitioner in view of the government decision. The order of the Deputy Collector, Land Reforms, Araria has been brought on the record as Annexure-2 to this writ application. It has further been stated that the Additional Collector also on the basis of the order of the Deputy Collector, Land Reforms, Araria and the other materials available on the record, passed an order dated 31.12.1989 to create Jamabandi in the name of the petitioner for an area of 6.50 acres and as regards to rest area of 3.76 acres, the Additional Collector directed to verify.

It has been stated in the writ application that after approval accorded by the Additional Collector, Purnea for creating Jamabandi in the name of the petitioner in respect of the aforesaid lands, the Jamabandi ought to have been created, but the Collector, Araria by an order dated 16.09.1992 rejected the approval accorded by the Additional Collector, Purnea without hearing the petitioner and without considering the facts and circumstances of the case. The order of Collector, Araria is also there on the record.

Learned counsel appearing on behalf of the petitioner drawing my attention to the order dated 16.09.1992 in Case No.



3/84-85, has submitted that the order is cryptic and has been passed without giving the petitioner any opportunity of hearing and without assigning any reason at all. Learned counsel for the petitioner has submitted that the Collector did not have any reason before him to take a view different from what was taken by the Deputy Collector, Land Reforms and Additional Collector. In the background of these facts, he submits that the order of the Collector dated 16.09.1992 is unsustainable and deserves to be set aside.

As has been indicated above, no counter affidavit has been filed on behalf of the respondent-State of Bihar. The facts as asserted in the writ application thus remain uncontroverted.

I am satisfied with the submission made on behalf of the petitioner that the Collector, Araria has passed the order dated 16.09.1992 in most casual manner without assigning any reason as to how a different view was possible than those taken by the Deputy Collector, Land Reforms as well as the Additional Collector, Araria. The order is cryptic on the face of it which cannot be sustained. The order dated 16.09.1992 passed by the Collector, Araria in Case No. 3/84-85 is set aside and, accordingly, the writ application is allowed.

The Collector, Araria is directed to take a decision

afresh after giving the petitioner due opportunity of being heard.

The decision must be taken by the Collector within a period of three (3) months from the date/production of a copy of this judgment.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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