

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16201 of 2010

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Arun Kumar, S/O Shri Mahabir Prasad Yadav, R/O Vill.- Kaswa Kherahi, P.S.-
Shahkund, Distt.- Bhagalpur, at Present Residing at Vill.- Tahbal Nagar, P.S.-
Shahkund, Distt.- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Bhagalpur
3. The Sub Divisional Officer, Sadar, Bhagalpur
4. The Land Reforms Deputy Collector, Sadar Bhagalpur
5. The Anchal Adhikari, Shahkund, Distt.- Bhagalpur
6. Lilo Yadav, S/O Ghoghan Yadav, R/O Vill.- Keswa Kherahi, P.S.- Shahkund,
Distt.- Bhagalpur
7. Angad Kumar Singh, S/O Sri Raghuram Singh, R/O Vill.- Keswa Kherahi, P.S.-
Shahkund, Distt.- Bhagalpur
8. Matiur Rahman, S/O Md. Nisar, R/O Vill.- Keswa Kherahi, P.S.- Shahkund,
Distt.- Bhagalpur
9. Amika Malakar, S/O Late Lochan Malakar, R/O Vill.- Keswa Kherahi, P.S.-
Shahkund, Distt.- Bhagalpur
10. Raju Yadav, S/O Shri Sundar Yadav, R/O Vill.- Keswa Kherahi, P.S.-
Shahkund, Distt.- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr.Adv.
Mr. Rajendra Prasad Yadav
For the Respondent nos.1to5 : Mr. Gautam Bose, AAG-8
Mr.Ajay Kumar, AC to AAG-8
For the respondent nos.6to10: Mr.Md.Najmul Hoda
Mr.Md.Arif Ismail Khan

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 17-03-2015

Heard the parties.

The petitioner is aggrieved by the order dated
06.05.2010 (Annexure-13) passed in J.C.Appeal No.58/04-05 by the
respondent District Collector, Bhagalpur, whereby the Parwana dated
09.06.2003 issued in favour of the petitioner under the joint signature
of the respondent D.C.L.R., Sadar Bhagalpur as also respondent nos.3

and 5 and communicated by the respondent Anchal Adhikari, Shahkund vide letter dated 13.07.2004 (Annexure-9 to the writ petition) has been cancelled.

Learned senior counsel appearing on behalf of the petitioner submits that, against the issuance of aforesaid Parwana dated 09.06.2003 (Annexure-9) in favour of the petitioner with respect to lands in question bearing khata no.173, khesra no.233, area 3 dismal, appeal was not maintainable before the respondent District Magistrate. Therefore, the impugned appellate order (Annexure-13) is liable to be set aside and quashed by this Court. It is also contended that the private respondent nos.6 to 10 have no concern with respect to lands in question. Therefore, on that ground also, appeal at their behest was not maintainable. According to him, the petitioner is a landless person and, therefore, he applied for settlement of lands in question in his favour for which a proposal was made by the respondent Anchal Adhikari and accordingly Land Settlement Case No.2/2002-03 was started by the respondent D.C.L.R., Sadar Bhagalpur. It is contended that after following the procedures and issuance of public notice, recommendation was made for settlement of lands in question in favour of the petitioner vide order dated 18.02.2003 (Annexure-8). Consequently, the Parwana as contained in Annexure-9 settling the lands in question was issued in favour of the petitioner under the joint signature of the respondent nos.3 to 5.

Learned AAG-8 appearing on behalf of the respondent nos.1 to 5 and learned counsel appearing on behalf of the respondent nos.6 to 10 have opposed the prayer made on behalf of the petitioner. According to them, the lands in question is situate in the town of Shahkund and was not an agricultural land. Therefore, the lands in question could not have been settled in favour of the writ petitioner. It

is contended by them that the petitioner is not a landless person. Hence, the settlement of the lands in question made in favour of the writ petitioner is a result of fraud committed by him. By referring to the averments made in paragraph no.7 of the counter affidavit filed on behalf of the respondent nos.6 to 10, it is further contended that the petitioner is having a pucca house consisting of eight rooms and he is having stationary business in Shahkunda market. It is further pleaded by them that the petitioner is having more than six acres of agricultural land. Therefore, the claim of the petitioner that he is a landless person is apparently wrong and misleading and consequential issuance of Parwana is not sustainable in law.

After having heard the parties and taking into consideration the materials available on record, this Court is of the opinion that the issues of facts raised on behalf of the parties in the present proceeding have not been conclusively decided by the competent authority after looking into all the relevant documents/materials produced by them. If the petitioner is a landless person then, of course, his case can be considered in accordance with law for grant of Parwana. But, if he is not a landless person and is having more than six acres of agricultural lands, then his claim for issuance of Parwana for settlement of lands in question on the ground of being landless person cannot be entertained. But these are still the issues within the domain of disputed questions of facts, which are required to be conclusively decided by the competent authority after giving an opportunity of hearing to both the sides and after looking into all the relevant documents/materials produced by them as also after examining the relevant revenue records. Therefore, this Court is of the opinion that the entire matter requires re-consideration and fresh decision in accordance with law.

For the reasons recorded above, the impugned appellate order dated 06.05.2010 (Annexure-13 passed in J.C. Appeal No.58/2004-05) by the respondent District Collector, Bhagalpur as also the different orders passed in Land Settlement Case No.2/2002-03 (Annexure-8) passed by the respondent D.C.L.R., Sadar Bhagalpur and the consequential Parwana as contained in Annexure-9 issued in favour of the petitioner settling the lands in question in his favour are hereby set aside and quashed, and the entire matter is remitted back to the respondent D.C.L.R., Sadar Bhagalpur with a direction to consider the case of the petitioner afresh for settlement of the lands in question in his favour after giving an opportunity of hearing to all concerned including the private respondent nos.6 to 10.

In order to expedite the matter, the petitioner as also respondent nos.6 to 10 are directed to appear before the respondent D.C.L.R., Sadar Bhagalpur on 28th April, 2015 with a certified copy of the present order, whereafter he shall fix a firm date for proceeding in the matter afresh further.

The writ petition stands finally disposed of with the observations and directions made above, but the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Arvind/-

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