

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5994 of 2008

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1. Awadhesh Choudhary
 2. Rabindra Nath Choudhary
 3. Ashok Kumar Choudhary
 4. Arun Choudhary
All sons of Late Jai Narayan Choudhary
 5. Ritesh Choudhary
 6. Mukesh Choudhary
Both sons of Late Arjun Prasad Choudhary
 7. Shashi Prabha Devi widow of Late Arjun Prasad Choudhary
 8. Ruby Kumari D/o Late Arjun Prasad Choudhary
 9. Shivrnanadan Choudhary S/o of Late Sant lal Choudhary @ Santi Choudhary
All residents of village Kathela, P.S.Kharik, District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Bhagalpur
2. District Magistrate, Bhagalpur
3. Additional Collector, Bhagalpur
4. Sub Divisional Officer, Naugachia, Bhagalpur
5. The Deputy Collector Land Reforms, Naugachia, Bhagalpur
6. Deputy Collector (Vidhi Shakha), Bhagalpur
7. Circle Officer Kharik, P.S.Kharik, District Bhagalpur

.... Respondents-Ist Set

8. Tarni Das S/o Jagrup Das
9. Vinod Das
10. Khokha Das
Both son of Tarni Das
11. Subaklall Daa
12. Pulkit Das
13. Suman Das
All sons of Yadu Das
14. Videshi Das
15. Chaliter Das
Both sons of Mohan Das
16. Buleshwar Das
17. Anil Das
Both sons of Congresh Das
18. Brihashpati Das son of Ayodhi Das
19. Hare Ram Das
20. Changuri Das
Both sons of Brihashpati Das
21. Parvati Devi wife of Babulal Das
22. Shivan Das
23. Arjun Das
Both sons of Chathu Das
24. Sakaldev Das son of Shivan Dasa
25. Chano Das son of Narsingh Das
26. Chharpan Das son of Chetu Das
27. Dahogi Das son of Laddoo Das
28. Malansh Das son of Uchit Das

29. Upendra Das, son of Jaldhar Das
30. Mohan Das son of Nathan Das
31. Parmanand Das
32. Ghauli Das
Both sons of Bhaden Das
33. Khaden Das son of Govind Das
34. Bhagwan Das
35. Prabhu Das
Both sons of Khajani Das
36. Mahendra Das son of Bhola Das
37. Siri Das son of Mahendra Das
38. Surendra Das
39. Dilip Das
Both sons of Vakil Das
40. Bhikhan Das son of Dhodhai Das
41. Ramjee Das
42. Mukesh Das
Both sons of Bhikhan Das
43. Sanjay Das son of Soti Das
44. Pankaj Das son of Bhumi Das
45. Bhumi Das
46. Umi Das
47. Chamak Lal Das
48. Haini Das
All sons of Moti Das
49. Ajay Das son of Tarni Das
50. Shrawan Das son of Dhanni Das
51. Rajesh Das son of Shrawan Das
52. Vipin Das son of Bharhamdeo Das

Repondents – 2nd Set

Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate
For the Respondent Nos. 1 to 7 : Mr. Harishankar Roy, AC to PAAG
For the Respondent Nos. 8 to 52 : None

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 13-02-2015

Heard the parties.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India with a prayer for quashing the entire proceeding of Land Settlement Case No. 11 of 2007-08 (Annexure-1) as also different orders passed thereunder, as detailed in paragraph no.1 of the writ petition, passed by the respondent Circle Officer, Kharik in the district of Bhagalpur, so far it

relates to lands bearing Plot Nos. 811 and 812 of Khata No. 931 situate at Mauza Usmanpur, Thana No. 65 in the district of Bhagalpur (in short, “the lands in question”).

3. Learned counsel appearing on behalf of the petitioners submits that the lands of aforesaid Plot No. 811, area 91 decimals and plot no. 812, area 90 decimals were originally belonging to the Ex-Landlord, and were subsequently settled in favour of the ancestors of the petitioners. According to him, since then, the petitioners or their ancestors have been coming in possession over the aforesaid plots of lands. At this stage, it is clarified that the petitioners have not raised their claims with respect to plot no. 1494 area 1.07 acres, plot no. 1450 area 47 decimals, and plot no. 58 area 75 decimals, which are/were also the subject matter of the aforesaid Land Settlement Case No. 11/ 2007-2008.

4. Learned counsel appearing on behalf of the petitioners has further submitted that though the lands in question were coming in possession of the petitioners or their ancestors, but during the recent revisional survey proceeding the lands in question were wrongly recorded in the name of State of Bihar. In support of the above contention, he has placed reliance on a document as contained in Annexure-7/1, which is a typed copy of continuous Khatiyani. According to him, though the lands in question have been recorded in the name of State of Bihar “**as Anawad Bihar Sarkar**”, but in the remarks column the lands in question have been shown under the illegal possession of Jai Narayan Choudhary and Jadunandan sons of Shanti Choudhary with entry as “**Aa. Da.**” i.e. **Awaidh Dakhal**”. It is also submitted since the revisional survey records were wrongly prepared in the name of State of Bihar and ancestors of the petitioners were shown under illegal possession over the lands in question,



therefore, petitioner nos. 1 to 4 and petitioner nos.5 to 9 have filed two separate Title Suits being T.S.No. 61 of 2006 and T.S.No. 64 of 2006 in the court of learned Munsif, Naugachia, wherein they have prayed for declaration of their right and title over the suit land and also for a declaration that the entry made in revisional survey records are wrong, illegal and not binding upon them besides others. In above view of the matter, it is contended that the respondent Anchal Adhikari was not justified in starting Land Settlement Case No. 11/2007-2008 for settling the same amongst the landless and poor persons by treating the said lands to be that of the State of Bihar.

5. Though despite opportunity given to the respondents, counter affidavits have not been filed either by the State of Bihar and its functionaries or on behalf of the private respondents in whose favour the lands in question are proposed to be settled or have already been settled. However, learned AC to the Principal Additional Advocate General, appearing on behalf of the official respondents, submits that on the basis of the materials produced by the petitioners themselves, their right, title and possession over the lands in question is under serious cloud, and unless and until the reliefs sought for on behalf of the petitioners are granted to them by the Civil Court in the aforesaid two pending title suits, they cannot claim that the lands in question belong to them. According to the learned State Counsel, as on the day, the lands in question stand recorded in the name of State of Bihar and in view of the presumption of correctness of the revenue records under the provisions of the Bihar Tenancy Act, 1885, the lands in question are required to be necessarily treated as that of State of Bihar. Therefore, according to him, the action of the respondent Circle Officer in settling the lands in question in favour of the poor and landless persons i.e. private respondents cannot be legally faulted.



6. After having heard the parties, this Court finds that though the petitioners claim that the lands in question were settled in favour of their ancestors by the ex-landlord, but in the last revisional survey records/khatiyan, the lands in question were recorded as the lands of the State of Bihar, and the petitioners' ancestors were held to be in illegal possession over the same. This Court further finds that for declaration of their right and title, the petitioners have themselves approached the Civil Court by filing two title suits vide T.S.No. 61 of 2006 and T.S.No. 64 of 2006 before the learned Munsif, Naugachia in the district of Bhagalpur. Copies of the plaint of the aforesaid two title suits have been brought on the record as Annexures 4 and 5 respectively. It is not the case of the petitioners that the aforesaid two title suits have finally been decreed by the Civil Court and therefore, rights and title have been declared over the lands in question. At best, the claims of the petitioners regarding their right and title over the lands in question is sub-judice before the Civil Court and till the matter is finally decided, in view of the entry in the revisional survey records/khatiyan, the lands in question shall be presumed to be the lands of State of Bihar. Hence, this Court is of the considered opinion that the petitioners are not legally entitled to challenge the validity of orders passed in Land Settlement Case No. 11 of 2007-08 or jurisdiction of the respondents Anchal Adhikari for settling the lands in questions in favour of the poor and landless persons, who have been impleaded as respondent nos. 8 to 52.

7. For the aforesaid reasons, this Court does not find any good ground to interfere with the orders passed by the respondent Anchal Adkhikari, Kharik in the aforesaid Land Settlement Case No. 11/2007-08 settling the lands in questions besides other plots of lands in favour of the landless persons i.e. respondent nos. 8 to 52.

8. In the result, the writ petition has to fail and is, accordingly, dismissed. The interim order of stay passed by a Bench of this Court on 12.05.2008, which was extended by order dated 05.07.2011, stands vacated.

9. However, the petitioners shall be at liberty to seek amendments in the complaints of the aforesaid two pending title suits and may seek further appropriate relief with respect to the order passed in aforesaid Land Settlement Case No. 11/ 2007-08, whereby the lands in question have been settled in favour of the private respondents.

(Birendra Prasad Verma, J)

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