

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12554 of 2008

With
Interlocutory Application No.5710 of 2015

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Keshav Mishra, son of late Vishwa Mohan Missir, resident of Naraipur,
P.S.-Bagaha, District-West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, West Champaran.
3. Anchal Adhikari, Anchal Bagaha No.2, District-West Champaran.
4. (a) Mostt. Dulari Devi, widow of late Moti Chand Dom
- (b) Bhimal Dom
- (c) Inal Dom
- (d) Chhote Lal Dom

All sons of late Moti Chand Dom, All residents of village-Naraipur, P.O.-
Naraipur, P.S.-Bagaha, District-West Champaran

5. Abdul Jalil, son of late Jamiruddin, resident of Mangalpur, P.O. and
P.S.-Bagaha, District-West Champaran.
6. Krishna Chandra Prasad, son of Madan Prasad, Resident of Bagaha,
P.S.&P.O.-Bagaha, District-West Champaran.
7. Sub-Registrar, Registration Office, Bettiah, West Chamapran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr.Adv. Mr. Manoj Kumar
For the Respondent nos.1to3:	:	Mr. Rajiv Roy, GP-5 Mr.Suresh Kumar, AC to GP-5
For the Respondent no.6	:	Mr.Vijay Kumar Singh Mr.Dronacharya

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

17 07-08-2015

Heard the parties.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the final order dated 24.10.1979 passed in Case No.6 of 1980-81 by the respondent Anchal Adhikari, Bagaha-II under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'Act, 1947'). The order-sheet of the aforesaid case no.6 of 1980-81 has been brought on record as Annexure-1 to the writ petition including the final order dated

24.10.1979.

Learned senior counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned proceeding as also the final order dated 24.10.1979, submitted that the procedures prescribed under the Act, 1947 and Rules made thereunder have not been followed and, therefore, on that ground alone, the impugned proceeding is liable to be quashed. He further submitted that the land holder Madan Mohan Mishra, the grandfather of the petitioner, though was impleaded as opposite party, but notices were never served upon him and the entire proceeding was carried out behind his back in violation of the principles of natural justice.

Learned State counsel appearing on behalf of the respondent nos.1 to 3 and 7 as also learned counsel appearing on behalf of the respondent no.6 have strongly opposed the prayer, but have not been able to show that the provisions of the Rule 5 of The Bihar Privileged Persons Homestead Tenancy Rules, 1948 framed under the Act, 1947 was strictly followed. Learned State counsel, though has produced the original records of the aforesaid Basgit Parcha case, but has not been able to show that notice issued was actually served upon the land holder.

From the submissions made by the learned counsel appearing on behalf of the respondent no.6, it appears that Moti Chand Dom (original respondent no.4), in whose favour originally the parcha was issued under the provisions of the Act, 1947, transferred that land in favour of Abdul Jalil (respondent no.5). From the aforesaid Abdul Jalil, the respondent no.6 claims to have purchased the said land through a registered sale deed.

In the considered opinion of this Court, the lands

allotted to the respondent no.4 under the provisions of the Act, 1947 was not transferable. Therefore, all the transfers made either by the respondent no.4 or by the subsequent purchaser are/were apparently illegal and contrary to the provisions of the Act, 1947.

In the factual matrix, as noticed above, this Court is of the opinion that the entire matter requires reconsideration and fresh decision by the original authority strictly in accordance with the provisions of the Act, 1947 and Rules framed therein.

In the result, the impugned final order dated 24.10.1979 is set aside and quashed and the matter is remitted back to the respondent Anchal Adhikari for passing a fresh order in accordance with law. However, before passing any final order, he shall be obliged to give an opportunity of hearing to all concerned.

I.A.No.5710 of 2015 is permitted to be withdrawn with a liberty to approach the competent authority/forum for grant of an appropriate relief.

The writ petition stands allowed to the extent indicated above, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

Arvind/-

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