

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12359 of 2012

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1. Rajpati Devi, W/O Late Hari Sah
2. Braj Kishore Prasad @ Braj Kishore Sah, S/O Late Hari Sah
3. Raju Sah, S/O Late Hari Sah
4. Rajesh Sah, S/O Late Hari Sah
All R/O Village, P.O. & P.S.- Kurhani, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. District Collector, Muzaffarpur
3. Anchaladhikari Anchal, Kurhani Turki, District- Muzaffarpur
4. Krishna Sahi, W/O Late Satendra Kumar Sahi @ Ajay Kumar Sahi, R/O Village & P.S.-Kurhani, District- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Shukla
For the Respondent nos.1to3 : Mr. Ajay Bihari Sinha, SC-19
Mr.Suryakant Kumar, AC to SC-19
For the Respondent no.4 : Mr.Choudhary Shyam Nandan

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 30-09-2015

Heard the parties.

The petitioners, who are heirs and legal representatives of one Hari Sah, have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order/communication dated 09.06.2012 issued under the signature of the respondent Anchal Adhikari, Kurhani, District-Muzaffarpur, as contained in Annexure-9, whereby Homestead Parcha granted in favour of aforesaid Hari Sah, the husband of the petitioner no.1 and father of petitioner nos.2 to 4, with respect to the lands under dispute has been cancelled purportedly in the light of the order passed by this Court in CWJC No.255 of 2009.

Learned counsel appearing on behalf of the

petitioners submits that the impugned order dated 09.06.2012 (Annexure-9) is contrary to the order/direction issued by this Court in CWJC No.255 of 2009 (Annexure-10) and has been passed in violation of the principles of natural justice; therefore, it is not sustainable in law.

Though, the matter is pending before this Court since 13.07.2012 and notice was issued to the private respondent no.4 by an order dated 16.07.2012, but till date no counter affidavit has been filed either on behalf of the official respondent nos.1 to 3 or on behalf of the private respondent no.4 controverting the averments made in the writ petition.

Though, the learned State counsel appearing on behalf of the respondent nos.1 to 3 and the learned counsel appearing on behalf of the respondent no.4 have opposed the prayer made on behalf of the petitioners, but they have not been able to dislodge the claim of the petitioners that before issuance of the impugned order an opportunity of hearing was not given to the petitioners. They have also not been able to show that the parcha issued in favour of aforesaid Hari Sah was ever quashed by this Court by an order passed in CWJC No.255 of 2009 (Annexure-10).

After having heard the parties and on consideration of the materials available on record, this Court finds that the Homestead Parcha was issued in favour of aforesaid Hari Sah, the husband of the petitioner no.1 and father of petitioner nos.2 to 4, in Homestead Parcha Case No.1304 of 1970-71 under the provisions of The Bihar Privileged Persons Homestead Tenancy Act, 1947 and the rules made thereunder. A copy of the aforesaid Homestead Parcha has been brought on record as Annexure-1.

After death of aforesaid Hari Sah, the petitioners, who are his heirs and legal representatives, have acquired their legal right and title over the lands in question, for which Homestead Parcha was granted by the competent authority.

Indisputably, before passing the impugned order dated 09.06.2012, notice was not issued to the petitioners. No opportunity of hearing was given to them. Therefore, there has been violation of principles of natural justice. The entire order-sheet including the final order dated 01.02.2012 passed in CWJC No.255 of 2009 has been brought on record as Annexure10 to the writ petition, from perusal of which, it is evident that the Basgit Parcha issued in favour of the petitioners or their ancestor was not cancelled and/or quashed. Only direction issued by this Court was that the Case No.3 of 1994-95 pending before the Anchal Adhikari, Kurhani should be disposed of within a period of three months. Those being the undisputed factual position, the impugned order cannot be sustained in law.

For the reasons recorded above, the impugned order/communication dated 09.06.2012 (Annexure-9) issued by the respondent Anchal Adhikari, Kurhani is hereby set aside and quashed with a liberty to the respondent Anchal Adhikari, Kurhani to pass a fresh order strictly in accordance with law after giving an opportunity of hearing to the petitioners, besides others.

The writ petition stands allowed to the extent indicated above.

Arvind/-

(Birendra Prasad Verma, J)

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