

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18785 of 2012

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Lakshmi Devi Wife Of Late Saryu Mishra, Resident of Mohalla- Dak Ghat Lane, Manpur, P.O. and P.S. Buniyadganj, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Gaya
3. The Survey Superintendent, Gaya
4. Awadh Kumar Pandey Son of Late Dwarika Pandey, Resident of Mohalla- Dak Ghar Lane, Manpur, P.O. And P.S. Buniyadganj, Distt.- Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar

For the Respondent No.1 to 3: Mr. Prabhat Kumar, AC to GA-2

For the Respondent No.4 : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

9 08-10-2015

Heard the parties.

The petitioner is aggrieved by the order dated 10.04.2012 passed in Miscellaneous Case No. 46 of 2012 by the respondent Survey Superintendent, Gaya, as contained in Annexure-6, whereby the petition filed on behalf of the respondent no.4 regarding the lands in question under the provisions of Rule 111 of The Survey Technical Rules has been allowed.

While assailing the validity and correctness of the impugned order, the learned counsel appearing on behalf of the petitioner has raised various issues with respect to the claim of the petitioner regarding the lands in question. He contended that the impugned order dated 10.04.2012 (Annexure-6) has been passed by the respondent no. 3 without valid service of notice upon the petitioner and, in complete violation of the rules of natural justice. It is further contended that on the ground of violation of rules of natural justice alone, besides on merit, the impugned order is not

sustainable in law.

Learned State counsel appearing on behalf of the respondent no. 1 to 3 and the learned counsel appearing on behalf of the respondent no. 4 have filed their separate counter- affidavits contesting the claims of the petitioner regarding the lands in question, but they have not controverted the claims of the petitioner that before passing the impugned order, reasonable opportunity of hearing was not given to the petitioner. Learned counsel appearing on behalf of the respondent no.4 has fairly conceded that there is no such averment in the counter-affidavit filed on behalf of the aforesaid respondent no.4.

After having heard the parties and on going through the records of the case, this Court finds that in the aforesaid Miscellaneous Case no. 46 of 2012, though the notice was directed to be issued to the petitioner, who was opposite party in that case, but it has nowhere been recorded that the notice was served upon the petitioner, rather in the impugned order itself it has been recorded that the petitioner, who was opposite party in that case, was not present and the impugned order was passed ex parte.

In above view of the matter, this Court is of the opinion that while passing the impugned order rules of natural justice has not been followed. Therefore, without going into the merits of the claims of either party, this Court is further of the opinion that the matter requires reconsideration and fresh decision by the respondent no.3, after giving an opportunity of hearing to both sides.

For the reasons recorded above, the impugned order dated 10.04.2012 (Annexure-6) passed in Miscellaneous Case No. 46 of 2012 by the respondent Survey Superintendent, Gaya, is

hereby set aside and quashed and the matter is remitted back to the respondent no.3 with a direction to him to decide the aforesaid Miscellaneous Case No. 46 of 2012 afresh, after giving an opportunity of hearing to both sides.

In order to expedite the matter, the petitioner as also the respondent no.4 are hereby directed to appear before the respondent no.3 with a certified copy of the present order within a period of one month from today, whereafter a firm date shall be fixed by the respondent no. 3 for hearing the aforesaid Miscellaneous Case No. 46 of 2012 afresh.

It is clarified that after fixation of date, if either party chooses not to contest the matter, and if the final order is passed by the respondent no.3 afresh, then such party shall not be allowed to challenge the validity and correctness of that order on the ground of violation of rules of natural justice.

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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