

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11852 of 2013

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1. Dindayal Yadav, Son Of Late Hakru Yadav
2. Sujeet Yadav, Son Of Dindayal Yadav
Both Resident Of Vill. Barhauna, P.S. Alamnaga, Dist.- Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The Collector, District- Madhepura
3. The Circle Officer, Alamnagar, Dist.- Madhepura
4. Mahendra Yadav, Son of Late Chamak Yadav
5. Sita Devi, Wife of Mahendra Yadav
Both Resident of Vill. Barhauna, P.S. Alamnagar, Dist.- Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ambuj Nayan Chaubey, Adv.
For the Respondent nos.1to3 : Mr.Ajay, GA-XII
Mr. Pratik Kumar Sinha, AC to GA-XII
For the Respondent nos.4&5 : Mr.Ram Narayan Brahmachari, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 27-11-2015 Heard the parties.

The petitioners are aggrieved by the order dated 29.03.2007 passed in Basgit Parcha Appeal Case No.24 of 2001 by the respondent District Collector, Madhepura, as contained in Annexure-4, whereby the petition filed on behalf of the petitioners under Section 21 of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'Act, 1947') has been rejected and the original order dated 15.01.2001 passed in Basgit Parcha Case No. 21 of 2000-2001 by the respondent Anchal Adhikari, Alamnagar, as contained in Annexure-2, allowing the claim of the private respondent no.4 for issuance of Basgit Parcha with respect to the lands in question under the provisions of the Act, 1947, has been affirmed.



The learned counsel appearing on behalf of the petitioners submits that, as a matter of fact, the petitioners are themselves privileged persons under the meaning of the Act, 1947; therefore, according to him, petition filed on behalf of the respondent no.4 for issuance of Basgit Parcha with respect to the lands in question was not maintainable. He further submits that, while passing the impugned final order dated 15.01.2001 (Annexure-2), allowing the claim of the private respondent no.4 for issuance of Basgit Parcha with respect to the lands under dispute, the procedure prescribed under the provisions of the Act, 1947 and the Rules made thereunder have not been followed. Therefore, the orders impugned cannot be sustained in law.

The matter has been contested by the learned State counsel, appearing on behalf of the respondent nos.1 to 3, by filing a counter affidavit on behalf of the respondent no.2 as also by the learned counsel appearing on behalf of the respondent nos. 4 and 5. However, no counter affidavit has been filed on behalf of the respondent nos.4 and 5, though notices were issued to them by an order dated 20.06.2014 and they have entered appearance through their counsel more than one year ago.

The learned AC to GA-XII appearing on behalf of the respondent nos.1 to 3 has also produced the original records of the aforesaid Basgit Parcha Case and the records of the proceeding before the respondent District Collector for perusal of this Court. Though, he has opposed the prayer made on behalf of the petitioners, but finally he fairly conceded that the procedures prescribed under the Rules, 1948 have not been followed and the impugned order is a perfunctory one.

After having heard the parties and on consideration



of the materials available on the record, this Court is of the opinion that the matter requires re-consideration and fresh decisions from the stage of the original authority i.e. the respondent Circle Officer, Alamnagar. Apparently, the procedures prescribed under Rule 5 of the Rules, 1948 have not been followed. Furthermore, whether the petitioners are themselves privileged persons or not, that issue has not been gone into either by the respondent Circle Officer or by the District Collector. These issues go to the root of the matter. From perusal of the order-sheet of the Basgit Parcha Case No.21 of 2000-01, it appears that on 22.12.2000 notice was directed to be issued and on the very next date i.e. on 15.01.2001 Basgit Parcha was directed to be issued by a cryptic and non-speaking order. The order-sheet of the aforesaid Basgit Parcha Case has also been brought on record as Annexure-2. From examination of that order-sheet, it is also apparent that the procedure prescribed under the Act, 1947 and the Rules made thereunder have not been followed, which vitiates the entire proceeding.

For the reasons recorded above, the impugned original order dated 15.01.2001 passed in Basgit Parcha Case No.21 of 2000-01, as contained in Annexure-2, the consequential Basgit Parcha, as contained in Annexure-3, and the order dated 29.03.2007 passed in Basgit Parcha Appeal Case No. 24 of 2001 by the respondent District Collector, as contained in Annexure-4, are hereby set aside and quashed, and the matter is remitted back to the respondent Circle Officer, Alamnagar (District-Madhepura) with a direction to decide the aforesaid Basgit Parcha Case filed by the respondent no.4 under the provisions of the Act, 1947 afresh in accordance with law.

In order to expedite the matter, the petitioners as also the respondent nos.4 and 5 are hereby directed to appear before the respondent Circle Officer, Alamnagar with a certified copy of the present order within a period of one month from today, whereafter he shall proceed further strictly in accordance with the provisions of the Act, 1947 and the Rules made thereunder and shall pass an appropriate final order regarding the claims raised on behalf of the private respondent nos.4 and 5 with respect to the lands in question, but before passing any final order opportunity of hearing must be given to all concerned.

The parties shall be at liberty to raise all the issues of facts and law, which may be available to them, with respect to the lands under dispute before the respondent Circle Officer, Alamnagar.

The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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