

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11682 of 1992

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1. Madan Mohan Mishra son of Shri Hira Mihsra
 2. Hira Mishra son of Late Jhenguri Mishra

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Collector, Katihar
3. The Sub-divisional Officer, Barsoi, Katihar
4. The Land Reforms Deputy Collector, Barsoi, Katihar
5. The Circle Officer, Barsoi, Katihar
6. Lal Sah
7. Rai Prasad Sah
8. Tapeswar Sah
9. Pukar Sah

Sons of Indu Sah, No. 6 to 9 residents of village Raghunathpur, Post and
Police Station Barsoi, Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh
For the State : Mr. Praveen Kumar

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 26-03-2015

1. This is an application seeking quashing of the orders passed
by the Respondents in Red Card Miscellaneous Registered Case No.
01/92-93 whereby settlement of the land in question made in favour of
the petitioner in the year 1976 is sought to be cancelled.

2. It is the petitioners' case that one Jyotindra Mohan Bose
had voluntarily surrendered to the State of Bihar certain surplus land
in case No. 128/1973-1974 under the Bihar Ceiling Act, 1961. The
petitioner claims that his ancestor Gayadatta Mishra was cultivating
the lands of Jyotindra Mohan Bose and was an under-tenant of the



some of the plots of Jyotindra Mohan Bose. The petitioners' ancestors had constructed a house over the disputed land, some part of which was being used for *Sahan* and for fishing etc. The said land admeasuring 5 decimal of Plot No. 607, Khata No. 78 Thana No. 571 is said to be situate at village Raghunathpur, Police Station-Barsoi, District-Katihar.

3. It is their specific case that the Halka Karamchari, upon a request having been made by the petitioners made an enquiry and found possession of the ancestors of the petitioners over the said land. Upon recommendation of the Circle Officer, Barsoi, the land was settled in favour of the petitioners' ancestor Gayadutta Mishra by virtue of an order dated 21.12.1976 passed by Sub-divisional Officer, Katihar. Red Card was accordingly issued in favour of the said Gayadutta Mishra and, thereafter, said Gayadutta Mishra and his heirs had been coming in peaceful possession of the land in question. Gayadutta Mishra died in the year 1985, leaving behind the petitioners and his legal heirs.

4. Upon an application filed by the private Respondents before the Circle Officer, a proceeding was initiated for cancellation of settlement of the disputed land in favour of the petitioners' ancestors which was registered as Case No. 01 of 1992-93.

5. There is specific statement in paragraph No. 18 of the writ

application that the Additional Collector, has cancelled the earlier Red Card issued in Case No. 29 of 1976-77 in favour of the petitioners' ancestor Gayadutta Mishra without affording the petitioner any opportunity of being heard.

6. It appears that the settlement in favour of Late Gayadutta Mishra has been cancelled on the ground that he could not be treated to be a landless person and no land could be settled in favour of such person, which was acquired by the State Government under the Bihar Land Ceiling Act, 1961.

7. Learned counsel appearing on behalf of the petitioner has submitted that the disputed land was rightly settled in favour of the petitioners' ancestor late Gayadutta Mishra as he was the under-Raiyat of Jyotindra Mohan Bose. He has relied upon Section 22(1) of the Bihar Land Ceiling Act, 1961 and has submitted that in terms of the said provision, an application was filed by Gayadutta Mishra to allow to him to retain as occupancy raiyat, on the land in question. The land in question was settled in favour of the Gayadutta Mishra, petitioners' father accordingly.

8. Despite the fact that private Respondents have entered appearance, no counter affidavit has been filed on their behalf, nor counter affidavit has been filed on behalf of the State Respondents. By an order dated 23.03.1994 passed by this Court in the present case,

operation of the impugned order as contained in Annexure-3 was stayed.

9. In such circumstance, the plea on behalf of the petitioners that the impugned order cancelling settlement in favour of the petitioners done in the year 1976-77 has been passed without affording them any opportunity of being heard stands un rebutted. The orders having been passed without giving the petitioners an opportunity of being heard, cannot be sustained.

10. The impugned orders passed in the said Red Card Miscellaneous Registered Case No. 1/92-93 are accordingly set aside.

11. The matter is remanded back to the Additional Collector, Katihar to consider the matter afresh after giving the petitioner a reasonable opportunity of being heard.

12. This application is allowed accordingly.

(Chakradhari Sharan Singh, J.)

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