

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7324 of 1997

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Prahlad Prasad Sah son of Late Ajnath Sah, resident of Bihariganj, Post-Bihariganj,
District-Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Madhepura, having the office situated at Collectorate Building,
at and PO-Madhepura, District-Madhepura
3. The Sub-divisional Officer, Udakishanganj Sub-division, at and P.O.
Udakishanganj, District-Madhepura
4. The Circle Officer, Udakishanganj, Circle, at and P.O.- Udakishanganj, District-
Madhepura.
5. Jaikishore Prasad Sah son of Late Nand Kishore Sah, resident of Bihariganj,
Post-Bihariganj, District-Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. KALI KANT JHA

Mr. Arun Kumar

For the Respondent/s : Mr. (SC2)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-02-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

In this case, the petitioner is claiming ownership over the
land appertaining to khata No. 119, plot No. 1400/3, area 10 dhur.

As per the petitioner, he purchased the aforesaid land
along with a pakka-constructed house on 2nd December 1983 from one
late Nand Kishore Sah, father of respondent No. 5. An encroachment
proceeding vide Encroachment Case No. 7/86-87 was initiated against
the petitioner with respect to the same piece of land and after
measurement report by the Amin, the proceeding was dropped vide



order dated 5th June 1986 (Annexure-7) which was informed to the Sub-Divisional Officer, Udakishunganj vide order dated 5th June 1986 (Annexure-7/A). As has been claimed by the petitioner that the Sub-Divisional Officer started fresh encroachment proceeding again vide Land Encroachment Case No. 4/92-93, the notice was challenged before this Court in CWJC No. 7764 of 1995 and this order, vide order dated 19th January 1996, directed the petitioner to file a representation before the Collector who will enquire into the matter and will pass the order in accordance with law whereupon the petitioner approached the Collector and submitted his application in pursuance of the aforesaid order that case was registered as Miscellaneous Case No. 78/96.

The Collector, vide order dated 14th July 1997, rejected the plea of the petitioner holding that late Nand Kishore Sah, father of respondent No. 5 had already sold the land to other persons and there was nothing left for sale in favour of the petitioner with respect to plot No. 1400.

The counsel for the petitioner submits that the petitioner purchased the land from late Nand Kishore Sah and after proper measurement, the order of mutation was passed in his favour, accordingly, his name was recorded in the record of right, so much so that the Collector nowhere discussed the material for arriving to such

finding that there was nothing left for sale in favour of the petitioner.

The counsel for the State has relied on different paragraphs of the counter affidavit where it has been stated that 1 Kattha land of C.S. Plot No. 1004 is concerned, late Nand Kishore Sah had already sold away entire land on 2nd September 1983 to the different purchasers in following manner:

- I) 6 ¼ Dhurs to Yogi Paswan
- II) 6 ¼ Dhurs to Sone Lal
- III) 7 Dhurs to Ganesh Poddar and all the persons are in peaceful possession of the land.

When late Nand Kishore Sah had already sold the land to different persons as aforesaid, the question of transferring 10 dhur land along with a pakka-constructed house to the petitioner does not arise.

It has further been mentioned in the counter affidavit that boundary that has been mentioned in the sale deed is not correct rather wrong statements have been mentioned in the three sale deeds. It has also been stated in paragraph 9 that father of the petitioner with respect to the said land, filed a title suit vide Title Suit No. 92 of 1984 in the court of Munsif, Madhepura there the father of the petitioner lost the same and so much so, the Government acquired 6 decimals of land over which the petitioner encroached upon and constructed his house. The Collector while passing the order has not discussed

anything, the aforesaid facts are coming by way of counter affidavit rather the Collector was required to dwell into the matter properly for arriving to the factual finding. This fact should have been discussed in the order of Collector as the order cannot be supplanted or supplemented by making statement in the counter affidavit.

In this view of the matter, the order of Collector dated 14th July 1997(Annexure-1) is hereby quashed and the matter is remanded back to the Collector who will examine the records of the case, after giving opportunity of hearing to the petitioner would pass a reasoned order preferably within a period of three months from the date of receipt/production of a copy of this order.

If the petitioner fails to appear on the date fixed by the Collector, he will have liberty to pass an order including *ex-parte*.

Accordingly, this petition is disposed of.

Mahesh/-

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(Shivaji Pandey, J)