

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9353 of 2010

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1. Md. Nasiruddin S/o Late Md. Ibrahim R/o Vill.- Chakasim, P.O.- Benigir, P.S.- Mufassil, Panchayat- Srimatpur, Distt.- Munger
 2. Md. Naushad S/o Late Subhanuddin R/o Vill.- Chakasim, P.O.- Benigir, P.S.- Mufassil, Panchayat- Srimatpur, Distt.- Munger
 3. Md. Nausher @ Tinku S/o Late Subhanuddin R/o Vill.- Chakasim, P.O.- Benigir, P.S.- Mufassil, Panchayat- Srimatpur, Distt.- Munger
 4. Md. Raju S/o Late Subhanuddin R/o Vill.- Chakasim, P.O.- Benigir, P.S.- Mufassil, Panchayat- Srimatpur, Distt.- Munger
 5. Md. Mausamuddin minor kid of Late Jasimuddin V/A of Md. Sulaman, S/o Md. Ibrahim R/o Vill.- Chakasim, P.O.- Benigir, P.S.- Mufassil, Panchayat- Srimatpur, Distt.- Munger
 6. Soni minor kid of Late Jasimuddin V/A of Md. Sulaman, S/o Md. Ibrahim R/o Village- Chakasim, P.O.- Benigir, P.S.- Mufassil, Panchayat- Srimatpur, Distt.- Munger

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Govt. of Bihar, Patna
2. The Commissioner-cum-Secretary Department of Revenue, Government of Bihar, Patna
3. The District Magistrate, Munger
4. The Additional District Magistrate (Land Reforms) Fort Area, Munger
5. The Sub-Divisional Officer, Fort Area Munger
6. The Land Reforms Deputy Collector, Fort Area, Munger
7. The Circle Officer Block- Mufassil, Munger

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Tarun Kumar Sinha, Advocate
For the Respondent/s : Mr. Neeraj Kumar, A.C. to SC-22

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-07-2015

Heard Mr. Tarun Kumar Sinha for the petitioners and Mr.

Neeraj Kumar, Assisting Counsel to SC-22 for the State.

The petitioners have prayed for issuance of a writ in the nature of mandamus commanding the respondents more particularly the respondent nos. 4 to 7 to produce the records of Settlement Case

No. 1 of 1999-2000 along with the final orders passed thereon.

While the writ petition was pending before this Court, that a notice was issued by the Circle Officer, Sadar Munger, the respondent no. 7 on 13.5.2010, who with reference to an order passed in Encroachment Case No. 3 of 2008-09 directed the petitioners to vacate the plot bearing Khata No. 4, Plot No. 29, Thana No. 169 admeasuring 14 decimals in Mauza-Kasimchak, in the district of Munger from such portion of land which is other than the house built by the petitioners under the Indira Awas Yojana. The said notice was questioned by filing Interlocutory Application No. 5262 of 2010.

The writ petition was heard by a Bench of this Court on 27.05.2010 and this Court while directing the State to file a counter affidavit as to the issues raised, also restrained the respondents from dispossessing the petitioners from the plot in question and from interfering with the house of the petitioner in any manner.

In the nature of the order which this Court proposes to pass, I would not delve deep into the matter. Suffice it to say that the petitioners are in possession of land bearing Khata No. 4, Plot No. 29 admeasuring 14 decimals in Maujza-Kasimchak in the district of Munger and have also built a house under the Indira Awas Yojana. It is the case of these petitioners that the land in question was occupied by their father. The land in question is in the nature of *gair majarua*



malik land and is in occupation of the petitioners since long. According to the petitioners the name of the father of petitioner no. 1 was mutated vide order passed in Mutation Case No. 3234 on 21.9.1990. Being in occupation of the land in question, an application was filed by these petitioners before the Circle Officer, Sadar Munger, the respondent no. 7 for issuance of an order of settlement in their favour in respect of the land in question, a copy of which is placed at Annexure-2 series and whereupon a public notice was published by the Circle Officer on 16.4.1999 inviting objections against the settlement so prayed by the petitioners. According to the petitioners since no objection was raised on the prayer made by the petitioners that the Circle Officer sought for a report from the Circle Amin and who confirmed the possession of these petitioners over the plot of land and recommended for settlement in their favour. A similar recommendation was also made by the Revenue Karamchari who found the petitioners in possession of the land in question. Copies of the recommendation made by the Circle Amin and the Revenue Karamchari are placed at Annexure-5 and 5/1 to the writ petition. It is in view of the application so filed by the petitioners and the recommendations of the revenue authorities that the request of the petitioner was acted upon and is reflected from the proposal placed at Annexure-5/2 which led to registration of Settlement Case No. 1 of



1999-2000 registered for settlement of the piece of land in favour of the petitioners bearing Khata No. 4, Plot No. 29 in Mauja Kashimchak in the district of Munger. The Circle Officer vide his letter dated 13.7.1999 forwarded the records of Settlement Case No. 1 of 1999-2000 to the Deputy Collector Land Reforms for necessary orders thereon but thereafter the records have got misplaced as is reflected from the series of responses given by the Circle Officer, Sadar Munger in reply to the queries made by the petitioners by invoking the Right to Information Act. Copy of the responses made by the Circle Officer, Sadar Munger is placed at Annexure-7 series and whereby he has admitted to the misplacement of the records relating to Settlement Case No. 1 of 1999-2000. It is in these circumstances that the petitioners moved before this Court through the present writ petition and a Bench of this Court finding prima facie case in their favour, while directing the respondents to file counter affidavit also restrained them from dispossessing the petitioners from the piece of land in question and from interfering with the house of the petitioners. It is in consequence of the stay order that the proceedings so initiated vide notice dated 13.5.2010 impugned at Annexure-10 to I.A. No. 5267 of 2010 was not acted upon and the matter rests at that stage.

A counter affidavit has been filed on behalf of the State who have supported the impugned action arising from the notice dated



13.5.2010 requiring the petitioners to vacate such portion of land not forming part of the dwelling constructed under the Indira Awas Yojana but while doing so they have conveniently ignored to respond to the relief prayed by the petitioners in the light of the Settlement Case No. 1 of 1999-2000 except submitting that it does not confer any right on the petitioners.

I have heard learned counsel for the parties and I have perused the records. Having initiated a proceeding for settlement of the plot in question with the petitioners bearing Settlement Case No. 1 of 1999-2000, it does not lie in the mouth of the respondents to question the very entitlement of the petitioners for a settlement. The moment they have initiated the proceedings in the light of the recommendations so received from the revenue authorities, it is confirmed that they have found a prima facie case in favour of the petitioners otherwise there was no need for initiation of the settlement proceedings. That in midway the records of the settlement proceedings have got misplaced, it cannot act prejudicial to the interest of the petitioners. The settlement proceedings having been initiated more than 15 years ago, it has to reach a conclusion and the respondents cannot abandon the proceedings midway.

For the reasons aforementioned and taking into consideration the recommendation of the revenue authorities available

at Annexure-5, 6 and 7 of the writ petition which have led to registration of Settlement Case No. 1 of 1999-2000 and taking into consideration that the foundation for initiation of the settlement proceedings rests on the report that the petitioners are in possession of entire 14 decimals of the plot of land in question, until such time that the settlement proceedings would have reached a conclusion which is adversarial to the interest of the petitioners, there was no occasion for the issuance of notice by the Circle Officer impugned at Annexure-10 to the writ petition which would have no legal sanction and is accordingly set aside.

The respondent authorities in the district of Munger more particularly the respondent nos. 3 to 7 are directed to take the Settlement Case No. 1 of 1999-2000 so initiated for settlement of the plot in question in favour of the petitioners to its logical conclusion and until such time they are restrained from taking any steps from dispossessing the petitioners from the land in question and from interfering with the house standing thereon.

The writ petition is allowed.

(Jyoti Saran, J)

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