

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14785 of 2015

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Krityanand Jha son of Late Shiv Nandan Jha, resident of village- Bhouradah, P.S.-
Bahadurganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Kishanganj
2. The Sub-Divisional Magistrate, Kishanganj
3. The Circle officer, Bahadurganj
4. Shobha Kant Jha
5. Bishnu Kant Jha
6. Maya Kant Jha
7. Nav Kant Jha, Sl. Nos. 4 to 7 sons of Late Haribansh Jha
8. Asha Devi wife of Late Haribansh Jha, All residents of village- Bhouradah, P.S.-
Bahadurganj, District- Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Rajendra Lal Das, Adv.

Mr. Manish Kumar, Adv

For the Respondent Nos.1 to 3 :Mr. Madanjeet Kumar, GP-20

For the Respondent Nos. 4 to 8: Mr. Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 18-10-2016

Heard the parties.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 14th July, 2015 passed in B.L.T. Case No. 494 of 2013 by the learned Bihar Land Tribunal, Patna, as contained in Annexure-7, whereby the aforesaid B.L.T. case filed on behalf of the respondent nos. 4 to 8 herein was allowed and the order dated 7.8.2010 passed by the Circle Officer, Bahadurganj, as contained in Annexure-4, and the appellate order dated 8.6.2012 passed by the S.D.O., Kishanganj, as contained in Annexure-5, have been set aside.

The learned counsel appearing on behalf of the petitioner



submits that the claim raised on behalf of the petitioner under Section 48D of The Bihar Tenancy Act, 1885 (in short 'B.T. Act') was allowed by the original authority i.e. the Circle Officer, Bahadurganj by his order dated 7.8.2010 passed in Case No. 11 of 2006-07, as contained in Annexure-4 to the writ petition. It is further submitted that being aggrieved by the aforesaid order, only respondent no.4 preferred an appeal before the respondent S.D.O., Kishanganj, which was dismissed by his order dated 8.6.2012 passed in Appeal Case No. 28 of 2010, as contained in Annexure-5, and the order passed by the original authority was affirmed. Thereafter, the respondent nos. 4 to 8 herein approached the learned Bihar Land Tribunal, Patna in B.L.T. Case No. 494 of 2013 which has been allowed by the impugned order dated 14th July, 2015 (Annexure-7), but the aforesaid order has been passed ex- parte without giving reasonable opportunity of hearing to the petitioner. Therefore, according to him, the order impugned is not sustainable in law.

Per contra, the learned counsel appearing on behalf of the respondent nos. 4 to 8 has supported the impugned order dated 14th July, 2015 passed by the learned Bihar Land Tribunal, Patna. According to him, notice was issued to the petitioner by the learned Bihar Land Tribunal, Patna and thereafter, the petitioner entered appearance through his counsel and had also filed a counter-affidavit, but copy of which was not served upon the learned counsel appearing on behalf of the other side. It is further pointed out that when the matter was fixed for final hearing, the learned counsel appearing on behalf of the petitioner was not present before the learned Bihar Land Tribunal, Patna, therefore, the learned Tribunal rightly decided to proceed in the matter ex-parte and finally, impugned order was passed setting aside the orders passed by the original authority as also the

appellate authority. He next contended that while allowing the claim of the writ petitioner, the Circle Officer, Bahadurganj had not followed the mandatory provisions of Section 48D of the B.T. Act and other provisions of law, which has a bearing over the claim of the writ petitioner. Therefore, according to him, the learned Tribunal has rightly set aside the aforesaid order of the original authority as also the appellate authority.

The learned G.P. 20 appearing on behalf of the respondent nos. 1 to 3 submits that in the given facts of the case, entire matter is required to be decided afresh from the stage of the original authority and, therefore, according to him, the order passed by the original authority as also the appellate authority and the learned Tribunal may be set aside with a direction to the respondent Circle Officer, Bahadurganj to decide the claim of the petitioner vis-à-vis the private respondents afresh strictly in accordance with law.

After having heard the parties and taking into consideration the materials available on the record, this Court finds that though the claim raised on behalf of the petitioner under Section 48D of the B.T. Act was allowed by the order dated 7.8.2010, but all the relevant provisions of Section 48D read with Section 48C of the B.T. Act were not taken into consideration. This Court further finds that the appeal preferred on behalf of the respondent no.4 was dismissed, but the statutory provisions were not strictly complied with. This Court also finds that when the learned Tribunal passed the impugned order (Annexure-7), the petitioner was not represented by his counsel and the matter was decided ex- parte. Therefore, the case of the petitioner was not properly considered by the learned Tribunal. This Court is of the opinion that if the learned Tribunal was not satisfied with the orders passed by the original authority or the appellate authority on



the ground that the statutory provisions were not complied with, then the matter ought to have been remitted back to the original authority for holding local inquiry and for passing fresh order strictly in accordance with law, but that has not been done in the present case. In above view of the matter, this Court is of the opinion that entire matter requires reconsideration and fresh decision right from very beginning.

For the reasons recorded above, the order dated 7.8.2010 passed in Case No. 11 of 2006-07 by the respondent the Circle Officer, Bahadurganj, as contained in Annexure-4, the appellate order dated 8.6.2012 passed in Appeal No. 28 of 2010 by the respondent the S.D.O., Kishanganj, as contained in Annexure-5, as also the impugned order dated 14th July, 2015 passed in B.L.T. Case No. 494 of 2013 by the learned Bihar Land Tribunal, Patna, as contained in Annexure-7 to the writ petition, all are hereby set aside and quashed, and the matter is remitted back to the respondent Circle Officer, Bahadurganj, with a direction to decide the claim of the petitioner raised under Section 48D of the B.T. Act with respect to the lands in question afresh strictly in accordance with law, but before passing any final order, reasonable opportunity of hearing must be given to all concerned including the petitioner and the respondent nos. 4 to 8, besides others, if any.

In order to expedite the matter, the petitioner as also the respondent nos. 4 to 8 are hereby directed to appear before the respondent Circle Officer, Bahadurganj within a period of one month from today with a certified copy of the present order, whereafter the respondent Circle Officer, Bahadurganj shall proceed to decide the case of the petitioner filed under Section 48D of the B.T. Act with respect to the lands in question afresh strictly in accordance with law.

It is clarified that the parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the lands in question before the respondent Circle Officer, Bahadurganj.

In the result, the writ petition is 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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Transmission Date	