

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.10 of 2014

IN

Civil Writ Jurisdiction Case No. 5224 of 2010

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1. Nehal Ahmad Khan, son of late Md.Reyaz Khan
 2. Md. Ghulam Abbas, son of late Mustaquim,
Both Residents of Mohalla - Murgia Chak, Ward No. 31, P.S. Laheriasarai,
District – Darbhanga.
 3. Syeda Nasreen Tolat W/O S.M. Zafir Ahmad, through her Power of Attorney
Holder S.M. Anwar Iqbal, son of late S.M. Zobair resident of Mohalla -
Chakrahmat, Ward No. 31, P.S. Laheriasarai, District - Darbhanga

.... Petitioners-Appellant/s

Versus

1. The State of Bihar.
2. The Collector, Darbhanga.
3. The Commissioner, Darbhanga, Darbhanga Pramandal, Darbhanga.
4. The Settlement Officer - Cum - Superintendent Of Survey, Darbhanga.
5. The Incharge Officer, Survey Settlement Office, Lalbag, Darbhanga.
6. The Assistant Settlement Officer - Cum - Assistant Superintendent Of Survey,
Darbhanga.
7. Rajiullah Khan son of late Nurul Hoda Khan, resident of Mohalla - Murgia
Chak, Ward No.31, P.S. Laheriasarai, District – Darbhanga.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Senior Advocate
Mr. Sunil Kumar Singh, Advocate

For the Respondent-State : Mr. Devendra Kr Sinha, A.A.G.-2
Mr. Biresh Kumar Sinha, A.C. to A.A.G.-2

For the Respondent no.7 : Mr. Vishwanath Pd. Singh, Senior Advocate
Mr. Prabhash Ranjan Thakur, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-05-2015

The unsuccessful petitioners in CWJC No.5224 of 2010 are the appellants. The writ petition was dismissed by the learned Single Judge on 30.10.2013.

The facts, in brief, that gave rise to this proceedings, are as under:

The appellants state that plot nos.310, 311, 941, 961, 1130 and 1132 within the Darbhanga Municipal Corporation, were recorded in the names of their ancestors. The Municipal survey was conducted in the year 1991-92. At one stage, called 'Kistwar', the names of the appellants are said to have been recorded in respect of those six plots, referred to above. However, at subsequent stage, namely "Khanapuri", the name of the 7th respondent was entered, not only in respect of those six plots, but also four plots, being 924, 927, 935 and 936.

Chinni Khan, Shakil Anwar and Motiur Rahman claimed rights over the four plots and made an application before the Settlement Officer for correction. That was rejected on



21.02.1994. Thereafter, the said three persons filed a review petition before the Collector. That was allowed on 09.08.1996 and the Collector directed that the entries be made in their favour. Aggrieved by that, the 7th respondent filed CWJC No.9427 of 1996. One of the contentions urged by him was that the District Collector does not have the power to review his own order. The writ petition was allowed on 19.05.1998, and the order passed by the Collector on 09.08.1996 was set aside.

The appellants made a representation before the Collector that the six plots owned by them were wrongly entered in the name of the 7th respondent, in the khatyan, i.e. the revenue record. The petition was allowed on 13.09.1996 and it was directed that the entries be made in the names of the appellants. The order was implemented.

Feeling aggrieved by the resultant action, the 7th respondent approached the Divisional Commissioner, Darbhanga. He passed an order dated 10.08.2007 setting aside the entries, that were made in favour of the appellants. Challenging the said order, the appellants filed the writ petition and the same was dismissed. Hence, this appeal.

Shri Shashi Shekhar Dwivedi, learned senior counsel for the appellants, submits that the 7th respondents did not implead



the appellants herein, in the proceedings before the Divisional Commissioner, and on that ground alone, the writ petition ought to have been allowed. He contends that the survey does not result in change of ownership, unless there is an agreement between the concerned parties and in the instant case, the six plots that were owned by the appellants herein, were wrongly entered in the name of the 7th respondent. He contends that there was no basis for the Commissioner to pass the order dated 10.08.2007, and that the writ petition ought to have been allowed.

Shri Vishwanath Prasad Singh, learned senior counsel for the 7th respondent, and Sri Devendra Kumar Sinha, learned Additional Advocate General-2 for the respondent-State, on the other hand, submit that the very basis for the rights claimed by the appellants, namely the order dated 13.09.1996 passed by the Collector was untenable in law, as well as on facts. They submit that the appellants did not implead the 7th respondent, while making a representation, and despite that, the Collector has virtually reviewed his own order and directed change of entries in the revenue records.

The Municipal survey was undertaken in the year 1991-92 in the Darbhanga Town. The purpose was to ensure that the names of the actual owners are reflected in the records so that the collection of tax and other related exercise are done perfectly. One

aspect, which needs to be kept in mind here is that the survey whenever conducted does not bring about the change of ownership by itself. If the ownership in respect of land, which is assigned a different survey number, is to change, it can take place only with consent of the respective parties.

The appellants assert that the ownership of the plots being 310, 311, 941, 961, 1130 and 1132 was recorded in the name of their ancestor, before the municipal survey was conducted. Any change of ownership could have taken place either with their consent or on the basis of the unimpeachable record. However, the name of the 7th respondent was entered in the revenue record, in respect of those six plots.

Law provides for series of remedies for the parties, who feel aggrieved on account of survey operations. The appellants filed an application for making necessary correction in the entries, to the Collector on 23.03.1996. An order was passed on 13.09.1996 in favour of the appellants by the Collector. Obviously on the basis of order dated 13.09.1996, the appellants filed an application on 13.09.2001 for making necessary entries, and that in turn was acted upon by the office of the Collector on 06.01.2002. At this stage, the 7th respondent had taken two steps. The first is that he filed CWJC No.8712 of 2002, and the second is that he approached the

Divisional Commissioner, by way of complaint.

It is no doubt true that CWJC No.8712 of 2002 was dismissed for default. However, by the time, the application for restoration thereof was taken up, the Commissioner passed order dated 10.08.2007. Therefore, the 7th respondent did not feel necessity to pursue the writ petition. The appellants challenged the order dated 10.08.2007 passed by the Commissioner, through a writ petition.

From the above narration, we notice two serious errors that are committed by the authorities of the revenue department at various stages in respect of the land in question. The appellants did have genuine grievance about the entries made in respect of the plots in favour of the 7th respondent. However, they could have pursued the proceedings in that behalf, only by impleading the 7th respondent. Almost identical patent illegality took place in the proceedings before the Commissioner. If the 7th respondent felt that the entries, detrimental to his interest and in favour of the appellants, were made, it was fundamental that in his complaint or petition or appeal, he ought to have impleaded the appellants herein. Unfortunately, neither the Collector, nor the Commissioner, have noticed these serious lapses and proceeded to pass the orders of their choice.



The order dated 10.09.2007 passed by the Commissioner, Darbhanga- 3rd respondent herein, deserves to be set aside on the ground that it was passed without ensuring that the appellants herein are made parties. That, however, would result in resurrecting the order passed by the Collector on 06.01.2002 which too, was passed without ensuring that the 7th respondent was made a party.

It is fairly well settled that the Court cannot leave the matter at a stage, where an otherwise untenable order would be resurrected on account of its adjudication. The practical course would be to set aside both the orders which are patently illegal and then to ensure that adjudication takes place in accordance with law.

We, therefore, allow the Letters Patent Appeal and set aside the order dated 30.10.2013 passed by the learned Single Judge in CWJC No.5224 of 2010.

Further, CWJC No.5224 of 2010 is allowed setting aside the order dated 10.09.2007 passed by the Commissioner- 3rd respondent herein. In addition to that, the order dated 06.01.2002 passed by the Collector- the 2nd respondent, which was the subject matter of the proceedings before the Commissioner- the 3rd respondent, is also set aside. The proceedings are remanded to the Collector- the 2nd respondent, for examination of the question, as to

whether making of the entries in respect of six plots in favour of the 7th respondent, is in accordance with law. He shall give an opportunity to both the parties, and pass orders, within a period of four weeks from today.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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