

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12351 of 2002

Prabhu Dayal Sao son of Late Kauleshwar Sao, resident of Mohalla Belisarai, Main Road, Nawadah, Ward No.4, P.S./P.O. Nawadah, District Nawadah.

.... Petitioner/s

Versus

1. The State of Bihar.
2. "Anabad Sarv Sadharan" through the District Collector, Nawadah.
3. The District Magistrate, Nawadah.
4. The Superintendent of Survey, Municipal Survey, Gaya.
5. The Assistant Superintendent of Survey, Municipal Survey, Nawadah.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Adv.

For the Respondent/s : Mr. Manoj Kumar Jha, AC to GP-26.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-04-2015

Heard counsel for the petitioner and the respondents.

In this case petitioner has made a prayer for quashing the order dated 26th November 1999 passed by the Assistant Superintendent of Survey, Nawadah in Case No. 146 of 1999 and also to quash the order dated 4th April 2000 passed by the Survey Superintendent, Nawadah in Appeal Case No. 273 of 1999 whereby he has rejected the claim of the petitioner for adding his name in the survey records of the Municipal Corporation.

In this case, petitioner has claimed right, title and possession over the land appertaining to Mauza Mirjapur & Belisarai Ward no.4, area 0.2111 acres. It has been claimed by the petitioner that he had purchased the land from Jageshwar Choudhary, Suresh Chaudhary and Lakhan Chaudhary who had right title and possession over the land and adverted, his claim is consolidated from the draft Khatiyani showing right of aforesaid persons over the land in question.



In fact they were in possession of the land and their names were also mutated in the municipal record and paid the rent up-to-date. It has further been claimed that the petitioner's father had also got a settlement of land from the Ex-landlord in his life time and they were in exclusive possession of land by constructing a house over the laid land amalgamating the land purchased with the land settled. During the Municipal survey, Parcha was prepared in the name of petitioner but during the survey Badar the land was recorded in the name of *Anabad Sarbsadharan* whereupon petitioner filed an application under Section 9 of the Municipal Survey Act on 23rd Augusts 1999 and claimed that the land has wrongly been recorded as *Anabad Sarbsadharan* and made a prayer for recording his name with respect to the land in question.

The case was registered as Case No. 146 of 1999. The Assistant Settlement Officer vide his order dated 26th November 1999 rejected the claim of the petitioner on the ground of impleadment of wrong party as he was of the view that in place of Bihar Sarkar, the O.P. should be "*Sarb Sadharan*" and on that ground alone the application filed by the petitioner was rejected.

Against that order, petitioner filed Appeal No. 173 of 1999 and the appellate authority vide order dated 4th April 2002 dropped the proceeding on the ground that the final publication has been made and, as such, his objection would be heard under Rule 111 of the Technical Rules.

It appears that the Survey Superintendent, Gaya vide order dated 15th June 2002 has passed the order refusing to entertain the application under Rule 111 of the Technical Rules on the ground that the land in question has been recorded in the Cadastral Survey Khatiyani as *Sarb Sadharan*. In that situation there is no question of purchase of such land by

the petitioner and has also mentioned that during the argument, counsel for the petitioner could not point out in what manner bona fide mistake was committed.

Counsel for the petitioner submits that the Survey Superintendent, Gaya has wrongly refused to entertain the application of the petitioner on the ground of not pleading the proper party, Survey Superintendent misdirected himself, the fact is that the land which has been recorded as *Sarb Sadharan* will always be represented by the State and its officials. The land which is recorded as *Sarb Sadharan* under the law is supposed to be under the State, no person can be said to have a right of representation over such nature of land. It has further been submitted that in appeal also, the appellate authority has committed a mistake in dropping the same on the ground with the plea that it will be seen at the stage of Rule 111 of the Technical Rule so much so the Survey Superintendent, Gaya again without considering the case of the petitioner by a cryptic order rejected it.

Counsel for the State has tried to justify the action of the Municipal Corporation and submitted that at the earliest in the Cadastral Survey Khatiyan the land has been shown as *Anabad Bihar Sarkar* in such a situation the question of purchase of such land does not arise.

Having considered the rival contention of the parties, it is apparently clear that the Assistant Superintendent of Survey, Gaya has misdirected himself in rejecting the application on the ground of non-impleadment of correct party as the State of Bihar would be correct party to represent the land of 'Sarvsadharan'. So this Court is of the view that the ground assigned by the Assistant Superintendent of Survey is not sustainable so much so the appellate authority has also wrongly dropped the proceeding

on the ground of final publication of record of right and later on also vide the impugned order dated 15th June 2002 without discussing the case of petitioner by a cryptic order, passed the impugned order. The Survey Superintendent, Gaya was deciding the matter in quasi judicial capacity and it is supposed from him to pass a speaking order so that higher authority can apply his mind on the reason for arriving to such conclusion.

In such view of the matter, this Court is of the view that the impugned orders passed by the Assistant Superintendent of Survey (Annexure-2) and the orders passed by the Superintendent of Survey, Gaya (Annexure-5 and 6) are hereby quashed and this matter is remanded back to the file of Assistant Superintendent of Survey to pass the order in accordance with law. This Court is not giving any opinion on the merit of the case.

Petitioner is directed to implead the State of Bihar through the Collector of the District concerned.

With the above observation/direction, this petition is allowed.

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(Shivaji Pandey, J)