

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15430 of 2010

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1. Ram Kishun Mandal S/O Late Bangali Mandal, R/O Vill.- Mali, P.S.- Dhamdaha, Distt.- Purnia
 2. Arun Mandal S/O Late Makuni Mandal, R/O Vill.- Mali, P.S.- Dhamdaha, Distt.- Purnia

.... Petitioner/s

Versus

1. The State of Bihar
2. Sub-Divisional Officer, Dhamdaha, Distt.- Purnia
3. Circle Officer, Dhamdaha, Distt.- Purnia
4. Tarni Mandal S/O Late Boku Mandal @ Boku Dhanuk, R/O Vill.- Mali, P.S.- Dhamdaha, Distt.- Purnia
5. Jagdish Mandal S/O Late Boku Mandal @ Boku Dhanuk, R/O Vill.- Mali, P.S.- Dhamdaha, Distt.- Purnia
6. Manju Devi W/O Ramesh Singh, R/O Vill.- Dharhara, P.S.- Banmankhi, Distt.- Purnia
7. Meena Devi S/O Azad Singh, R/O Vill.- Bahadura Deori, P.S.- Rupauli, Distt.- Purnia

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha
Mr. Kamal Kishore Jha

For the Respondent No.1 to 3 : Mr. Dhurjati K Prasad, G.P. 7

For the Respondent No.4 & 5 : Mr. Arun Pd. Ambastha

For the Respondent No. 6 & 7 : Mr. Rajiv Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 21-08-2015

Heard the parties.

2. The present matter arises out of a proceeding under Section 48D of the Bihar Tenancy Act, 1885 (In short "B.T. Act").

3. The petitioners are aggrieved by the original order dated 12.04.2006 (Annexure-5) passed in Case No.11 of 2004-05 by the respondent Circle Officer, Dhamdaha, whereby claim of one Boku Mandal @ Boku Dhanuk, father of respondent no. 4 and 5, under Section 48D of the B.T. Act with respect to the lands under dispute, detailed in that order, has been allowed and he was declared to be



raiyat over the lands under dispute on payment of prescribed rent. The petitioners are also aggrieved by the appellate order dated 19.08.2009 (Annexure-8) passed by the respondent S.D.O., Dhamdaha in Revenue Appeal No. 25 of 2008-09, whereby the aforesaid appeal filed by the petitioners has been dismissed and the order passed by the respondent Circle Officer, Dhamdaha has been affirmed.

4. Learned counsel appearing on behalf of the petitioners submits that these petitioners purchased the lands in question from the widow of original landlord by a registered sale deed dated 24.11.1982 and, therefore, they became the owner of the lands in question, but before passing the impugned original order dated 12.04.2006 (Annexure-5) neither any show cause notice was issued nor any opportunity of hearing was given to them. Therefore, there has been violation of the rules of natural justice. Besides that, he has raised some other points also with respect to the merits of the claim of the petitioners vis-à-vis aforesaid Boku Mandal, father of respondent no. 4 and 5. It is further pointed out that the appellate authority, without taking into consideration the aforesaid aspect, has dismissed the appeal of the petitioners in a mechanical manner. Therefore, according to him, the orders impugned are not sustainable in law.

5. The matter has been contested by the learned G.P.-7 appearing on behalf of the respondent no. 1 to 3 as also learned counsel appearing on behalf of the private respondent no.4 to 7. Learned counsel appearing on behalf of the respondent no. 4 and 5 submits that, in fact, the petitioners purchased the lands in question from only one heir of the original land owner, therefore, they cannot claim right and title over the entire area of the lands under dispute.

However, despite repeated query he has not been able to show that before passing the impugned final order, opportunity of hearing was given to the petitioners.

6. After having heard the parties and on consideration of the materials available on record, this Court finds that while passing the impugned original order there has been violation of the rules of natural justice, in view of the fact that the petitioners purchased the lands in question in the year 1982 and even if father of respondent no. 4 and 5 was under raiyat over the lands in question in that case also the petitioners became owner of the lands in question and they were required to be heard before deciding the claim of the father of respondent no. 4 and 5 in a proceeding under Section 48D of the B.T. Act, but that has not been done in the present case. The appellate authority has failed to take into consideration the valid issues raised on behalf of the petitioners and has arbitrarily dismissed the appeal. Therefore, this Court is of the opinion that the matter requires reconsideration and fresh decision from the stage of the respondent Circle Officer, Dhamdaha.

7. For the reasons recorded above, the original order dated 12.04.2006 (Annexure-5) passed in Case No.11 of 2004-05 by the respondent Circle Officer, Dhamdaha as also the appellate order dated 19.08.2009 (Annexure-8) passed by the respondent S.D.O., Dhamdaha in Revenue Appeal No. 25 of 2008-09 are hereby set aside and quashed and the entire matter is remitted back to the respondent Circle Officer, Dhamdaha with a direction to decide the claim of respondent no. 4 and 5 with respect to the lands in question afresh in accordance with law.

8. It is clarified that 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 claims raised on behalf of the respondent no.4 and 5 under Section 48D of the B.T. Act.

9. In order to expedite the matter, the petitioners as also the private respondent no. 4 to 7 are hereby directed to appear before the respondent Circle Officer, Dhamdaha within a period of two months from today with a certified copy of the present order, whereafter the respondent Circle Officer, Dhamdaha shall proceed further in accordance with law, but before passing any final order, he shall give a reasonable opportunity of hearing to all concerned.

10. The writ petition stands allowed to the extent indicated above. The parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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