

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6444 of 2007

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1. Krityanand Mandal son of Late Kusum Lal Mandal
 2. Krishandev Sharma son of Late Sukhai Sharma
 3. Yogendra Mehta son of Late Mahavir Mehta

All are residents of Village Sukaila, Police Station Bhargama, District Araria

.... Petitioner/s

Versus

1. The State of Bihar
2. The S.D.O., Forbesganj, District Araria
3. The Circle Officer, Bhargama, District Araria
4. Domi Mandal son of Late Dhuri Mandal, resident of Village Sukaila, Police Station Bhargama, District Araria
5. Tarkeshwar Jha son of Late Tirthanand Jha
6. Madhewar Jha son of Late Kirpanand Jha
7. Kamlanand Jha son of Late Kirpanand Jha
8. Taranand Jha
9. Ugranand Jha
10. Chandraanand Jha
11. Chaturanan Jha
12. Girjanand Jha

Respondent Nos. 8 to 12 are sons of Late Mehi Jha and respondent nos. 5 to 12 are residents of Village Adirampur, Police Station Bhargama, District Araria

13. Shiv Narayan Mandal son of Shri Baldeo Mandal, resident of Village Sukaila, Police Station Bhargama, District Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md.Faiz Ahmad, Advocate

For the Respondent Nos. 1 to 3: Mr. Prakash Ch.Jha, AC to GA 11

For the Respondent No. 4 : Mr.Mrigendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 13-12-2016

Heard the learned counsel appearing on behalf of the petitioners, the learned AC to GA 11, appearing on behalf of the respondent nos. 1 to 3 as also the learned counsel appearing on behalf of the respondent no.4. However, despite valid service of notice, none appears on behalf of the respondent nos. 5 to 13.

2. The matter in issue is the validity and correctness of the orders passed by the statutory authorities under the provisions of Section 48D of The Bihar Tenancy Act, 1885 (in short “B.T.Act”) with respect to a plot of land bearing Khata No. 86 appertaining to



Khesra No. 79 situate at Village Sukaila in the District of Araria (hereinafter in short “the lands in question”).

3. The petitioners are aggrieved by the order dated 29.01.2005 passed in Case No. 5 of 2004-05 by the respondent Circle Officer, Bhargama, as contained in Annexure-3 to the writ petition, whereby the claim raised on behalf of the respondent no.4 with respect to the lands in question under Section 48D of the B.T.Act has been allowed. The petitioners are also aggrieved by appellate order dated 30.11.2006 passed in Appeal Case No. 5 of 2005-06 by the respondent S.D.O., Forbesganj, as contained in Annexure-4 to the writ petition, whereby the aforesaid appeal filed on behalf of the petitioners, besides others, was dismissed and the original order passed by the respondent Circle Officer, Bhargama was affirmed.

4. The learned counsel appearing on behalf of the petitioners submits that the respondent nos. 5 to 12 were the original owners of the lands in question from whom these petitioners purchased the lands in question through different sale deeds prior to passing the impugned final order dated 29.01.2005. It is contended that though, the petitioners had acquired their right and title over the lands in question, but in the petition filed by the respondent no.4 before the respondent Circle Officer, Bhargama raising his claim under Section 48D of the B.T.Act, they were not impleaded as party respondents and entire proceeding was carried out behind their back without following the rules of natural justice. It is next contended that apart from the merit, on the ground of violation of rules of natural justice itself, the impugned order dated 29.01.2005 (Annexure-3) passed by the respondent Circle Officer is fit to be quashed. It is further contended that the appeal was preferred against the order passed by the Circle Officer, but the appellate authority without considering the case of the petitioners in its proper perspective has



dismissed the aforesaid appeal mechanically. Therefore, according to him, the appellate order is also vitiated and is fit to be set aside.

5. The learned State learned counsel appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the respondent no.4 have contested the matter. The learned counsel appearing on behalf of the respondent no.4 has submitted that, in fact, the original landholders were issued notice, but they did not choose to appear and contest the claim of the respondent no.4. It is also contended that the respondent no.4 had no knowledge/information about the transfer of the lands in question in favour of the petitioners, therefore, they were not impleaded as party respondents. However, despite repeated queries, he has not been able to point out any document to show that before passing the impugned final order, any opportunity of hearing was given to the petitioners.

6. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the entire matter requires re-consideration and a fresh decision. Indisputably, the petitioners purchased the lands in question through registered sale deeds prior to passing the impugned final order dated 29.01.2005, but they were neither impleaded as party respondents nor they were given any opportunity of hearing by the respondent Circle Officer, Bhargama before passing the impugned final order, as contained in Annexure-3 to the writ petition. Apparently, the rules of natural justice has not been followed. The appellate authority has failed to take into consideration this aspect of the matter and has mechanically dismissed the appeal filed on behalf of the petitioners. In above view of the matter, the impugned orders cannot be sustained in law.

7. For the reasons recorded above, the impugned order dated 29.01.2005 passed in Case No. 5 of 2004-05 by the respondent



Circle Officer, Bhargama, as contained in Annexure-3 as also the impugned appellate order dated 30.11.2006 passed in Appeal Case No. 5 of 2005-06 by the respondent S.D.O., Forbesganj, as contained in Annexure-4, are hereby set aside and quashed and the matter is remitted back to the respondent Circle Officer, Bhargama, District Araria with a direction to decide the claim of respondent no.4 under Section 48D of the B.T.Act afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioners, respondent no.4 as also the original landholder(s), besides others, if any.

8. The parties shall be at liberty to raise all the issues of facts and law before the Circle Officer, Bhargama, which may be available to them, with respect to the lands in question.

9. In order to expedite the matter, the petitioners as also the respondent no.4 are hereby directed to appear before the respondent Circle Officer, Bhargama, District Araria with a certified copy of the present order within a period of one month from today, whereafter the respondent Circle Officer, Bhargama shall proceed to decide the matter afresh strictly in accordance with law.

10. In the result, 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	14.12.2016
Transmission Date	

