

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7935 of 2012

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Lallu Singh, Son of Sri Shiv Bachan Singh, resident of Village - Biran Bigha, P.S.-
Dehri-On-Sone, District - Rohtas (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Revenue & Land Reforms Department, Government of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Rohtas.
4. The Additional Collector, Rohtas.
5. The Deputy Collector, Land Reforms, Dehri-On-Sone, Rohtas.
6. The Sub-Divisional Magistrate, Dehri-On-Sone, Rohtas.
7. The Circle Officer, Dehri-On-Sone, Rohtas.
8. Sri Krishna Kumar Kariwal, son of Late Banwarilal Agarwal.
9. Sri Gopal Chandra Agarwal, son of Late Banwarilal Agarwal.

Both are residents of Dehri, P.S. Dehri, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh
For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-25
For the private respondents: Mr. Ashok Kumar Garg

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-08-2015

Heard the parties.

The petitioner has questioned the order dated 14.2.2012 passed by the Commissioner, Patna Division in Case No.12 of 2011, whereby he has allowed the appeal filed by the private respondent nos.8 and 9 and set aside the order dated 17.7.2010 passed by the Deputy Collector Land Reforms, Dehri-On-Sone (hereinafter referred to as 'the DCLR') in Encroachment Miscellaneous Case No.03 of 2010-11 whereunder he has affirmed the order of the Circle Officer, Dehri charging the petitioner of encroachment on plots bearing khata no.790, plot no.393 situated in

Mohalla- Biran Bigha, Ward No.28 under Dehri-On-Sone Municipality in the district of Rohtas.

Mr. Manoj Kumar Singh, learned counsel appearing for the petitioner with respect to the Continuous Khatiyani present at Annexure-1 and the map present at Annexure-3 submits that plot no.393 is shown as 'Gali' standing in the name of Dehri Municipality. He submits that plot no.393 is a public road which is utilized by the public of the locality and which passes through plot no.386. He complains that the private respondents have constructed a wall and thus obstructing the public passage and causing encroachment on public road. It is contended that although the order passed by the Circle Officer as well as 'the DCLR' is upon appreciation of factual position but has been upset by the Commissioner.

Mr. Upendra Pratap Singh, learned Assisting Counsel to Standing Counsel No.25 has appeared for the State while the private respondents are represented by Mr. Ashok Kumar Garg.

It is jointly submitted by the counsel for the respondents that although admittedly plot no.393 is a public way but it ends at plot no.386. It is submitted that the so called public passage in plot no.386 is existing within the plot and which is only used by the residents of the colony and is not open for the general public. Learned counsel have also referred to a report of the

Additional Collector present at Annexure-8 who has also opined that the identity of the passage at plot no.393 ends at plot no.386.

I have heard learned counsel for the parties and I have perused the materials on record.

The map enclosed by the petitioner is itself an answer to the issue raised. A plain glance at the map would show that whereas plot no.393 is admittedly shown as a passage but its identity ends at plot no.386 which is a big plot spread over an area and it is admitted by learned counsel for the parties that the said plot now consists of several houses and although a passage is available within the plot but it is not open for public thoroughfare. The Additional Collector has given his report after holding an enquiry and it is taking into consideration these aspects of the matter that the Commissioner has set aside the opinion of the Circle Officer as well as 'the DCLR' and going by the map placed at Annexure-3 and the report of the Additional Collector I am satisfied that there is no infirmity in the order of the Commissioner requiring interference.

The writ petition is disposed of.

(Jyoti Saran, J)

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