

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14310 of 2012

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1. Mithilesh Devi W/o Late Raghunath Sharan Singh, resident of village Shahabad, P.S.Masaurhi, Patna
 2. Umesh Prasad Singh @ Bharat Singh
 3. Naresh Singh
- both petitioner nos. 2 and 3 are sons of Late Kapildeo Prasad Singh, resident of village Mor, P.S.Mokama, District Patna

Through Ram Ratan Bhagat, Attorney and Power Holder of petitioner No. 1 to 3 S/O Late Ram Kishun Bhagat R/O Kharkhura, Tarwara, P.S.- Delha, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Magadh Division, Gaya
3. The District Magistrate, Gaya
4. The Deputy Collector, Land Reforms, Gaya
5. The Circle Officer, Gaya Anchal, Gaya
6. Raj Kumar Kaushalendra Prasad Narayan Singh S/O Late Raja Bahadur Harihar Prasad Narayan Singh R/O Jamuna Apartment, P.S.- Sri Krishnapuri, District- Patna
7. Balram Singh S/O Late Heera Singh R/O Village- Baghlatti, P.S. and Anchal- Mohanpur, District- Gaya
8. Ravindra Singh S/O Late Heera Singh R/O Village- Baghlatti, P.S. and Anchal- Mohanpur, District- Gaya
9. Dilendra Singh S/O Late Heera Singh R/O Village- Baghlatti, P.S. and Anchal- Mohanpur, District- Gaya

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.18336 of 2012

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1. Balram Singh son of Late Hira Singh, resident of Village Baghlatti, P.S.- Mohanpur, Dist.- Gaya
 2. Ravindra Singh son of Late Hira Singh, resident of Village Baghlatti, P.S.- Mohanpur, Dist.- Gaya
 3. Dilendra Kr. Singh son of Late Hira Singh, resident of Village Baghlatti, P.S.- Mohanpur, Dist.- Gaya

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms Department, Bihar, Patna
2. The Commissioner, Magadh Division, Gaya District, Gaya
3. The Collector-cum-Superintendent of Survey, Land Measurement and Settlement Officer, Gaya
4. The Deputy Collector, Land Reforms, Sadar Gaya, District- Gaya
5. Circle Officer, Sadar Gaya, District.- Gaya
6. The Charge Officer, Municipal Survey, Gaya, District- Gaya
7. Raj Kumar Kaushlendra Pd. Narayan Singh son of Late Raja Bahadur Harihar Prasad Narayan Singh, resident of Jamuna Apartment, Sri

Krishnapuri, Patna

.... Respondent/s

Appearance :

(In CWJC No.14310 of 2012)

For the Petitioner/s : Mr.Arun Pd.Ambasta, Advocate
Mr. Santosh Kumar Singh, Advocate

For the Respondent Nos. 1 to 5 : Mr. Sanjay Kumar, AC to AAG 6

For the Respondent No. 6 : Mr.J.S.Arora, Advocate

Mr. Manoj Kumar, Advocate

For the Respondent Nos. 7 to 9: Mr. Durga Nand Jha, Advocate

(In CWJC No.18336 of 2012)

For the Petitioner/s : Mr. Durga Nand Jha, Advocate

Mr.Vivekanand Kumar, Advocate

For the Respondent Nos. 1 to 6 : Mr.Sanjay Prakash Verma, AC to GA1

For the Respondent No. 7 : Mr.J.S.Arora, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 14-10-2015

In the aforesaid two writ petitions, issues of facts and law as also contesting parties therein are almost common; therefore, on the request of the learned counsel appearing on behalf of the parties, both the writ petitions were heard together and are being disposed of by this common judgment.

2. CWJC No. 14310 of 2012 was originally filed by one Ram Ratan Bhagat, power of attorney holder on behalf of the petitioner nos. 1 to 3. However, names of aforesaid petitioner nos. 1 to 3 were not reflected in the cause title of the writ petition. Therefore, I.A.No.1204 of 2013 was filed on behalf of the petitioners with a prayer that names of Smt.Mithilesh Devi, Umesh Prasad Singh alias Bharat Singh and Naresh Singh be permitted to be added as petitioner nos. 1 to 3, since the main writ petition was filed on their behalf through the aforesaid power of attorney holder. Aforesaid Interlocutory Application No. 1204 of 2013 was allowed by order dated 25.02.2013 passed by a Bench of this Court and party position was directed to be corrected in the light of the averments made in the

aforesaid I.A.No. 1204 of 2013.

3. The aforesaid CWJC No. 14310 of 2012 was filed on behalf of the petitioners under Article 226 of the Constitution of India originally assailing the validity and correctness of the order dated 10.05.2012 passed in Land Dispute Resolution Appeal No. 144 of 2011 by the respondent Commissioner, Magadh Division, Gaya, as contained in Annexure-5 to the aforesaid writ petition, whereby the petition filed on behalf of the writ petitioners for their impleadment as party respondents in the aforesaid appeal No. 144 of 2011 was rejected by a cryptic and non-speaking order. During the pendency of the aforesaid writ petition, despite restraint order dated 07.08.2012 passed by a Bench of this Court in aforesaid CWJC No. 14310 of 2012, the respondent Divisional Commissioner passed final order on 09.08.2012 allowing the aforesaid Appeal No. 144 of 2011 filed on behalf of the respondent no.6 on the ground that the restraint order passed by this Court was not communicated to him. In above view of the matter, the petitioners filed I.A.No. 822 of 2013 seeking amendment in the prayer portion of the main writ petition and seeking permission of this Court to challenge the validity and correctness of the final order dated 09.08.2012 passed in aforesaid Appeal No. 144 of 2011 by the respondent Divisional Commissioner. The aforesaid I.A.No. 822 of 2013 was allowed by a Bench of this Court by an order dated 06.02.2013 passed in the aforesaid CWJC No. 14310 of 2012. Therefore, the petitioners of CWJC No. 14310 of 2012 are now essentially aggrieved by the aforesaid final order dated 09.08.2012 (Annexure-6 to the aforesaid I.A.No. 822 of 2013).

4. CWJC No. 18336 of 2012 has been filed on behalf of the petitioners of that case under Article 226 of the Constitution of India assailing the validity and correctness of the order dated

09.08.2012 passed in Appeal No. 144 of 2011 by the respondent Commissioner, Magadh Division, Gaya, as contained in Annexure-1 to the writ petition, whereby the aforesaid appeal filed on behalf of the respondent no.7 of that case was allowed and the order dated 07.06.2011 passed by the respondent DCLR, Sadar, Gaya (respondent no.4), as contained in Annexure-7, was set aside and reversed.

5. In aforesaid CWJC No. 18336 of 2012, I.A.No. 821 of 2013 has been filed on behalf of the petitioners of CWJC No. 14310 of 2012 for their impleadment as party respondents in the aforesaid writ petition.

6. At this place, it would be relevant to mention here that the petitioners of CWJC No.14310 of 2012 are the interveners in CWJC No. 18336 of 2012, whereas respondent nos. 7 to 9 of CWJC No. 14310 of 2012 are the petitioners in CWJC No. 18336 of 2012. Raj Kumar Kaushlendra Prasad Narayan Singh, in whose favour impugned appellate order was passed by the respondent Divisional Commissioner, has been impleaded as respondent no.6 in CWJC No. 14310 of 2012 whereas he has been impleaded as respondent no.7 in CWJC No. 18336 of 2012. The original order dated 07.06.2011 passed by the respondent DCLR, Sadar, Gaya has been brought on record as annexure-2 in CWJC No. 14310 of 2012, whereas the aforesaid order has been brought on record as Annexure-7 in CWJC No. 18336 of 2012. Similarly, impugned final appellate order dated 09.08.2012 passed in Appeal No. 144 of 2012 by the respondent Divisional Commissioner has been brought on record as Annexure-1 in CWJC No. 18336 of 2012, whereas aforesaid order has been brought on record as Annexure-6 in CWJC No. 14310 of 2012.

7. It is the common case of the parties that the petitioners of CWJC No. 18336 of 2012 filed a petition before the respondent



DCLR, Sadar, Gaya under Section 4 of the Bihar Land Disputes Resolution Act, 2009 (hereinafter to be referred to as “the Act, 2009”) for fixation of rent regarding lands in question mentioned in the order passed by the respondent DCLR, Sadar, Gaya. On the basis of the aforesaid petition, Rent Fixation Case No. 1 of 2011-12 (Nagar Circle)/Rent Fixation Case No. 20 of 2011 (Land Reforms) was registered. In the aforesaid Rent Fixation case, though one Smt. Umeshwari Kuer and others were impleaded as opposite parties, but, indisputably, neither respondent Raj Kumar Kaushlendra Prasad Narayan Singh nor the petitioners of CWJC No. 14310 of 2012 were impleaded as parties. Though in the aforesaid Rent Fixation Case, notices were issued to the opposite parties, but none of them entered appearance. Even steps for substituted service by publication of notice in the News Paper was taken, yet none appeared to contest the claims of the applicants, as a result of which the respondent DCLR, Sadar, Gaya proceeded in the matter ex-parte and final order was passed on 07.06.2011 whereby the claim of the applicants of that case was allowed for fixation of rent. However, it was clarified that this order shall not be construed as declaration of title of the applicants over the lands in question. During course of hearing of this matter, learned counsel appearing on behalf of the parties were unanimous in their submissions that Smt. Umeshwari Kuer, widow of Late Raghubansh Mani Prasad Narain Singh, was already dead, when the aforesaid rent fixation case was filed by the writ petitioners of CWJC No. 18336 of 2012. From the aforesaid facts it is apparent that the order dated 07.06.2011 by the respondent DCLR, Sadar, Gaya was passed ex-parte and it was passed against a dead person.

8. The respondent Raj Kumar Kaushlendra Prasad Narayan Singh, being aggrieved by the aforesaid order of the



respondent DCLR, Sadar, Gaya preferred Land Dispute Resolution Appeal No. 144 of 2011 before the respondent Commissioner, Magadh Division, Gaya under Section 14 of the Act, 2009. In that appeal, only petitioners of CWJC No. 18336 of 2012 were impleaded as party respondents, but Smt.Umeshwari Kuer or her heirs and legal representatives were not impleaded as party respondent (s). Subsequently, the petitioners of CWJC No. 14310 of 2012 filed a petition for their impleadment as parties, which was ultimately rejected by the impugned order dated 10.05.2012, as contained in Annexure-5, and finally the appeal filed on behalf of the aforesaid respondent was allowed by the final appellate order dated 09.08.2012, which is the subject matter of challenge in both the writ petitions.

9. The petitioners of CWJC No. 14310 of 2012 have given the details of the lands under dispute in paragraph 5 of the writ petition. They claim to be the descendants of one Brahmadeo Sharma, who had allegedly purchased the lands under dispute through sale deed dated 12.04.1918. According to the learned counsel appearing on behalf of the petitioners of that case, the petitioners are in possession over the lands in question, yet they were not impleaded as parties either before the respondent DCLR or before the respondent Divisional Commissioner. Therefore, according to him, on coming to know about the pendency of the aforesaid appeal No. 144 of 2011, a petition was filed on their behalf for their impleadment as parties, but that was rejected by the respondent Commissioner by the impugned cryptic order dated 10.05.2012 (Annexure-5). It is contended by the learned counsel that the appellate authority passed the impugned final appellate order despite restraint order dated 07.08.2012 passed by this Court; therefore, the orders impugned are not sustainable and are fit to be quashed by this Court. It was further submitted by him that the

petition filed on behalf of the respondent no. 7 to 9 before the respondent DCLR, Sadar, Gaya for fixation of rent under Section 4 of the Act, 2009 was completely misconceived, as Section 4 of the Act, 2009 does not confer such powers upon “the competent authority” for fixation of rent with respect to any plot/area of land.

10. The petitioners of CWJC No. 18336 of 2012 claim to be the descendants of one Heera Singh. The details of the lands claimed by them have been given in paragraph 1 of the writ petition itself, which have been mentioned in the order passed by the respondent DCLR as well. According to the learned counsel appearing on behalf of the aforesaid petitioners, the land in question was originally belonging to Kumar Maharaja Gopal Sharan Narayan Singh, who settled the lands in question in favour of aforesaid Heera Singh through Hukumnama dated 22.05.1925. It is the case of the aforesaid petitioners that since then they or their ancestor (s) are coming in possession over the lands in question; and as the rent was not being realized by the State for the lands in question, they filed a petition under Section 4 of the Act, 2009 before the respondent DCLR, Sadar, Gaya for fixation of rent, which was finally allowed by order dated 07.06.2011. Learned counsel pointed out that since the opposite parties of that case did not appear despite issuance of notice, therefore, matter proceeded further and final order was passed by the respondent DCLR, Sadar, Gaya accepting their claims regarding the lands in question. However, he also fairly conceded that Smt.Umeshwari Kuer, widow of late Raghubansh Mani Prasad Narayan Singh was already dead, when the petition was filed on behalf of the aforesaid petitioners. According to him, the respondent Divisional Commissioner could not have allowed the appeal of the private respondent in view of the restraint order passed by this Court.

Hence, it is pleaded that the impugned appellate order passed by the respondent Divisional Commissioner is liable to set aside and quashed on that ground alone, besides on merits.

11. The respondent Raj Kumar Kaushalendra Prasad Narayan Singh has contested both the writ petitions by filing his separate counter affidavits in both the writ petitions. According to him, the lands in question was purchased in auction by one Raja Bahadur Harihar Prasad Narayan Singh in the name of his employee namely, Brahmadeo Singh on 25th May, 1916. It is also the case of the aforesaid respondent that land in question was gifted by one Kumar Maharaja Gopal Sharan Narain Singh of Tekari to one Rani Bhuneshwari Kuer through a registered deed of gift dated 04.07.2016. Learned counsel appearing on behalf of the aforesaid respondent submitted that the lands in question is not an agricultural land, rather a huge building is standing over the same, which is known as “Anta Kothi”. It is the case of the aforesaid respondent that the land/property in question belongs to him and claims of the petitioners of both the writ petitions are unfounded. Therefore, according to him, the respondent Divisional Commissioner has rightly allowed the appeal filed on his behalf by the impugned appellate order dated 09.08.2012. It is also contended by the learned counsel that the restraint order dated 07.08.2012 passed by a Bench of this Court was not communicated to the respondent Divisional Commissioner; therefore, the impugned appellate order cannot be legally faulted on that ground. It is pleaded that both the writ petitions are liable to be dismissed on the facts stated in the counter affidavits filed separately on behalf of the aforesaid respondent in the both the writ petitions. However, he has not disputed that in the appeal filed on behalf of the aforesaid respondent Smt. Umeshwari Kuer or all her heirs and legal

representatives were not impleaded as party respondents.

12. After having heard the parties at great length and on consideration of the materials available on the record, this Court finds that the petitioners of CWJC No. 18336 of 2012 had filed a petition under Section 4 of the Act, 2009 before the respondent DCLR, Sadar, Gaya for fixation of rent with respect to the lands in question. In the aforesaid rent fixation case, admittedly, neither the petitioners of CWJC No. 14310 of 2012 nor the respondent no. 7 of that case were impleaded as opposite parties. However, one Most. Umeshwari Kuer widow of Late Raghubansh Mani Prasad Narayan Singh was impleaded as opposite party, but admittedly she was already dead when the proceeding was started by the respondent DCLR, Sadar, Gaya. Therefore, the final order dated 07.06.2011 has been passed against a dead person and was passed ex-parte. The respondent no.7 on coming to know and being aggrieved by the aforesaid order, filed Appeal No. 144 of 2011 before the respondent Divisional Commissioner, Gaya under Section 14 of the Act, 2009. The petition filed on behalf of the petitioners of CWJC No. 14310 of 2012¹ for their impleadment as opposite parties has been rejected by a most cryptic and non-speaking order dated 10.05.2012 (Annexure-5); though the petitioners of that case have raised various issues regarding the lands in question, but none of those issues were taken into consideration and their prayer was rejected by a cryptic order. Therefore, in the considered opinion of this Court, the aforesaid order dated 10.05.2012 (Annexure-5) is not sustainable on that ground alone.

13. Indisputably, by order dated 07.08.2012 passed in CWJC No. 14310 of 2012 by a Bench of this Court, though the respondent Commissioner was allowed to proceed with Land Dispute



Resolution Appeal No. 144 of 2011, but he was restrained from passing any final order till appearance of the private respondents in that writ petition. However, it is apparent that while the aforesaid restraint order was still in vogue, the respondent Divisional Commissioner passed the impugned final appellate order on 09.08.2012 and allowed the aforesaid appeal filed on behalf of the private respondent after setting aside and reversing the order passed by the respondent DCLR. On going through the orders impugned passed by the respondent DCLR as also the respondent Divisional Commissioner, this Court does not find that the issues raised on behalf of the parties regarding maintainability of the petition for fixation of rent under Section 4 of the Act, 2009 have been gone into. This goes to the root of the matter. Several orders have been produced by the parties in support of their respective claims regarding lands in question.

14. At this place, it would be relevant to mention here that the learned counsel appearing on behalf of the petitioners of CWJC No. 18336 of 2012 has produced a copy of the plaint of Title Suit No. 268 of 2015 filed by Mithilesh Devi and others in which all the contesting parties of these two writ petitions, besides others, have been impleaded either as the plaintiffs or as the defendants. However, this is the subsequent development when the orders were already passed by the respondent DCLR as also the respondent Divisional Commissioner.

15. In the considered opinion of this Court, in the factual matrixes noticed above, the entire matters require re-consideration and a fresh decision from the stage of Section 4 of the Act, 2009, after giving an opportunity of hearing to all the parties of the aforesaid two writ petitions, particularly in view of the fact that the issue regarding

maintainability of petition for fixation of rent under the provisions of the Act, 2009 goes to the root of the matter, but this aspect of the matter has not at all been touched either by the original authority or by the appellate authority.

16. For the reasons recorded above, the impugned appellate orders dated 10.05.2012 and 09.08.2012 passed in Land Dispute Resolution Appeal No. 144 of 2011 by the respondent Commissioner, Magadh Division, Gaya as also the original order dated 07.06.2011 passed in Rent Fixation Case No. 1 of 2011-12/20 of 2011 by the respondent DCLR, Sadar, Gaya are hereby set aside and quashed and entire matter is remitted back to the respondent DCLR, Sadar, Gaya with a direction to decide the case of the parties afresh by a reasoned and speaking order after giving an opportunity of hearing to all the parties.

17. In order to expedite the matter, the contesting parties of both the writ petitions are hereby directed to appear before the respondent DCLR, Sadar, Gaya within a period of one month from today with a certified copy of the present order, whereafter the respondent DCLR, Sadar, Gaya shall fix a firm date for deciding the aforesaid proceeding afresh strictly in accordance with law.

18. All the contesting parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the lands in question before the respondent DCLR, Sadar, Gaya.

19. In the result, both the writ petitions stand allowed to the extent indicated above, but without costs.

(Birendra Prasad Verma, J)

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