

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16236 of 2013

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1. Mahendra Singh, Son of Late Ambika Singh
2. Dinesh Singh, Son of Late Mithilesh Singh
Both Resident Of Mohalla - Janakpur (Dakpur Kuti), Buniyadganj, Police
Station - Gaya Mufassil, District - Gaya

.... Petitioner/s

Versus

1. The State Of Bihar through the Collector-Cum-District Magistrate, Gaya
2. The Additional Collector, Gaya
3. The Superintendent of Survey, Government of Bihar, Gaya
4. The Assistant Superintendent of Survey, Government of Bihar, Gaya
5. The Deputy Collector, Land Reforms, Gaya, Police Station Gaya
(Kotwali), District - Gaya
6. The Circle Officer, Sadar Gaya, District - Gaya
7. Kailash Singh, Son Of Late Tulsi Singh, Resident Of Village - Chhapra,
Post Office and Police Station - Rajauli, District – Nawadah (Expunged
vide order dated 08.12.2014)
(A) Vijay Singh, son of late Kailash Singh, Resident Of Village - Chhapra,
Post Office and Police Station - Rajauli, District – Nawadah.
(B) Sarthak Kumar Singh, son of late Tempo Singh, Resident Of Village -
Chhapra, Post Office and Police Station - Rajauli, District – Nawadah
8. Ram Badan Singh, Son Of Late Tulsi Singh, Resident Of Village -
Chhapra, Post Office and Police Station - Rajauli, District – Nawadah
(Expunged vide order dated 08.12.2014)
(A) Binay Singh, son of late Ram Badan Singh, Resident Of Village -
Chhapra, Post Office and Police Station - Rajauli, District – Nawadah.
(B) Sashi Bhushan Singh, son of late Ram Badan Singh, Resident Of
Village - Chhapra, Post Office and Police Station - Rajauli, District –
Nawadah.
(C) Rana Ranjit Singh, son of late Ram Badan Singh, Resident Of Village -
Chhapra, Post Office and Police Station - Rajauli, District – Nawadah.
9. The Municipal Commissioner, Gaya Municipal Corporation, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh No.4, Adv.
Dharmendra Kumar Singh, Adv.
For the Respondent no.1to6 : Mr. Madhuresh Prasad, GP-12
Mr.Prabhat Ranjan, AC to GP-12

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

7 16-03-2016 Heard learned counsel for the petitioners and learned
GP-12 appearing on behalf of the respondent nos.1 to 6. However,
despite valid service of notice, none is appearing on behalf of the

substituted respondent nos.7 and 8, as also on behalf of the respondent no.9.

The petitioners are aggrieved by the order dated 18.01.2000 passed in Appeal Case No.251 of 1990 (wrongly mentioned as 1989) by the respondent Superintendent of Survey, Gaya, whereby the lands in question, claimed by the petitioners, have been directed to be recorded as Anawad Sarvasadharan.

Learned counsel appearing on behalf of the petitioners submits that originally the lands in question, fully detailed in paragraph 4 of the writ petition, were recorded in the name of one Ram Keshwar Singh, the ancestor of these petitioners. He further submits that, at the time of municipal survey at Gaya, the lands in question were recorded in the name of the petitioners or their ancestor, whereafter an objection under Rule 9 of the Bihar and Orissa Municipal Survey Rules (in short 'Rules') was filed by the original respondent no.7 Kailash Singh and the original respondent no.8 Ram Badan Singh, which gave rise to the Case No.20 of 1988 in which the petitioners, besides others, were impleaded as opposite parties. It is contended that the aforesaid Case No.20 of 1988 was finally rejected by the Assistant Superintendent of Survey, Gaya by an order dated 29.03.1990 (Annexure-3). It is next contended that the original respondent nos.7 and 8, being aggrieved by the aforesaid order, preferred Appeal No.251 of 1990 under the provisions of the Rule 15 of the Rules and in that appeal the petitioners were impleaded as respondent nos.3 and 4. The memo of appeal has been annexed as Annexure-5 to the writ petition. It is the case of the petitioners that without issuing any show cause notice and without giving an opportunity of hearing to them the impugned final order was

passed on 18.01.2000 (Annexure-6) by the Superintendent of Survey, Gaya, whereby the lands in question have been directed to be recorded as Anawad Sarvasadharan. It is pointed out that besides on merits, the impugned order is not sustainable in law on the ground of violation of rules of natural justice itself.

A counter affidavit has been filed on behalf of the respondent nos.1 to 6. Learned GP-12 appearing on behalf of the aforesaid respondents has contested the claims raised on behalf of the petitioners on merits. However, despite repeated query, he has not been able to show that, before passing the impugned final order, an opportunity of hearing was given to the petitioners or notices were issued to them.

As noticed above, notices were issued to the original respondent nos.7 and 8 as also the respondent no.9. Now, the respondent nos.7 and 8 are dead and they have been substituted. Despite valid service of notice upon the substituted respondents, none has appeared on their behalf. None is appearing on behalf of the respondent Municipal Commissioner, Municipal Corporation, Gaya also.

After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the impugned order dated 18.01.2000, as contained in Annexure-6, cannot be sustained on three grounds: firstly, the impugned order has been passed in violation of the rules of natural justice as no notice was issued to the petitioners before passing the impugned final order; secondly, the impugned order is a cryptic and non-speaking one; and thirdly, the appellate authority had no jurisdiction to make out a third case, either he could have accepted the appeal filed by the private respondents or could have

dismissed the same, but he could not have made out a third case.

For the reasons recorded above, the impugned appellate order dated 18.01.2000 passed in Appeal Case No.251 of 1990 (wrongly mentioned as 1989) by the Superintendent of Survey, Gaya is hereby set aside and quashed, and the matter is remitted back to him for passing a fresh order strictly in accordance with law. However, before passing any final order, an opportunity of hearing must be given to the petitioners as also the substituted respondent nos.7 and 8, besides others, if any.

In order to expedite the matter, the petitioners are directed to appear before the Superintendent of Survey, Gaya within a period of one month from today with a certified copy of the present order, whereafter he shall fix a firm date and shall proceed further strictly in accordance with law in the manner indicated above.

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)

Arvind/-

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