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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15043 of 2005
With
Interlocutory Application No. 7960 of 2016

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1. Indu Devi wife of Shri shoe Narayan Ravidas
2. Sanjo Devi wife of Shri Shankar Ravidas
3. Seem Devi wife of Shri Umesh Ravidas

All the petitioners are residents of Village Mehdi, Police Station Rupouli (Tikapatti), District Purnia

... . Petitioner/s

Versus

1. The State of Bihar
2. The Sub Divisional Officer at Dhamdaha within the district of Purnia
3. The Anchal Adhikari, Rupouli within the district of Purnia
4. Shri Lachit Mandal son of Late Sant Ram Mandal
5. Shri Dhaneshwar Mandal son of Late Sant Ram Mandal
6. Shri Duryodhan Mandal son of Late Sant Ram Mandal

Respondent Nos. 4 to 6 are resident of Village Harnaha, P.O. Mehdi, Police Station Rupouli (Tikapatti), District Purnia

7. Shri Dinesh Prasad Singh son of Late Ramakant Singh
8. Shri Damodar Singh son of Late Saryug Singh

Respondent Nos. 7 & 8 were originally residents of Village Govindpur Kusli, P.S.Gopalpur, District Bhagalpur and at present at Village Harnaha, P.S.Rupouli (Tikapatti), District Purnia

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Arun Prasad Ambastha, Advocate
For the Respondent Nos. 1 to 3 : Mr.Ajay Kumar Sharma, AC to PAAG-1
For the Respondent Nos. 4 to 6 : Mr. Binay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 15.11.2016

Heard the parties.

2. The matters in issue are the orders passed by the competent authorities under the provisions of Section 48D of The Bihar Tenancy Act, 1885 (in short "the B.T.Act"). The petitioners claim to be the second purchasers with respect to lands in question, fully detailed in paragraph 5 of the writ petition.

3. The petitioners, claiming to be the second purchasers of the lands in question through sale deed dated 17.06.2002 (Annexure-5)

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from one Dinesh Prasad Singh, the first purchaser, have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 18.07.1998 passed in Case No. 12 of 1996-97 by the respondent Anchal Adhikari, Rupauli, as contained in Annexure-6 to the writ petition, whereby the claims raised on behalf of the respondent Nos. 4 to 6 with respect to lands in question under Section 48D of the B.T.Act was allowed. The petitioners are also aggrieved by the order dated 20.02.2003 passed in Appeal Case No. 15 of 2002 by the respondent S.D.O., Dhamdaha, Purnia, as contained in Annexure-10 to the writ petition, whereby the aforesaid appeal filed on behalf of the petitioners has been dismissed on the ground of limitation as also on merits.

4. It is not in dispute that the lands in question were originally belonging to one Munni Lal Singh and his family. The private respondent nos. 4 to 6, claiming to have become occupancy under raiyats over the lands in question, filed their petition under Section 48D of the B.T.Act before the Anchal Adhikari, Rupauli which gave rise to Case No. 12 of 1996-97. In that case, original landholder Munni Lal Singh and his other family members were impleaded as opposite parties. The claims raised on behalf of the private respondent nos. 4 to 6 was finally allowed by the impugned order dated 18.07.1998 (Annexure-6) and they were declared to have acquired raiyati rights over the lands in question on payment of compensation , as directed by the said order. It is also not in dispute that neither the original landholder Munni Lal Singh and his other family members, nor the first purchaser-Dinesh Prasad Singh, the vendor of the petitioners, challenged the validity and correctness of the aforesaid order dated 18.07.1998 either before the prescribed appellate authority or before this Court or any other forum. Therefore, so far the order dated 18.07.1998 (Annexure-6) is concerned, that has become final against

the original landholder Munni Lal Singh and others as also the first purchaser Dinesh Prasad Singh.

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5. The learned counsel appearing on behalf of the petitioners submits that the petitioners purchased the lands in question from the first purchaser Dinesh Prasad Singh by sale deed dated 17.06.2002 (Annexure-5) and once they came to know about the aforesaid order dated 18.07.1998 passed by the respondent Circle Officer, Rupauli, they preferred an appeal before the respondent S.D.O., Damdaha giving rise to Case No. 15 of 2002, but that has been dismissed by the impugned order dated 20.02.2003, as contained in Annexure-10 to this writ petition. It is contended that in view of the purchase made by the petitioners in the year 2002, they were legally entitled to challenge the order passed by the Circle Officer, Rupauli as also the appellate order passed by the S.D.O., Dhamdaha. According to him, the orders passed by the authorities concerned are not sustainable in law and are fit to be set aside by this Court.

6. The learned AC to PAAG-1, appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the original respondent no.4 to 6 have contested the matter and have supported the impugned orders.

7. At this place, it would be relevant to mention here that during pendency of the present writ petition, original respondent no.4 Shri Lachit Mandal has passed away on 22nd February, 2016. In above view of the matter, the petitioners have filed I.A.No. 7960 of 2016 seeking expunction of the name of deceased respondent no.4 and substitution of his heirs and legal representatives, detailed in paragraph 2 of the aforesaid Interlocutory Application no. 7960 of 2016.

8. The learned counsel appearing on behalf of the original respondent no.4 has filed a fresh vakalatnama today itself on behalf of the heirs and legal representatives of deceased respondent no.4, which

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has been taken on the record. In above view of the matter, the prayer for substitution vice deceased respondent no.4 is allowed. Since his heirs and legal representatives have already entered appearance through their counsel, hence the matter has been heard on merits.

9. At this place, it would further be relevant to mention here that by order dated 29.08.2007 notices were issued to the respondent nos. 4 to 8. In response to the aforesaid notice, though respondent nos. 4 to 6 entered appearance through their counsel, but respondent no.7 Dinesh Prasad Singh, the first purchaser and the respondent no.8 Damodar Singh, the heir of original landholder, have chosen not to appear in the present proceeding despite valid service of notice upon them.

10. After having heard the parties and taking into consideration the materials available on the record, this Court finds that the following facts are not in dispute:

(i) The lands in question was originally belonging to one Munni Lal Singh and his family members.

(ii) The respondent no.4 to 6, claiming to have become occupancy under raiyats filed their petition under Section 48D of the B.T.Act, which was finally allowed by order dated 18.07.1998 by the respondent Circle Officer, Rupauli, as contained in Annexure-6 to the writ petition.

(iii) Sri Dinesh Prasad Singh- respondent no.7 was the first purchaser from the original landholder Munni Lal Singh and his family members, but at no point of time, he challenged the validity and correctness of the aforesaid order dated 18.07.1998 passed in Case No. 12 of 1996-97 allowing the claim of respondent nos. 4 to 6 under Section 48D of the B.T.Act. In fact, aforesaid Dinesh Prasad Singh was the real aggrieved person by the order dated 18.07.1998, but he has allowed that order to

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attain its finality.

(iv) After about four years, the petitioners claim to have purchased the lands in question from aforesaid Dinesh Prasad Singh through a sale deed dated 17.06.2002 (Annexure-5) and filed Appeal Case No. 15 of 2002 before the S.D.O. Dhamdaha. Unfortunately, in the aforesaid appeal, aforesaid Dinesh Prasad Singh did not join as the appellant. He was not even impleaded as party respondent.

(v) In the present writ petition, the aforesaid Dinesh Prasad Singh, the first purchaser, has been impleaded as respondent no.7, but he has not come forward to support the case of the petitioners by filing any counter affidavit.

11. In the aforesaid factual matrices, this Court is also of the opinion that in view of the fact that claim of the respondent no.4 to 6 under Section 48D of the B.T.Act was allowed by order dated 18.07.1998 and they were declared to have acquired raiyati rights over the lands in question, the right of the landholder/first purchaser-Dinesh Prasad Singh had already extinguished under the mandate of section 48D of the B.T.Act before the date of purchase made by these petitioners. Aforesaid Dinesh Prasad Singh could not have executed a valid sale deed in favour of the petitioners in the year 2002. The respondent no.7 Dinesh Prasad Singh, the first purchaser, had no subsisting legal right over the lands in question in the year 2002. Therefore, transfer made by aforesaid Dinesh Prasad Singh in favour of the petitioners in the year 2002 was viod-ab-initio. The petitioners have simply purchased a bag of litigations, but without any legal right with respect to lands in question.

12. In above view of the matter, this Court is of

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the opinion that the order dated 18.07.1998 passed in Case No. 12 of 1996-97 by the respondent Anchal Adhikari, Rupauli (Annexure-6) and the impugned appellate order dated 22.02.2003 passed in Appeal Case No. 15 of 2002 by the respondent S.D.O., Dhamdaha (Annexuire-10) cannot be legally faulted. The writ petition is devoid of merits and is, according, dismissed. I.A. No. 7960 of 2016 has already been allowed in terms of the order indicated above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma,J.)

Tahir/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	21.11.2016
Transmission Date	