

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10908 of 2012

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Jai Ballabh Jha son of Late Sone Lal Jha, resident of Village - Basawan
Patti, Police Station - Karjain Bazar, District - Supaul

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Revenue, Government of Bihar, Patna, Old Secretariat
2. Commissioner, Koshi Division, Saharsa
3. D.C.L.R., Birpur
4. Trilok Chandra Sharma son of Bachu Lal Sharma, resident of Village - Karjain , North Tola, Police Station - Karjain Bazar, District - Supaul
5. Sri Ram Sharma son of Babu Jee Sharma, resident of Village - Karjain, North Tola, Police Station - Karjain Bazar, District - Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s

: Mr.R.S.Roy, Sr.Advocate

Mr. Binod Kumar Singh, Advocate

For the Respondent Nos. 1 to 3 : Mr. Satya Deo Kumar, SC 5

For the Respondent Nos. 4 & 5 : Mr.Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 28-09-2015

Heard the parties.

2. The petitioner is aggrieved by order dated 06.01.2012 (Annexure-3) passed in Revenue Appeal No. 174 of 2011 by the respondent Commissioner, Kosi Division, Saharsa, whereby the aforesaid appeal filed on behalf of the respondent nos. 4 and 5 has been mechanically allowed by one line order and matter has been remanded to the DCLR, Birpur.

3. Learned senior counsel appearing on behalf of the petitioner submits that the petition filed on behalf of the petitioner under Section 4 of The Bihar Land Disputes Resolution Act, 2009 (in short, "Act, 2009") giving rise to Case No. 35 of 2011 was allowed by the learned DCLR, Birpur by a reasoned and speaking order dated 03.11.2011 (Annexure-2), but the respondent Commissioner while exercising his appellate powers has recorded

no reason at all for reversing and setting aside the said order and has arbitrarily and mechanically remanded the matter back to the respondent DCLR.

4. Learned SC 5, appearing on behalf of the respondent nos. 1 to 3, and learned counsel appearing on behalf of the respondent nos. 4 and 5, though have opposed the prayer made on behalf of the petitioner, but could not dispute that the reason has not at all been recorded by the respondent Commissioner for passing the impugned appellate order.

5. After having heard the parties and taking into consideration the manner in which the impugned order has been passed by the appellate authority, this Court is of the opinion that the matter requires re-consideration and a fresh decision by the respondent Commissioner himself. Evidently, while allowing the appeal of respondent nos. 4 and 5, the respondent Commissioner has not recorded any reason for reversing and setting aside the order of the respondent DCLR. In fact, he has not recorded any opinion about the original order passed by the respondent DCLR, yet mechanically remanded the matter back to the respondent DCLR. The impugned appellate order passed by the respondent Commissioner is patently illegal and arbitrary. The Commissioner, being the appellate authority under the provisions of the Act, 2009, was required to record at least some valid reasons for reversing the order passed by the respondent DCLR, which has not done in the present case.

6. For the reasons recorded above, the impugned appellate order dated 06.01.2012 passed in Revenue Appeal No. 174 of 2011 by the respondent Commissioner, Kosi Division, Saharsa, as contained in Annexure-3, is hereby set aside and

quashed, and the matter is remanded back to the respondent Commissioner for deciding the aforesaid appeal afresh by a reasoned and speaking order, but before passing any final order, opportunity of hearing must be given to the parties.

7. The parties shall be at liberty to raise all the issues of facts and law before the respondent Commissioner, which may be available to them either with respect to the land under dispute or with respect to the original order passed by the respondent DCLR, as contained in Annexure-2.

8. In order to expedite the matter, the petitioner and respondent nos. 4 and 5 are hereby directed to appear before the respondent Commissioner, Kosi Division, Saharsa with a certified copy of the present order within a period of one month from today whereafter a firm date shall be fixed by him for deciding the aforesaid appeal afresh in accordance with law.

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

(Birendra Prasad Verma, J)

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