

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16310 of 2008

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1. Bindeshwar Paswan , son of Late Sonfi Paswan
2. Bhola Paswan, son of Late Sonfi Paswan
3. Yogi Paswan, son of Late Sonfi Paswan
4. Bhogi Paswan, son of Late Sonfi Paswan
5. Krishna Kumar Paswan, son of Late Alkeshwar paswan
6. Abinash Kumar, son of Sri Sheo Narayan Paswan
All residents of village benipur, Tola - Hanuman Nagar, P.S. bahera, district Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. the District Collector, Darbhanga
3. the Anchal Adhikari (Circle Officer) Benipur, P.S. Bahera, District Darbhanga
4. Kamla Kant Jha, son of Late Bhagirath Jha, resident of village Nawada, P.S. bahera District Darbhanga
5. Baue Lal Jha @ Babue LaL Jha, son of Late Mohit Jha, resident of village benipur, Tola Navtoliya, P.S. Bahera, District Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M.S. Hoda, Advocate
Mr. Yogendra Kumar, Advocate
For the Respondent No. 4: Mr. Keshav Shrivastava, Sr. Counsel
Mr. Bhubneshwar Prasad, Advocate
For the respondent no. 5: Mr. Abinash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-05-2015

Heard Mr. M.S. Hoda, learned counsel, who was assisted by Sri Yogendra Kumar, learned counsel for the petitioners, learned AC to SC No. 25, Sri Keshav Shrivastava, learned senior counsel, who was assisted by Sri Bhubneshwar Prasad, learned counsel, who has appeared on behalf of the respondent no. 4 as well as Sri Abhinash Kumar, learned counsel, who has appeared on behalf of the respondent no. 5.



Six petitioners, invoking writ jurisdiction of this court under Article 226 of the Constitution of India, have prayed for quashing of an order dated 1.9.2008 passed in Miscellaneous Appeal No. 17 of 2008-09, whereby the learned Collector, Darbhanga, exercising power under Section 21 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as the “Act”) has allowed the petition and quashed the Basgit Parcha issued under the provisions of the Act in favour of the petitioners.

Short fact of the case is that the petitioners claiming to be privileged persons as well as persons belonging to the category of scheduled caste (dusadh) had applied for issuance of Basgit Parcha in their favour over the land measuring 0.6 decimal appertaining to khata no. 126, khesra no. 933, plot no. 743 and 744 situated in the village- Benipur. It was claimed that the said land was in their possession since about 50 years. It appears that general notice was issued and after receiving no objection by order dated 9.11.1998 the Basgit Parcha Case No. 125 of 1998-99 was allowed and Basgit Parcha was issued in favour of the petitioners.

Learned counsel for the petitioners submits that even though order in Basgit Paarcha Case was issued in the year 1998, for a long period nothing was done and suddenly after about 10 years, the respondent no. 5 filed a petition under Section 21 of the Act before



the Collector and the Learned Collector has allowed the petition filed by the respondent no. 5. He submits that no petition was filed by respondent no. 4, even then, the learned Collector has passed the order in favour of the respondent no. 4 and 5. A preliminary question has been raised by the learned counsel for the petitioners, while assailing the impugned order, that under Section 21 of the Act of-course the learned Collector was authorized to set aside an order passed in the Basgit Parcha proceeding but at the same time it was mandatorily required on his part to remit back the matter to the concerned court for examining the same and passing order afresh. In the present proceeding the learned Collector has given a complete go by to the statutory provisions. In support of his submission learned counsel for the petitioners has placed heavy reliance on a single bench judgment of this court reported in **2004(3) PLJR 424 (Narayan Sah vs. The State of Bihar & Ors.)**. Learned counsel for the petitioners has assailed the order impugned both on the ground that after 10 years the learned Collector was not required to entertain the petition and secondly, on technicality, the learned Collector has committed serious error in not remitting back the matter to the original court i.e. Circle Officer.

Sri Keshav Shrivastava, learned senior counsel, who has appeared on behalf of the respondent no. 4 has opposed the prayer of

the petitioners. He submits that since in the Basgit Parcha proceeding no proper notice was issued and served to the respondent no. 4, the order was itself incorrect which has been corrected by the learned Collector. However, on the point as to whether the learned Collector was authorized to finally dispose of the proceeding under Section 21 of the Act, he candidly accepts that the matter was required to be remitted back to the Circle Officer. He accepts the proposition as contained in Section 21 of the Act as well as the single bench judgment of this court.

In view of the facts and circumstances, without delving into the merit of the case, the court proposes to interfere with the order of the appellate authority and as such, the order passed by the learned Collector dated 1.9.2008 in Miscellaneous Appeal No. 17 of 2008-09 is hereby set aside and matter is remitted back to the Circle Officer, Benipur, to examine the matter afresh and pass appropriate order after hearing both sides in accordance with law preferably within a period of three months from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

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