

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3638 of 1998

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Kamleshwary Mehta son of Late Kusumlal Mehta, resident of Village Pachchiyari
Jhirua, Police Station Simraha, District Araria

.... Petitioner/s

Versus

1. The State of Bihar
2. The Sub Divisional Magistrate, Forbisganj, District Araria
3. The Anchal Adhikari, Forbisganj, District Araria
4. Satya Narayan Mahto son of Late Raghu Mahto
5. Laxman Mehta son of Sukdeo Mehta
6. Gira Nand Mehta son of Sukal Mehta

Respondent nos. 4 to 6 are residents of Village Pachchiyari Jhirua,
Police Station Simraha, District Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Bhanu Roy, Advocate

For the Respondent Nos. 1 to 3: Mr. Amresh, AC to GP 13

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 17-09-2016

Heard the learned counsel appearing on behalf of the petitioner and the learned AC to GP 13, appearing on behalf of the respondent nos. 1 to 3.

2. The petitioner is aggrieved by the order dated 21.01.1998 passed in Case No. 145 of 1996 by the respondent S.D.O.; Forbisganj, as contained in Annexure-4 to the writ petition, whereby the aforesaid case, by way of appeal, filed on behalf of the respondent nos. 5 and 6 under Section 48D of The Bihar Tenancy Act, 1885 (in short "B.T.Act") and the rules made thereunder has been allowed, and the order dated 22.12.1995/24.01.1996 passed by the respondent Anchal Adhikari, Forbisganj in 48D Case No. 646 of 1995-96, as contained in Annexure-3 to the writ petition, has been set aside and quashed.

3. The matter in issue is the claim of the petitioner under

Section 48D of The B.T.Act with respect to the lands in question, fully detailed in paragraph 4 of the writ petition.

4. The learned counsel appearing on behalf of the petitioner submits that earlier father of the petitioner had filed an application under Section 48E of The B.T.Act for declaring him as an under Raiyat with respect to the lands in question, which was finally allowed by the competent authority. He further submits that after death of his father, the petitioner filed an application under Section 48D of The B.T.Act before the Anchal Adhikari, Forbisganj giving rise to 48D Case No. 646 of 1995-96 in which the respondent no.4- the landowner was impleaded as party. It is contended that the aforesaid case was finally allowed by the respondent Anchal Adhikari, Forbisganj by order dated 22.12.1995/24.01.1996 (Annexure-3) after hearing all the parties including the respondent nos. 5 and 6. Thereafter, respondent nos.5 and 6 filed appeal before the S.D.O., Forbisganj giving rise to Case No. 145 of 1996, which has been allowed by the impugned order dated 21.01.1998 (Annexure-4). In his submission, the impugned appellate order cannot be sustained in law.

5. The learned State counsel appearing on behalf of the respondent nos. 1 to 3 has opposed the prayer and has supported the impugned appellate order. He contends that by virtue of judgment and decree passed in Title Suit No. 478 of 1976, the right and title of respondent nos. 5 and 6 was declared over the lands in question and therefore, respondent no.4 was no longer the title holder over the lands in question. Hence, the petitioner could not have raised his claim under Section 48D of the B.T.Act against the respondent no.4 alone before the respondent Anchal Adhikari, but that was illegally allowed, which has been set aside by the appellate court. According to

him, the impugned appellate order cannot be legally faulted.

6. After having heard the parties and taking into consideration the materials available on the record, this Court finds that there is no dispute that the claim of father of the petitioner under Section 48E of The B.T.Act was allowed in the year 1976 over the lands in question. It is also not in dispute that the respondent nos. 5 and 6 filed Title Suit No.478 of 1976 in the court of the learned Munsif, Araria, which was finally allowed by judgment and decree dated 7th January, 1977 and right and title of respondent nos. 5 and 6 over the lands in question was declared. Apparently, when the petitioner had filed his case in the year 1995 under Section 48D of The B.T. Act before the Anchal Adhikari, Forbisganj, the respondent no.4 was having no right and title over the lands in question. Therefore, the order passed by the Anchal Adhikari accepting the claim of the petitioner by order dated 22.12.1995/24.01.1996 (Annexure-3) was contrary to the judgment and decree passed by the Civil Court. Hence, it has rightly been set aside by the appellate authority by the impugned order dated 21.01.1998 (Annexure-4).

7. For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned appellate order dated 21.01.1998 (Annexure-4) passed by the respondent S.D.O., Forbisganj. The writ petition is devoid of merit and it is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.09.2016
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