

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.432 of 2013

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1. Abdul Rauf S/O Ramzan Ali R/O Birnia, Police Station- Bahadurganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Kishanganj, District- Kishanganj
2. The Sub-Divisional Magistrate Kishanganj, District- Kishanganj
3. The Circle Officer Block Terhagachh, P.S.- Terhagachh, District- Kishanganj
4. Taukir S/O Late Alimuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
5. Gulfam S/O Late Alimuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
6. Nasim S/O Late Alimuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
7. Aarif S/O Late Alimuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
8. Akmal S/O Late Alimuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
9. Razi Anwar S/O Late Alimuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
10. Suleman S/O Late Jamaluddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
11. Rajjak S/O Late Jamaluddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
12. Murtaza S/O Late Jamaluddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
13. Nasima Khatoon W/O Aiyub R/O Asha, Police Station-T Erhagachh, District- Kishanganj
14. Yaqub S/O Late Ali Hussain R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
15. Yashin S/O Late Ali Hussain R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
16. Aaiyub S/O Late Ali Hussain R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
17. Abu Nashar S/O Late Asabuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj
18. Nadim S/O Late Asabuddin R/O Village- Asha, P.O. & P.S.- Terhagachh, District- Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Triloki Nath Maitin, Sr. Adv.
Mr. Dilip Kumar Singh, Adv.

For the Respondent/s : Mr. V.M.K Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-07-2015

Heard Mr. Triloki Nath Maitin, learned counsel for the petitioner, learned counsel for the State and Mr. Pankaj Kumar Sinha learned counsel for the respondent Nos. 4 to 12.

The petitioner is aggrieved by the order dated 22.5.2012 passed by the Sub Divisional Officer, Kishanganj whereby the Appeal Case No.10 of 2011 filed by the respondent Nos. 4 to 12 has been allowed and the order passed by the Circle Officer dated 24.11.2009 passed in Case No.31 of 2009-10 whereunder the petitioner had been declared under raiyat over lands in question, the details of which are mentioned in paragraph 4 of the writ petition, has been set aside.

The facts of the case are in a very narrow compass. It is not in dispute that the petitioner herein is a purchaser of sikmi rights and he has not stopped at that rather he has even sold away those rights in favour of the respondent No.13 vide two sale deeds dated 26.10.2010 and 12.10.2010. It is by virtue of acquisition of the sikmi rights in the year 1980 and on grounds of having continued in cultivable possession of the plots in question since 30 years that an application was filed by the petitioner claiming a declaration under Section 48D of the Bihar Tenancy Act (hereinafter referred to as 'the Act') and which was allowed by the Circle Officer vide order passed on 27.3.2010 in case No. 31 of 2009-10. The land owners went in appeal before the Sub Divisional Officer, Kishanganj giving rise to Appeal No. 10 of 2011 and which has been allowed and being aggrieved the petitioner is before this Court.

Mr. Maitin learned Senior Counsel appearing for the petitioner even while admitting to the legal position that sikmi rights cannot be transferred has tried to salvage the situation for the petitioner by submitting that soon after the purchase made by the petitioner from the sikmidar in 1980 that with due information to the



landlords he had continued in the cultivable possession of the land for the period of 30 years and it is in this background that the rights had been claimed by the petitioner under Section 48D of 'the Act'. He submits that even if the sikmi rights are not transferable but where it is under the concession of the landlord and by his acceptance a person continues for such a long period then he sails into the privilege of Section 48D and Section 48E of 'the Act' for claiming the raiyati rights. He submits that it was by a positive act of landlord that the writ petitioner continued and thus at this belated stage no issue can be entertained to scuttle the rights invested in the petitioner. He further submits that the appeal was grossly time barred having been preferred after a delay of almost a year although the period of limitation is mere 30 days and thus was not fit to be entertained. The third issue advanced by Mr. Maitin to support the case of the petitioner is that in a joint property even if one of the several landlords accepts the raiyati rights of a person in cultivable possession of a plot for more than 12 years, he has a right to claim the privilege under Section 48D of 'the Act'.

The Arguments of Mr. Maitin has been contested by Mr. Sinha appearing for the landlord to submit that the person whom the petitioner refers to as a landlord is his own brother-in-law. He further submits that except for the oral statement made by the petitioner of being in cultivable possession on the plot for 30 years there is no single document on record to support this contention. It is further submitted that the sale deed executed in between the petitioner and the sikmidar itself was illegal and which illegality has been perpetuated when the petitioner has again executed sale deeds in favour of the respondent No.13. It is stated that the landlords were neither noticed nor had an opportunity to contest the issue and the petitioner in collusion with the brother-in law Md. Yakub has obtained the orders from the Circle Officer which has been rightly interfered with

by the appellate court.

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

The appellate order rejects the opinion of the Circle Officer on three grounds namely:

- (a) The landlords were not noticed.
- (b) The Circle Officer without satisfying himself as to the factual position has simply relied upon by the circle inspector report; and
- (c) That the compensation amount has not been properly computed.

In the first blush the arguments of Mr. Maitin almost persuaded this Court to remand the matter to the Circle Officer since the appellate authority upon verification of the records has opined that the landowners had not been noticed. There is nothing on record of the proceedings to contest this opinion. The issue would be whether a remand in the circumstances would serve any purpose. The reasons are twin namely;

- (a) The petitioner is not a sikmidar rather claims to have purchased the sikmi rights; and
- (b) He has even sold away those rights whatsoever.

Although the argument of Mr. Maitin that a continuation of a person in cultivable possession of a land for a period exceeding more than 12 years with the consent of the landlord would vest right in such person to claim protection under Section 48D appears quite attractive but I shall leave this issue open for adjudication in an appropriate proceeding since admittedly even the petitioner has sold away the rights so claimed. Further except for oral statement there is nothing on record to support the case of the petitioner regarding being in cultivable possession of the lands in question and the reliance by Mr. Maitin on the

acceptance of Md. Yakub cannot be accepted for he happens to be the own brother in law of this petitioner.

The very fact that even when the said Md. Yakub appeared before the Circle Officer, but the other landlords were kept in dark, is sufficient indication that the proceedings was collusive and had been conducted behind the back of the landholders and without valid service of notice on them.

Another aspect which does not persuade this court to remand the matter is that there is not a single document on records of the writ petition which would support the contention of Mr. Maitin that the writ petitioner was in a cultivable possession of the land for a long period of 30 years.

In my opinion in absence of any document to support the claim of the petitioner and in view of the admitted legal position that sikmidar rights cannot be transferred, in my opinion, a remand of the matter is not an answer to the issue raised by the petitioner who in my opinion, is not entitled to the protection so claimed in absence of supportive documents.

For the reasons aforementioned, the writ petition is dismissed.

(Jyoti Saran, J)

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