

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13135 of 2011

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1. Most.Asha Devi W/O Late Om Prakash Mahto @ Chetnanand, R/O Mohalla- Gur Ki Mandi, Arafabad, P..S- Alamganj, P.O.- Gilzarbag, Distt.- Patna
 2. Ganga Ram S/O Late Om Prakash Mahto @ Chetanand R/O Mohalla- Gur Ki Mandi, Arafabad, P..S- Alamganj, P.O.- Gilzarbag, Distt.- Patna
 3. Krishna Prasad Mahto S/O Late Om Prakash Mahto @ Chetanand R/O Mohalla- Gur Ki Mandi, Arafabad, P..S- Alamganj, P.O.- Gilzarbag, Distt.- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Ramdeo Mahto S/O Late Ram Chandra Mahto, R/O Kajipur, P.S.- Kadam Kuan, Distt.- Patna
3. Dharamvir Singh S/O Late Budhan Prasad, R/O Madhi, Distt.- Nalanda
4. Suresh Prasad Yadav S/O Late Ram Chandra Gope, R/O Sakari Gali, P..S- Alamganj, Distt.- Patna
5. Gita Devi W/O Deo Nath Mahto, R/O Rajosar Dhanahar, Distt.- Sitamarhi
6. Dhrupati Devi W/O Paras Prasad, R/O Bagbhup Singh Lane, P.S.- Alamganj, Distt.- Patna
7. Anil Kumar S/O Ram Autar Ram, R/O Mirganj, P.S.- Bihar Sariff, Distt.- Nalanda
8. Rajendra Prasad S/O Late Ram Bachan Sao, R/O Mohalla- Kazibagh, Gandhibagh, P.S.- Alamganj, Distt.- Patna
9. The Circle Officer, Patna, Sadar, Distt. Patna.
10. The Deputy Collector Land Reforms, Patna Sadar, Distt. Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Janardan Prasad Singh, Sr. Adv.
Mr. Shailendra Singh

For the Respondent No.1, 9 & 10 : Mr. Atal Bihari Pandey, AC to G.P. 22

For the Respondent No. 2: Mr. Shashi Shekhar Dvivedi, Sr. Adv.
Mr. Ranjan Kr. Dubey
Mrs. Sangeeta Sharma
Mr. Rakesh Chandra
Mr. Satyendra Nath Shukla
Mr. Parth Gaurav

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL Judgment

3 11-02-2016 Heard the learned Senior counsel appearing on behalf of the petitioners, the learned State counsel appearing on behalf of the respondent no.1, 9 and 10 as also the learned counsel appearing on behalf of the respondent no.2. However, despite

valid service of notice, the respondent no. 3 to 8 have chosen not appear and not to contest the matter.

The petitioners are essentially aggrieved by the order dated 11.06.2011 passed in Miscellaneous Case No. 18 of 2007-08 by the respondent D.C.L.R.-cum- S.D.O., Patna City, as contained in Annexure-11 to the writ petition, whereby the aforesaid case filed on behalf of the respondent no.2 was allowed by the respondent D.C.L.R.-cum-S.D.O., Patna City, by exercising his powers purportedly under Section 15 of The Bihar Tenant's Holdings (Maintenance of Records), Act, 1973 (In short 'Act, 1973').

The learned senior counsel appearing on behalf of the petitioners has raised very short question. According to him, indisputably, before the respondent Circle Officer, Patna Sadar, a petition was filed by the respondent no. 2 with respect to the lands in question mentioned in the impugned order, but no final order was passed by the respondent Circle Officer, yet he referred the matter to the respondent D.C.L.R., Patna City for passing final order. It is contended that without there being any final order passed by the respondent Circle Officer, Patna Sadar, the respondent D.C.L.R., who is the appellate authority prescribed under the provisions of the Act, 1973, has acted as original authority and has passed the impugned order in favour of the respondent no.2. It is further contended that though the show cause notice was directed to be issued to the petitioners, but notices were never served upon them, yet the impugned final order was passed by the respondent D.C.L.R., Patna City behind their back. According to the learned Senior counsel, the impugned order is in flagrant violation of the mandatory provisions of the Act,

1973.

The learned counsel appearing on behalf of the respondent no. 2 has contested the matter. According to him also, a petition under the provision of Act, 1973 had been filed by the respondent no. 2 before the Circle Officer, Patna Sadar, but in view of the objections raised by the petitioners, the Circle Officer, Patna Sadar, did not pass any final order and referred the matter to the respondent D.C.L.R., Patna City for passing final order under the provisions of the Act, 1973. It is also contended that the petitioners were heard before the respondent Circle Officer, Patna Sadar as also before the respondent D.C.L.R., Patna City. Therefore, according to him, the order impugned cannot be legally faulted. However, he has not been able to show any provision of law, as to how the respondent D.C.L.R., who is the prescribed appellate authority under the provisions of the Act, 1973, could have acted as original authority for deciding the claim of the parties with respect to the lands in question.

After having heard the parties at some length and on consideration of the materials available on record, this Court is of the opinion that the entire matter requires reconsideration and fresh decision. Indisputably, the D.C.L.R. is the prescribed appellate authority under Section 15 of the Act, 1973. The D.C.L.R. could have heard appeal against the final order passed by the Circle Officer, but admittedly, no final order was passed by the Circle Officer, Patna Sadar in the present case. There is no provision under the Act, 1973 that the D.C.L.R., being the appellate authority, can decide the dispute of the lands between two sides, as original authority. It is apparent that while passing the impugned order, the provisions and procedure prescribed

under the Act, 1973 have not been strictly followed.

For the reasons recorded above, the impugned order dated 11.06.2011 passed in Miscellaneous Case No. 18 of 2007-08 by the respondent D.C.L.R.-cum- S.D.O., Patna City, as contained in Annexure-11 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the respondent Circle Officer, Patna Sadar, with a direction to decide the claim of the parties afresh with respect to the lands in question under the provisions of The Bihar Land Mutation Act, 2011, since admittedly, Act, 1973 has been repealed and the aforesaid new Act has been enacted in the year 2011 vide Bihar Act 23 of 2011.

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

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)

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