

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19119 of 2012

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Arvind Kumar, son of Late Shri Bindeshwari Prasad, resident of Village-
Baikunthpur, P.S. Rajapakar, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Vaishali at Hajipur.
3. Circle Officer, Anchal- Rajapakar, District Vaishali.
4. Jaleshwari Devi, wife of Late Suresh Paswan
5. Umesh Paswan
6. Bhoolan Paswan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shrinandan Pd. Singh
 Mr. Surendra Pd. Singh
 Mr. Ashok Kumar

For the Respondent No.1 to 3: Mr. Manoj Kumar, AC to GA-10

For the Respondent No. 4 to 6: Mr. Sunil Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 07-10-2015

Heard the parties.

2. The petitioner is aggrieved by the order dated 16.08.2007 passed in Case No. 7 of 2006-07 by the respondent Circle Officer, Rajapakar District Vaishali, as contained in Annexure-4, whereby the petition filed on behalf of the respondent no. 4 to 6 under the provisions of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'Act, 1947,) for issuance of Basgit (homestead) parcha with respect to the lands under dispute has been allowed.

3. Learned counsel appearing on behalf of the petitioner submits that the impugned order is a nullity in the eye of law since the aforesaid proceeding was started against dead persons namely Gorakh Prasad Singh and one Surajdeo Prasad Singh. By referring to the averments made in paragraph-14 of the writ petition, it is submitted that aforesaid persons, who were the original owners of the land in question, died in the year 1964 and 1998 respectively, which was



prior to initiation of the impugned proceeding by the respondent Circle Officer. It is contended that so far the petitioner is concerned, he purchased the lands in question from the widow of late Gorakh Prasad Singh through a registered sale deed dated 19.01.1991, but the petitioner was not impleaded as party respondent in the aforesaid case. Therefore, according to him, the impugned order is liable to be set aside on the ground of violation of the rules of natural justice as well.

4. Learned State counsel appearing on behalf of the respondent no. 1 to 3 has contested the matter and supported the impugned order by referring to the averments made in the counter-affidavit filed on behalf of the aforesaid respondents. However, he has not been able to show from the aforesaid counter-affidavit that the aforesaid land owners were not dead, when the impugned proceeding was initiated by the respondent Circle Officer. He has further not been able to dislodge the claim of the petitioner that he was not given an opportunity of hearing before passing the impugned order. However, he has pointed out that against the impugned order, the petitioner has an alternative remedy before the respondent District Collector, Vaishali under Section 21 of the Act, 1947.

5. Learned counsel appearing on behalf of the respondent no. 4 to 6 though has opposed the prayer made on behalf of the petitioner, but he has fairly conceded that no counter-affidavit has been filed on their behalf controverting the averments made in the writ petition.

6. It is true that against the impugned order the petitioner has an alternative remedy before the respondent District Collector, Vaishali under Section 21 of the Act, 1947, but the hands of this Court is not fettered on account of availability of alternative remedy as indicated above, particularly in view of the fact that the impugned

order was passed against dead persons and is in complete violation of the rules of natural justice.

7. For the reasons recorded above, the impugned order dated 16.08.2007 passed in case No. 7 of 2006-07 (Annexure-4) by the respondent Circle Officer, Rajapakar is hereby set aside and quashed and the matter is remitted back to the respondent Circle Officer, Rajapakar (respondent no.3) for deciding the claim of the respondent no. 4 to 6, afresh after giving an opportunity of hearing to the petitioner, besides others.

8. In order to expedite the matter, the petitioner as also the respondent no. 4 to 6 are hereby directed to appear before the respondent Circle Officer, Rajapakar within a period of eight weeks from today with a certified copy of the present order, whereafter he shall fix a firm date for deciding the claims of respondent no. 4 to 6 afresh strictly in accordance with law and the matter shall be taken to its logical conclusion strictly under the provisions of the Act and Rules made thereunder.

9. The writ petition stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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