

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16011 of 2008

With
Interlocutory Application No.2889 of 2012
And
Interlocutory Application No.5753 of 2013

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Haribansh Narayan Tiwari son of Late Indrajeet Tiwari, Resident of Gorakh Parasi, Anchal Karakat, Police Station Karakat, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Land Reforms Department, Bihar, Patna.
2. The Collector, Rohtas.
3. The Sub-Divisional Officer, Bikramganj, Rohtas.
4. The Land Reforms Deputy Collector, Bikramganj, Rohtas.
5. The Circle Officer, Karakat, Rohtas
6. Ajeet Kumar son of Saheb Dayal Singh, Resident of Dharamagat Parashi, Anchal Karakat, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash Upadhyay
For the Respondent No.1 to 5 : Mr. Din Bandhu Singh, GP-9
For the Respondent No.6 : Mr. Satya Narayan Mishra

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

7 13-08-2015

Heard the parties.

2. The petitioner is aggrieved by the order dated 26.11.2004 passed in Settlement Case No. 2 of 2003-04 by the respondent Sub-Divisional Officer, Bikramganj, Rohtas, which has been brought on record as Annexure-6 to I.A. No. 5753 of 2013, whereby in the light of recommendation made by the respondent Anchal Adhikari, Karakat, a plot of land bearing khata No. 141 khesra No. 2 area 10 decimals situate at Mauza Gorakh Parasi in the District of Rohtas (In short “land in question”) has been settled in favour of respondent no.6.

3. Learned counsel appearing on behalf of the petitioner submits that by judgment and decree dated 12th April, 1980



(Annexure-1) passed by learned 2nd Additional Munsif, Sasaram in Title Suit No. 80 of 1976/ 163 of 1979, right, title and possession of the petitioner over the lands in question was declared, which was affirmed in First Appeal as also in Second Appeal upto this Court. It is further submitted that though the land in question belongs to the petitioner, yet before issuance of the impugned order neither any show cause notice was issued nor any opportunity of hearing was given to the petitioner and it has illegally been treated as the land belonging to the State of Bihar. According to him, there has been violation of the rules of natural justice. Therefore, it is pleaded that on that count also the impugned order passed by the respondent Sub-Divisional Officer, Bikramganj, Rohtas is not sustainable in law.

4. Learned Government Pleader No.9, appearing on behalf of the respondent no.1 to 5, by referring to the averments made in the counter-affidavit filed on behalf of the respondent no. 2 to 5, submits that in view of the materials collected subsequent to the order passed by the respondent Sub-Divisional Officer, Bikramganj (Rohtas), the respondent Anchal Adhikari, Karakat has recommended for cancellation of Jamabandi created in favour of respondent no.6. However, according to him, final order has not been passed till date and the matter is pending before the Additional Collector.

5. Learned counsel appearing on behalf of the respondent no.6, though has not filed any counter-affidavit till date, submits that in the title suit filed earlier by the petitioner, which was decreed by judgment and decree dated 12th April, 1980 (Annexure-1), all the necessary parties were not impleaded. According to him, the land in question was earlier settled in



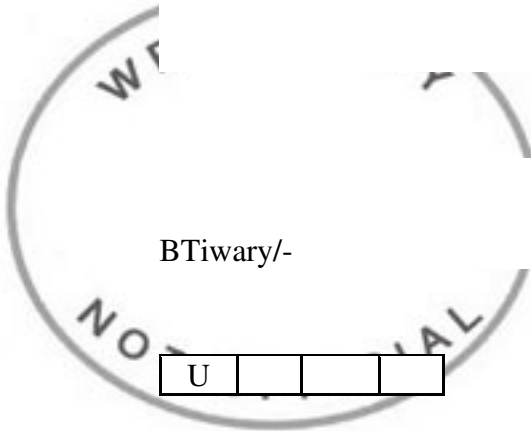
favour of the father of the respondent no.6, but he was not impleaded as respondent. Therefore, according to him on the basis of aforesaid judgment and decree, the rights of respondent no.6 or his father cannot be ignored. However, despite repeated query made by this Court, he has not been able to show that before issuance of impugned order dated 26.11.2004 (Annexure-6), either show cause notice was issued or any opportunity of hearing was given to the petitioner.

6. After having heard the parties and taking into consideration the factual matrixes, as noticed above, this Court is of the opinion that the matter requires reconsideration and fresh decision by the respondent Sub-Divisional Officer, Bikramganj, Rohtas as apparently there has been violation of rules of natural justice while passing the impugned order. Though there a judgment and decree passed by the competent civil court in favour of the petitioner, yet the land in question has been treated to be that of the State of Bihar and final order has been passed without giving him any opportunity of hearing.

7. For the reasons recorded above, the impugned order dated 26.11.2004 (Annexure-6 to the interlocutory application No.5753 of 2013) passed in Settlement Case No. 2 of 2003-04 by the respondent Sub-Divisional Officer, Bikramganj, Rohtas, is hereby set aside and quashed and the matter is remitted back to him with a liberty to pass a fresh order in accordance with law, but before passing any final order he shall be obliged to give an opportunity of hearing to all concerned including the petitioner and the respondent no.6.

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

9. Interlocutory Applications No. 2889 of 2012 and 5753 of 2013 both are, accordingly, disposed of.



(Birendra Prasad Verma, J)