

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7029 of 1995

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1. Sri Gauri Shankar Thakur
2. Sri Om Shankar Thakur
Both sons of late Bijali Thakur, resident of village Madhaul, P.O. Shata, Police
Station Kurhani, Sub Division-Muzaffarpur West , District Muzaffarpur
..... Petitioners

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector, Muzaffarpur.
4. The Additional Collector, Muzaffarpur.
5. The Deputy Collector Land Reforms, West Muzaffarpur.
6. The Circle Officer, Kurhani, Block (Turki) Muzaffarpur.
..... Respondent/s

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Appearance :

For the Petitioners : Mr. Bindhyachal Singh, Advocate.
Mr. Uday Pratap Singh, Advocate.

For the Respondents : AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 16-04-2015

Heard Mr. Bindhyachal Singh in support of the writ
application and AC to GA-9 for the State.

A supplementary affidavit has been filed which is on
record. No counter affidavit on behalf of the State respondents has
been filed.

Father of the petitioners' was recorded in the revenue
records as tenant in possession although the land stood recorded as
Bihar Sarkar. The claim of the petitioners' is that the subject land
detailed in para 4 of the application measuring a total area of 20
decimals was settled in 1350 Fasli by the ex-landlord in favour of the



father of the petitioners. During the revisional survey the same was wrongly recorded in the name of the Bihar Sarkar although in the remarks column thereof the name of the father of the petitioners' in possession of the land was entered. When the mouza in question was notified under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Act') an application for correction of land record was filed before the Consolidation Officer, Kurhani under Section 10(4) of the Act. This gave rise to case no. 3 of 1977. Notice was issued and the Halka Karmchari appeared on behalf of the State. After hearing both sides the Consolidation Officer allowed the application and directed correction of records in the name of father of the petitioners who also belonged to the weaker sections of the society (Annexure-1). Along with the supplementary affidavit the petitioners have enclosed the order passed by the Joint Director Consolidation, Muzaffarpur in revision case no. 18/96 (Annexure-11) wherefrom it appears that a revision application was preferred against the order dated 20.3.1997 passed by the Consolidation Officer when the revisional Court after hearing the parties rejected the same. In other words, the order passed by the Consolidation Officer was affirmed. In such circumstance, the petitioners filed an application for fixation of rent in the Court of respondent- Deputy Collector, Land Reforms, West Muzaffarpur vide Rent Fixation case no. 1 of 1988-



89. A verification report was called for from the Anchal Amin. The report of Anchal Amin dated 16.7.1988 has been enclosed as Annexure-3. On perusal whereof, it appears that the Anchal Amin recommended in favour of the petitioners. The matter was thereafter considered by the Sub Divisional Officer, West Muzaffarpur who by order dated 29.12.1988 rejected the said application treating the same to be an application for settlement of the subject land. Under wrong legal advice the said order was unsuccessfully challenged before the Additional Collector, Muzaffarpur (Annexure-5) and the respondent Commissioner (Annexure-6). In these setting of facts the petitioners filed the present writ application calling in question the order passed by the Sub Divisional Officer, the Additional Collector and the respondent-Commissioner as contained in Annexures 4,5 and 6 respectively.

Mr. Singh learned counsel for the petitioners submits that in the light of order of the Consolidation Officer an application was filed for fixation of rent which was misconstrued as an application seeking settlement of the land. The order passed by the Sub Divisional Officer is wholly without jurisdiction. If that be the case then the subsequent orders passed by the respondent -Additional Collector as well as the respondent- Commissioner are also bad in law as they have been passed without jurisdiction.

Learned counsel for the State is unable to dispute the aforesaid contention of the counsel for the petitioners.

From the report which was submitted by the Anchal Amin (Annexure-2) it appears to this Court that the petitioners had filed an application for mutation and fixation of rent of the subject land in their favour. The Sub Divisional Officer considered it to be a case of settlement of land and rejected the same. This is evident from perusal of the order dated 29.12.1988 (Annexure-4). In my considered view, the order passed by the Sub Divisional Officer (Annexure-4), therefore, cannot be allowed to sustain. Subsequent orders passed by the higher Revenue authorities as contained in Annexures 5 and 6 are, therefore, also held not sustainable in law. The writ application succeeds. The orders contained in Annexures 4, 5 and 6 passed by the respondent Deputy Collector Land Reforms-cum- Sub Divisional Officer, respondent- Additional Collector and the respondent -Commissioner respectively are quashed and set aside.

No order as to costs.

(Kishore Kumar Mandal, J)

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