

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6218 of 1998

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Lukhiya Devi wife of Late Baue Paswan, resident of village Bhirha,
P.S. Rosera, District Samastipur

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Circle Officer, Rosera, Samastipur
4. Anik Paswan (since dead) son of Late Garib Paswan
5. Rajiv Paswan
6. Ramdeo Paswan
7. Mahavir Paswan
8. Phoolo Paswan

5 to 8 are sons of Late Anik Paswan, resident of village Bhirha, P.S.
Rosera, District Samastipur

.... Respondent/s

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Appearance :

For the Petitioner : Mrs. Mira Kumar, Advocate
For the State : Mr. M.K. Upadhyay, A.C. to G.P. X
For Respondent : None
Nos. 5 to 8

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 30-04-2015

I have heard learned counsel for the petitioner and the
State. None appears on behalf of the respondent nos. 5 to 8.

Petitioner seeks quashing of the order dated 18.11.1996
passed by the Collector, Samastipur, as contained in Annexure 3, by
which the Collector has ordered for modification of the homestead
purcha issued in favour of the petitioner by reducing the area from
12 decimals to 5 decimals. The petitioner also challenges Annexure
4 which is an order dated 2.9.1997 passed by Circle Officer, Rosera

by which he has further reduced the area from 12 decimals to 1 ½ decimals.

It is submitted on behalf of the petitioner that the Collector has passed the order on the basis of the report given by the Anchala Adhikari appended as Annexure 2 in which he has come to the conclusion that after losing 144 Cr.P.C. proceeding the petitioner appears to have managed to get homestead purcha for 12 decimals of land though all along his possession was only upon 5 decimals of land.

Learned counsel for the petitioner has not been able to produce any cogent material to show that she was actually in possession of 12 decimals of land all along. It appears from the report of Anchala Adhikari, that he has inquired the matter after issuing notice to both the parties and, thereafter, upon verification, has submitted his report stating that the petitioner has encircled her 5 decimals of land by fixing babmboos which was in her possession .

In above view of the matter this Court is unable to make any interference in the impugned order as contained in Annexure 3.

However, so far the Annexure 4 is concerned, it appear that the area that has been found to be in possession of the petitioner has further been reduced from 5 decimals to 1 ½ decimal. Vide



Annexure 3, the Collector after holding that the petitioner is entitled to only 5 decimals of land of the concerned plot, had directed the Circle Officer to make necessary modification in the homestead purcha of the petitioner.

Accordingly, in my considered opinion there was no occasion for the Circle Officer concerned to again inquire into the matter and come to the conclusion that the petitioner was not even possession of those 5 decimals of land as he was only required to follow the direction given by the Collector specially when the earlier report of the Circle Officer (Annexure 2) goes to show in clear terms that the petitioner was found in possession of 5 decimals of land. There was no occasion at all to again modify the order of Collector which would amount to over stepping his jurisdiction and also over reaching the order passed by the higher authority, i.e., the Collector of the District. Though none has appeared on behalf of the private respondents but a counter affidavit has been filed on their behalf. However, they have not answered the aforesaid issue which is involved in this case as to how the Circle Officer could further have reduced the area held by the petitioner under the homestead purcha.

Accordingly, this writ application is allowed in part.

The impugned order dated 2.9.1997, as contained in annexure 4, is quashed and set aside and it is held that in view of the

Annexure 3 the petitioner would be entitled for purcha of an area of 5 decimals of the concerned plot as has been held by the respondent no. 2 vide Annexure 3. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

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