IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3631 of 1995

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1 Jadunandan Prasad
2 Ram Sharan Prasad, sons of late Sheobarat Prasad, residents of Village – Mohiuddinpur, PS – Chandi, District – Nalanda & at present resident of Nagarnausa, District - Nalanda

.... Petitioner/s

Versus

1 The State of Bihar
2 The Commissioner, Patna Division, Patna
3 The District Magistrate, Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Md Waliur Rahman, Satish Kumar & Nishant Kumar Sinha, Advocates

For the S t a t e : Mr Sushant Praveer, AC to SC 27

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 07-05-2015

This writ petition has been filed for challenging the order dated 31.01.1991 passed by the Collector, Nalanda in Miscellaneous (4(h) Case No 42 of 1989 as affirmed by the Divisional Commissioner by his order dated 03.01.1995 passed in Case No 42 of 1991 whereby the Jamabandi, standing in the name of the mother of the petitioner, has been cancelled.

2 There are two short issues as raised by Mr Md Waliur Rahman, learned counsel for the petitioners in support of the writ petition. His first contention is that no such power could be exercised in terms of Section 4 (h) of the Bihar Land Reforms Act, 1950 and secondly, in any view of the matter, the Collector though may be right in holding that the original cadastral survey khatiyan stood in the name of Nazir Shah, a Fakir and the estate was described as Fakirana, the Collector was wrong in assuming that it was a non-heritable estate.

3 Having considered the matter, in my view, on both the counts, the writ petition must succeed. First, if one refers to Section 4 (h) of the Act, it authorizes the Collector to enquire into and annul Jamabandis that were created after 01.01.1946 but this power is circumscribed by the contingency that where such transfer has been made either to defeat the object of the Act or for obtaining higher compensation. Thus, it is only when the Collector is of the opinion that the transfers were made to defeat the vesting of tenure under the said Act or to ensure higher compensation upon vesting of tenure under the Act, can any such proceeding at all be initiated under Section 4 (h) of the Act and not otherwise. In the present case, there is no suggestion even much less any finding that the transfers were made with the object, as noted above. Thus, the very jurisdictional fact which gives jurisdiction to the Collector to initiate a proceeding under Section 4 (h) of the Act and not otherwise. In the present case, there is no suggestion even much less any finding that the transfers were made with the object, as noted above. Thus, the very jurisdictional fact which gives jurisdiction to the Collector to initiate a proceeding under Section 4 (h) of the Act is missing. That is condition precedent for assumption of jurisdiction under the said Act in terms of Section 4 (h) of the Act. In absence thereof, the entire exercise, as carried out by the Collector and being confirmed by the Commissioner, falls to the ground and cannot be sustained. The orders of the Collector and the Divisional Commissioner, thus, have to be set aside.

4 Even though the writ petition succeeds on the first issue, I may point out the relevance of Fakir and Fakirana. Fakirana means an estate of a Fakir. Nowhere it means that it is inheritable. A Fakir is normally referred to in Hindustan as documented by H H Wilson in his compilation of Glossary, Judicial and Revenue Terms, Useful Words Occurring in Official Documents relating to the Administration of the Government of British India to mean any power or indigent person who possesses only a little property. In its general application, a Fakir is a Mohammedan religious mendicant, who wanders about the country, and subsists upon alms and Fakirana is land etc appropriated to the support of the Fakir. If we refer to the Khatiyan, which has been produced in the Court, Nazir Shah has been referred to as the Fakir holding the land and the estate is Fakirana meant for his benefit. There is nothing in this Khatiyan which was prepared on 07th February, 1911 to show that it was not an inheritable estate. The assumption of the Collector, that it was not an inheritable estate, has no foundation.

5 It may be noted here that both the Collector and the Divisional Commissioner confused the concept of not inheritable estate. They confused the concept with a Hindu endowment which is dedication to God and the properties normally stand in the name of the Shebait who is the caretaker. The revenue entries in this regard is either in the name of the Math or endowment or the name of an individual as a Shebait. Similar is the position where a waqf is created which is again a dedication to Allah and Mutawallis are appointed to look after the property. The revenue records would show waqf as the land holder or an individual being Mutawalli as the land holder but the position of Fakir and Fakirana estate is totally different. It is the property of an individual who may be a Fakir.

6 Accordingly, the writ petition is allowed and the impugned orders of the Collector, Nalanda and the Divisional Commissioner, Patna are set aside.

(Navaniti Prasad Singh, J)

M.E.H./-

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