

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.695 of 2005

With

Interlocutory Application No. 8659 of 2015

Kashi Prasad Mandal son of Sri Baiju Mandal, resident of village- Kursela Purab Tola, P.S.- Kursela, District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Collector, Katihar.
3. The Anchal Adhikari, Kursela, Distt.- Katihar.
4. Ramdev Yadav
5. Fulo Yadav
6. Natesh Yadav

All Respondent Nos. 4 to 6 are sons of Late Munsii Yadav, residents of village- Kursela Purab Tola, P.S. Kursela, Distt. Katihar.

.... Respondent/s

Appearance :

For the Petitioner/s :Mr. Mukesh Kr. Jha, Adv.

For the Respondent Nos. 1 to 3 :Mr. Vikas Ratan Bharti, AC to G.P. 9

For the Respondent Nos. 5 & 6 : Mr. Sarvendra Kumar Verma, Adv.

Mr. Jai Vardhan Narayan, Adv.

Mr. Manjul Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 08-11-2016

Heard the learned counsel appearing on behalf of the petitioner, the learned AC to G.P.9 appearing on behalf of the respondent nos. 1 to 3 as also the learned counsel appearing on behalf of the respondent nos. 5 and 6. However, none appears on behalf of the proposed heirs of deceased respondent no.4, to whom notices were issued by order dated 29.10.2015 on I.A. No. 8659 of 2015, though notices have been received by them, which is evident from the office note dated 9.9.2016.

2. The petitioner has filed the present writ petition assailing the validity and correctness of the order dated 30.7.2004 passed in B.P.P.H.T. Appeal No. 764 of 2001-02 by the respondent District Collector, Katihar, as contained in Annexure-3 to the writ petition, whereby the aforesaid case filed on behalf of the petitioner under

Section 21 of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (in short 'Act, 1947') has been dismissed and the order passed by the Circle Officer, Barari has been affirmed.

3. The learned counsel appearing on behalf of the petitioner submits that the father of the petitioner had purchased 3 decimals of land of khata no. 3613 appertaining to Khesra no. 6891 through a registered sale deed dated 3.12.1964 for the purposes of construction of his residential house. By referring to the averments made in paragraph-12 of the writ petition, he further submitted that the petitioner is having no other land, except the aforesaid 3 decimals of land, which is the subject matter of consideration in the present proceeding and for which one Munshi Yadav, the father of original respondent nos. 4 to 6, had filed a petition under the provisions of the Act, 1947 for issuance of homestead parcha. It was next contended that on the basis of the petition filed by the father of the respondent nos. 4 to 6, Bihar Privileged Persons Homestead Tenancy Case No. 9 of 1978-80 was started by the Anchal Adhikari, Barari (Anchal Kursela was earlier part of Anchal Barari) for grant of homestead parcha with respect to the lands in question, but at no point of time any notice was issued either to the father of the petitioner, who is now dead, or to the present petitioner, and the entire proceeding was carried out behind their back in complete violation of the rules of the natural justice, though the land in question was purchased by them way back in the year 1964. It is also contended that once the petitioner came to know about issuance of the impugned homestead parcha, as contained in Annexure-2, he filed a petition under Section 21 of the Act, 1947 before the respondent District Collector, Katihar, giving rise to B.P.P.H.T. Appeal No. 764 of 2001-02, but that was finally dismissed by the impugned order dated 30.7.2004 (Annexure-3)

passed by the respondent District Collector, Katihar.

4. The learned AC to G.P. 9 appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the private respondents, have opposed the prayer and have supported the impugned order. According to them, the respondent District Collector, Katihar has rightly dismissed the petition filed on behalf of the petitioner under Section 21 of the Act, 1947 on the ground of delay and laches. However, they have fairly conceded that no counter-affidavit has been filed on behalf of the respondents disputing the claim of the petitioner that he is having only 3 decimals of land and, therefore, the petitioner himself is a privileged person under the provisions of the Act, 1947.

5. After having heard the parties and taking into consideration the materials available on the record, this Court is of the opinion that the present matter requires reconsideration and fresh decision by the original authority i.e. the Circle Officer, Kursela primarily on two grounds; firstly, there has been violation of rules of natural justice by the original authority, and secondly the petitioner himself claims to be the privileged person under the meaning of the Act, 1947. Both these assertions have not been disputed by the respondents by filing their counter-affidavit and these issues have not been taken into consideration by the respondent District Collector, Katihar, while passing the impugned order dated 30.7.2004 (Annexure-3).

6. However, it may be noted that, initially, this Court was not inclined to interfere with the impugned order passed by the respondent District Collector, Katihar on the ground that when the impugned order was passed by the Circle Officer, Barari, section 21 of the Act, 1947 was not there on the statute book, which was brought



on the statute book for the first time by The Bihar Amending Act 11 of 1989, which came into force w.e.f. 25.9.1989. Indisputably, section 21 of the Act, 1947 was/is not applicable retrospectively and was made applicable prospectively. Therefore, the order passed by the respondent District Collector, Katihar could not have legally faulted, but the facts remain that the petitioner himself claims to be the privileged person and he further claims that there has been complete violation of the rules of natural justice before passing the final order by the original authority, but these two assertions made by the petitioner have not been controverted by the respondents by filing any counter affidavit, though the present matter is pending for more than ten years. Therefore, the matter requires reconsideration and fresh decision by the original authority on merits, after giving an opportunity of hearing to all concerned.

7. For the reasons recorded above, the impugned order dated 30.7.2004 passed in B.P.P.H.T. Appeal No. 764 of 2001-02 by the respondent District Collector, Katihari, as contained in Annexure-3, as also the Homestead Parcha dated 8.11.1979 issued by the respondent Anchal Adhikari, Barari (after its bifurcation, lands in question is now part of Kursela Anchal), as contained in Annexure-2, are hereby set aside and quashed, and the matter is remitted back to the Anchal Adhikari, Kursela with a direction to decide the claims of respondent nos. 4 to 6 or their heirs and legal representatives, afresh strictly in accordance with law. However, before passing any final order, reasonable opportunity of hearing must be given to the petitioner as also to the claimants i.e. heirs and legal representatives of the deceased respondent no. 4 as also the respondent nos. 5 and 6, besides others, if any. 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 Anchal Adhikari, Kursela.

8. In order to expedite the matter, the petitioner as also the private respondents are hereby directed to appear before the Anchal Adhikari, Kursela within a period of one month from today with a certified copy of the present order, whereafter the respondent Anchal Adhikari, Kursela shall proceed to decide the claim of the private respondents with respect to the lands in question afresh strictly in accordance with law. The respondent Anchal Adhikari, Kursela, is further directed to make all endeavours to dispose of the aforesaid proceeding afresh within a maximum period of three months from the date of appearance of the parties before him, as directed above.

9. Till the matter is finally decided by the respondent Anchal Adhikari, Kursela, the parties are directed to maintain status quo, with respect to the lands in question, as obtaining today.

10. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. I.A. No. 8659 of 2015 stands accordingly disposed of. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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CAV DATE	
Uploading Date	15.11.2016
Transmission Date	