

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13706 of 2000

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1. Smt. Usha Kiran Sinha Wife of Sri Ashok Kumar Sinha
2. Kundan Sinha
3. Nandan Sinha both Sons of Sri Ashok kumar Sinha All Residents of Mohalla-Burhanath Jogsar, P.S Kotwali ,District Bhagalpur at Present residing at Tilak Marg, C/18, New Delhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Munger.
3. Anchal Adhikari, Dharhara, District Munger.
4. Mangal Korha Son of Moran Korha
5. Nageshwar Korha Son of Tilo Korha
6. Bhomu Korha Son of Bukka Korha
7. Karu Korha Son of Bhattu Korha
8. Genhari Korha son of Tuna Korha (expunged vide order dated 31.3.2006 as he died issueless).
9. Baleshwar Korha son of Gongu Korha
10. Bhkhu Korha Son of Naru korha
11. Sukhdeo korha Son of Naru Korha
12. Mostt. Bhakhiya Devi Wife of Ram Bajju Korha
13. Mangal Korha son of Jaitu Korha (expunged vide order dated 31.3.2006 as he died issueless).
14. Govind Korha son of Marwari korha
15. Kaleshwar Korha Son of Jhagru Korha
16. Supari Korha Son of Marbari Korha
17. Rajendra Korha Son of Jahgru Korha
18. Shanichar Korhas son of Bhanu Korha (Name does not find in the village record).
19. Sanjay Korha son of Mushaharu Korha
20. Chamru Korha son of Nageshwar Korha
21. Sonu Korha son of Sukkar Korha (expunged and substituted by his following heirs and legal representatives :)
 - (i) Mahadeo Korha
 - (ii) Hira Korha, both sons of Late Sonu Korha.
22. Lukhad Korha son of Pandey Korha (Expunged and substituted by his following heirs and legal representatives:)
 - (i) Ratan Korha Son of late Lukhad Korha resident of Village- Gogaiya, P.S Dharhara, District munger.
23. Mostt. Samri Devi wife of Bhola Korha
24. Thakur Korha son of Gore lal Korha
25. Samar Santhal son of Durga Santhal (Expunged and substituted by his following heirs and legal representatives:)
 - (i). Purna Santhal
 - (ii). Gujja Santhal
 - (iii). Akwer Santhal, all sons of late Samar Santhal, All Resident of Village Goraiya, P.S Dhoraiya, District Munger.
26. Jitan Korha son of Chhathu Korha (Expunged and substituted by his following heirs and legal representatives:)

- (i). Jharna Korha
(ii). Khairuah Korha, Both Sons of late Jitan Korha Both Resident of Village- Goraiya, P.S Dharhara District Munger.
27. Mato Korha son of Ram Tahal Korha (Expunged and substituted by his following heirs and legal representatives:)
(i) . Lala Korha Son of late Mato Korha Resident of Village- Goraiya, P.S Dharhara District Munger.
28. Rajo Korha son of Jhummar Korha
29. Daro Korha Son of Gore Lal Korha
30. Doman Korha Son of Jhummar Korha
31. Mahesh Korha Son of Moran Korha
32. Bankey Korha Son of Shibu Korha
33. Bhudeo Korha
34. Suren Korha
35. Girja Korha, All sons of Shibu Korha
36. Shanti Devi Wife of Bhikhan Korha
37. Sanjay Korha Son of Ram Bhajju Korha
38. Marekho Devi Wife of Tetar korha
39. Basanti Devi Wife of Kartik Korha
40. Shama Devi Wife of Rajendra Korha, All Resident of Village- Goraiya, P.S Dharhara, District munger.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Sr. Adv.
Mr. Praveen Prakash, Adv.
Mr. Manoj Kumar Sinha, Adv.
For the Respondent/s : Mr. Aditya Nath Jha, AC to SC-18

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 09-08-2016

Heard the learned Senior Counsel appearing on behalf of the petitioners and the learned AC to SC-18 appearing on behalf of the respondent Nos. 1 to 3. However, none appears on behalf of the private respondent nos. 4 to 40, though notices were earlier issued to them by different orders passed by the different Benches of this Court.

2. The matters at issue are the orders passed under the provisions of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short Act, 1947) in favour of the private respondent nos. 4 to 40 with respect to the lands claimed by the petitioners.

3. The petitioners have filed the present writ petition under



Article 226 of the Constitution of India assailing the validity and correctness of the order dated 30.09.1994 passed in Homestead Parcha Case No. 3 of 1994-95 by the respondent Anchal Adhikari, Dharhara in the district of Munger, as contained in Annexure-2 to the writ petition, whereby claims raised on behalf of the private respondents with respect to the lands in question, fully detailed in paragraph-4 of the writ petition, has been allowed under the provisions of the Act, 1947. The petitioners are also aggrieved by the order dated 28.8.2000 passed in Homestead Parcha Case No. 8 of 1998-99 by the respondent District Collector, Munger, as contained in Annexure-4 to the writ petition, whereby the aforesaid case filed on behalf of the petitioners under Section 21 of the Act, 1947 has been dismissed and the order passed by the respondent Anchal Adhikari, Dharhara has been affirmed.

4. The learned Senior Counsel appearing on behalf of the petitioners, by referring to the averments made in the writ petition as also the supplementary affidavit filed on behalf of the petitioners, submitted that the lands in question were originally belonging to one Kishun Prasad, but finally on the basis of deed of gift dated 9.7.1986, which has been brought on the record as Annexure-5 to the supplementary affidavit, the petitioners became the rightful owner of the lands in question. He further submitted that though the petitioners were the rightful owners of the lands in question, but no notice was issued to them at any point of time by the respondent Anchal Adhikari, Dharhara before allowing the claims raised on behalf of the respondent nos. 4 to 40 with respect to the lands in question. He next submitted that before passing the impugned final order, the respondent Anchal Adhikari, Dharhara has not followed the procedures prescribed under Rule 5 of The Bihar Privileged Persons



Homestead Tenancy Rules, 1948 (In short Rules, 1948). Therefore, according to him, on these grounds, besides others, the impugned original order passed by the respondent Anchal Adhikari, Dharhara is not sustainable in law. It was further contended that the petitioners, being aggrieved by the aforesaid order passed by the respondent Anchal Adhikari, Dharhara, filed their case under Section 21 of the Act, 1947 before the District Collector, Munger giving rise to Homestead Parcha Case No. 8 of 1998-99, but the respondent District Collector, without considering the basic issues raised on behalf of the petitioners, has dismissed the aforesaid case and has illegally affirmed the order passed by the respondent Anchal Adhikari, Dharhara.

The learned AC to SC-18 appearing on behalf of the respondent nos.1 to 3 has supported the impugned orders. According to him, general notice was issued, but no objection was filed by any person. He further submitted that the notice was issued to the earlier owner of the land in question namely Shanti Devi from whom the petitioners claim to have derived their right and title, but no objection was filed. Therefore, final order was passed by the respondent Anchal Adhikari allowing the claim of Homestead parcha raised on behalf of the respondent nos. 4 to 40. In support of his above contention, he has placed reliance on the averments made in the counter-affidavit and the supplementary counter-affidavit filed on behalf of the respondent no.3 as also the documents annexed thereto. However, despite repeated query, the learned State counsel has not been able to show that the notices were actually served upon these petitioners before passing the final order by the respondent Anchal Adhikari, Dharhara. He has also not been able to show from the order-sheet of the Homestead Parcha case, which has been brought on the record as contained in Annexure-D to the supplementary counter-affidavit, that the procedures

prescribed under Rule 5 of the Rules, 1948 were strictly followed.

As noticed above, despite issuance of notice, none is appearing on behalf of the respondent no. 4 to 40.

After having heard the learned Senior Counsel appearing on behalf of the petitioners and the learned State counsel appearing on behalf of the respondent no. 1 to 3, this Court is of the opinion that the matter requires reconsideration and fresh decision for two reasons; firstly, before passing the impugned final order by the respondent Anchal Adhikari, Dharhara rules of natural justice was not strictly followed, as the petitioners who claim to have acquired their right and title over the lands in question in the year 1986, were not issued notice. Secondly, Rule 5 of the Rules, 1948 have not been strictly followed. Furthermore, the respondent District Collector, while passing the impugned final order, as contained in Annexure-4 to the writ petition, has not taken into consideration these aspects of the matter, yet he has dismissed the petition filed on behalf of the petitioners.

For the reasons recorded above, the impugned order dated 30.09.1994 passed in Basgit Parcha Case No. 3 of 1994-95 by the respondent Anchal Adhikari, Dharhara, as contained in Annexure-2 to the writ petition as also the impugned order dated 28.08.2000 passed in Basgit Parcha Case No. 8 of 1998-99 by the respondent District Collector, Munger, as contained in Annexure-4 to the writ petition, are hereby set aside and quashed, and the entire matter is remitted back to the respondent Anchal Adhikari, Dharhara with a direction to decide the aforesaid Basgit Parcha Case afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned, including the petitioners as also the respondent no. 4 to 40, besides others, if any.

In order to expedite the matter, the petitioners are hereby directed to appear before the respondent Anchal Adhikari, Dharhara within a period of two months from today with a certified copy of the present order, whereafter the respondent Anchal Adhikari, Dharhara shall proceed to decide the matter afresh strictly in accordance with law, but, as indicated above, before passing any final order, opportunity of hearing must be given to all concerned.

The 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 Anchal Adhikari, Dharhara, (Munger).

The writ petition stands allowed to the extent indicated, but with the observations and directions made above. No costs.

(Birendra Prasad Verma, J)

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