

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17469 of 2013

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Shila Kumari Mishra D/O Sri Sri Niwas Tiwari R/O Village- Suara, P.S.- Nokha,
District- Rohtas, Presently At Village + P.O.- Khirigawa, Amaw, P.S.- Chainpur,
District- Kaimur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
3. The Director, Consolidation, Bihar, Patna
4. The District Magistrate, Kaimur, Bhabhua
5. The Superintendent of Police, Kaimur, Bhabhua
6. The Sub-Divisional Officer, Mohania, Kaimur
7. The Circle Officer, Durgawati Circle, Durgawati, Kaimur
8. The Officer-In-Charge, Durgawati P.S., Durgawati, Kaimur
9. The Bihar State Minority Commission, Old Secretariat through its Chairman
10. The Chairman, Bihar State Minority Commission, Old Secretariat, Patna
11. Mr. Samsad Alam, Member, Bihar State Minority Commission, Old Secretariat, Patna
12. Gudari Sah @ Gudari Sai S/O Late Manuar Sah Resident Of Village- Karanpura, Tola- Pipra, P.O.+P.S.- Durgawati, District- Kaimur
13. Saida Begam W/O Gudari Sah @ Gudari Sai Resident Of Village- Karanpura, Tola- Pipra, P.O.+P.S.- Durgawati, District- Kaimur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Ranjan Pandey
Mr. Rakesh Narayan Singh,
For the Respondent/s : Mr. Satyapal Singh
For the State : Mr. Lokesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 20-06-2016

Heard the counsel for the petitioner, the private
respondent(s) as well as the State.

Pleadings have been exchanged.

The petitioner has called in question by filing the present
writ petition legality of the order dated 29.07.2013, passed in M.



Case No. 192/13, by respondent no. 11, who was then functioning as Member of the Bihar State Minority Commission (for short “The Commission”), constituted under the Bihar State Minority Commission Act 1991 (for short “The Act”). Subsequently, further interim order was passed by the respondent no. 11, vide communication on the letter head of the Commission dated 23.09.2013, addressed to the Deputy Director Chakbandi, Rohtas (Sasaram). The legality thereof has also been questioned by the petitioner.

The dispute in the present case relates to the land pertaining to C.S. Khata No. 18, C.S. Plot No. 384 (area 1.10 acre), C.S. plot no. 385 (area 0.14 acre), C.S. plot no. 386 (area 0.43 acre), situated in Mauza Didkhili within Thana No. 119 in the district of Kaimur. During the revisional survey, the land was recorded in the name(s) of Manaur/Sanaur S/o Wazar Ali and others who were heirs of Wazar Ali, Amir Ali and Wasar Ali. The petitioner claimed to have purchased part of the subject land measuring 41 decimals from the recorded tenants. Inasmuch as the consolidation records were also prepared in the name of the petitioner. The respondent nos. 12 and 13 made attempts to occupy the land which was protested by the petitioner, whereafter they moved the Commission. A Member of the Commission (respondent no. 11), got a proceeding registered

vide case no. 192/13 and passed the aforesaid orders restraining the authority from altering or changing the records relating to the subject land.

Contention of Mr. Pandey is that under the relevant provisions of the Act, a Member of the Commission is not entitled to pass any such orders. The matter was never considered by the Commission as such. The respondent no. 11, who was then functioning as the Member of the Commission passed these orders on his own without the authority of law. In this connection, he has drawn attention of the Court to Section 6 of the Act which enumerates the power/jurisdiction of the Commission.

A counter affidavit has been filed on behalf of the Commission affirmed by the Chairman himself. Paragraph 5, 6, 7 and 8 thereof merit notice and are extracted hereinbelow:

“5. That at the outset it is submitted that the action and omission of respondent no. 11 in passing the order impugned is uncalled for and unwarranted and the answering respondents are not at all endorsed the same; rather the order impugned has been passed by the respondent no. 11 in his individual capacity and has never been brought into the notice of the answering respondents which is apparent from the recitation of the order as the same is dispatched by respondent no. 11 himself on his letter head and neither the Bihar State Minorities Commission (hereinafter referred for the sake of brevity as ‘Commission’) nor the Chairman has given their consent.

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6. *That it is further submitted that the reference of file number given by the respondent no. 11 has not even been opened in the Office of the Commission and it appears that the so-called file has been opened by respondent no. 11 in his individual capacity and the same is against the settled rule of Minorities Commission Act, 1991.*
 7. *That it is further submitted that under the Act, 1991 the Commission is vested with certain work as provided under Section 5 and the same does not gives power to any of the person much less the answering respondents to act against the said Act/Rules.*
 8. *That it is further submitted that the respondent no. 11 has violated the rules provided under the Act, 1991 because of the fact that Section 8 of the Act, 1991 clarifies that the Commission shall not investigate into any such matter which is pending before any Court or Tribunal or Quasi Judicial body and in other words the order impugned has been issued in an individual capacity by the respondent no. 11 of which the Commission has no endorsement, therefore, the order under challenge issued by the respondent no. 11 is not legal, justified because of the fact that the respondent no. 11 has not been vested with any power or authority to issue such order or direction and as such the answering respondents are not supporting the order impugned rather prays for quashing of the same in the interest of justice.”*

Even otherwise on going through the relevant provision of the Act, it does not appear that any such power to restrain the Authorities is vested in the Commission. Acting on his own

respondent no. 11, passed these orders which are not sustainable in law.

In view of the aforesaid stand taken by the respondent-Commission and the other materials available on record, I am satisfied that the application is fit to be granted.

The writ application is allowed. The orders contained in Annexure-2 and 5 are quashed.

No order as to Cost(s).

(Kishore Kumar Mandal, J)

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