

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3649 of 2007

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1. Parmatma Pathak @ Paramatma Pathak
 2. Shivjee Pathak
 3. Ram Nath Pathak @ Ram Nath Pathak
- Petitioner Nos. 1 to 3 are sons of Late Manlesh Pathak @ Mangl Pathak
4. Kashi Nath Pathak son of Late Shivpujan Pathak
 5. Ram Kumar Pathak son of Late Shivpujan Pathak
 6. Onker Nath Pathak son of Late Bishwanath Pathak
 7. Ramjee Pathak son of Sheo Narayan Pathak
 8. Shankracharya Pathak son of Late Bacha Pathak
 9. Hrishikesh Pathak son of Late Bacha Pathak
 10. Parshuram Jee Pathak son of Late Bacha Pathak

All are resident of Neazipur, P.S.Simari, District Buxar Petitioner/s
Versus

1. The State of Bihar
 2. The Collector, Buxar
 3. The Sub-Divisional Officer, Dumraon, District Buxar
 4. Circle Officer, Simari, District Buxar
 5. Raghunath Yadav
 6. Yadu Nath Yadav
 7. Kalecto Yadav
 8. Juj Yadav
 9. Vishnu Bhagawan Yadav
- Respondent nos. 5 to 9 are sons of Late Chhotale Yadav
10. Prem Yadav son of Late Budhan Yadav
 11. Shriram Yadav son of Late Buchul Yadav
 12. Gangesagar Yadav son of Late Ramchandra Yadav
- Respondent nos. 10 to 12 are resident of village Meyazipur Dada babaka Dera, P.S.Simeri, District Buxar
13. Rajesh Yadav son of Late Mohan Yadav
 14. Hari Yadav son of Late Mohan Yadav
- Respondent nos. 13 and 14 are resident of village Neyazipur dali Ahirka Dera, P.S.Simari, District Buxar
15. Shyam Sunder Yadav son of Late Sachul Yadav
 16. Meharijiya Devi wife of Shyam sunder YadavYad
 17. Ramchandra Yadav son of Late Sachul Yadav
 18. Kesho Yadav @ Dhondhe Yadav
 19. Balram Yadav
 20. Daya Yadav
 21. Parshuram Yadav
 22. Sheoji Yadav
- Respondent nos. 18 to 22 are sons of Late Ram GobindYadav
and respondent nos. 15 to 22 are resident of Village Neyazipur Dada
Baba Ka Dera, P.S.Simari, District Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rang Nath Choubey, Advocate
For the Respondent Nos. 1 to 4 : Mr.Sanjay Kumar, AC to AAG 4

For the Respondent No. 18 : Mr. Binay Kumar, Advocate
Mr. Krishna Kant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 02-08-2016

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Heard the parties.

2. The petitioners are aggrieved by the order dated 07.06.2005 passed in Settlement Case No. 15 of 1996-97 by the respondent Additional Collector, Buxar, as contained in Annexure-1 to the writ petition, whereby the aforesaid case filed on behalf of the petitioners and/or their ancestors was dismissed for want of prosecution. The petitioners are also aggrieved by the order dated 05.07.2005 passed in the aforesaid Settlement Case No. 15 of 1996-97, whereby the prayer for restoration has been rejected by the respondent Additional Collector, Buxar on the ground that he has no jurisdiction to restore the aforesaid case.

3. The learned counsel appearing on behalf of the petitioners submits that against the order passed/recommendation made by the Anchal Adhikari, Simari, Buxar for settling the lands in question in favour of the private respondents, aforesaid Settlement Case No. 15 of 1996-97 was pending before the Additional Collector, Buxar for quite a long time and regular pairvi was made on their behalf, but on few dates for valid justification pairvi could not be made, though the matter remained pending before the Additional Collector right from 1996 to 2005, yet by the impugned order dated 07.06.2005 the aforesaid case has been dismissed for default. In support of the aforesaid submissions, he has annexed the entire ordersheet of the aforesaid settlement case to show that on various dates the petitioners were present, yet the matter was not decided. Therefore, according to him, appropriate direction may be issued to

the Additional Collector, Buxar for deciding the aforesaid case on merits.

4. The present writ petition was filed on 21.03.2007, after service of its copy upon the learned Advocate General. By order dated 19.01.2009, notices were issued to the private respondent nos. 5 to 22, as a result of which some of them are represented by their learned counsel. Till date, no counter affidavit has been filed either on behalf of the State or on behalf the private respondents controverting the averments made in the writ petition.

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the matter requires re-consideration and a fresh decision on merits. Admittedly, aforesaid Settlement Case No. 15 of 1996-97 was filed in the year 1996 and thereafter, on many dates, the petitioners and opposite parties therein were present, but the matter was not decided. In fact, keeping the aforesaid matter pending for such a long time itself was unusual; and the Additional Collector, Buxar ought to have taken pains for deciding the matter on merits earlier, but that was not done. Equity demands that the respondent Additional Collector, Buxar is directed to decide the matter on merits.

6. For the reasons recorded above, the impugned order dated 07.06.2005 as also the impugned order dated 05.07.2005, both passed in Settlement Case No. 15 of 1996-97 by the respondent additional Collector, Buxar, as contained in Annexure-1 to the writ petition, are hereby set aside and quashed; and the matter is remitted back to the Additional Collector, Buxar with a direction to decide the aforesaid 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 and the private respondent nos. 5

to 22, besides others, if any.

7. In order to expedite the matter, the petitioners as also the private respondents are hereby directed to appear before the respondent Additional Collector, Buxar within a period of two months from today with a certified copy of the present order, whereafter the Additional Collector, Buxar shall proceed to decide the matter in accordance with law as also in the light of the observations/directions made above.

8. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.08.2016
Transmission Date	