

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8341 of 2003

With
Interlocutory Application No. 1111 of 2012

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Ram Bahadur Prasad Yadav son of late Pawandhari Prasad Yadav, resident of Village Pitonjhia, P.S. Gogari, District Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Khagaria.
3. Circle Officer, Gogari, District Khagaria.
4. Ramrakshi Sah son of Saudagar Sah.
5. Satan Sah, son of Late Anti Sah
6. Thari Sah son of Late Kanti Sah.
7. Raghuni Sah son of Santokhi Sah.
8. Basudeo Sah son of late Brahmdeo Sah.
9. Naresh Sah son of Polish Sah.
10. Luri Sah son of Rameshwar Sah, respondent no. 4 to 10 are residents of Village Pitonjhia, P.S. Gogari, District Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Verma, Sr. Adv.
For the Respondent Nos. 1 to 3 : Mr. Aditya Nath Jha, AC to SC-18
For the Respondent Nos. 4 to 10: Mr. Praveen Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 20-09-2016

Re.: Interlocutory Application No. 1111 of 2012

The instant interlocutory application has been filed by one Rajiv Kumar son of the original writ petitioner- RamBahadur Prasad Yadav stating therein that during the pendency of the main writ petition, sole petitioner died on 1.11.2011 leaving behind his four sons including the applicant Rajiv Kumar as his heirs and legal representatives. It has further been stated that the other sons of the deceased original writ petitioner are pursuing their educational career; therefore, the present application has been filed on behalf of the eldest son of the deceased original writ petitioner for his substitution in the main writ petition. He claims to have become karta of the joint family.

The learned Senior counsel appearing on behalf of the

applicant submits that in the facts and circumstances stated in the present interlocutory application, the prayer for substitution may be allowed, and the sole applicant has already entered appearance through his lawyer by filing his duly executed vakalatnama.

The learned counsel appearing on behalf of the respondents do not raise any objection to the prayer for substitution made in the present interlocutory application.

In above view of the matter, the prayer for substitution is allowed. The name of the original writ petitioner Ram Bahadur Prasad Yadav is directed to be expunged from the array of the parties of the main writ petition and he be substituted by the present applicant Rajiv Kumar, who has already entered appearance through his lawyer.

The present interlocutory application stands finally disposed of with the observations and directions made above.

Re.: Civil Writ Jurisdiction Case No. 8341 of 2003

On the request of the parties main writ petition has been taken up for consideration on merits.

Heard the parties.

The present writ petition has been filed under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 20.5.2003 passed in Basgit Parcha Case No. 3 of 1997-98 by the District Collector, Khagaria, as contained in Annexure-8 to the writ petition, whereby the aforesaid case filed on behalf of the original writ petitioner Ram Bahadur Prasad Yadav under Section 21 of The Bihar Privileged Persons Homestead Tenancy Act, 1947 (In short Act, 1947) has been dismissed, and the order passed by the Anchal Adhikari, Gogri (District Khagaria) in Basgit Parcha Case No. 8 of 1974-75 for issuance of Homestead Parcha in favour of the private

respondents with respect to the lands in question claimed by the petitioner has been affirmed.

At this place it would be relevant to mention here that in the present proceeding the petitioner has not challenged the validity and correctness of the order passed in Basgit Parcha Case No. 8 of 1974-75 by the respondent Circle Officer, Gogri allowing the claims raised on behalf of the private respondents under the provisions of the Act, 1947 and the rules made thereunder. From examination of the record of the writ petition, this Court finds that the original writ petitioner had originally made a prayer quashing the order dated 30.12.1974 passed by the Anchal Adhikari, Gogri in Basgit Parcha Case No. 8 of 1974-75, but subsequently the learned counsel appearing on behalf of the petitioner deleted the aforesaid prayer No. B of paragraph-1 of the writ petition by his note dated 14.8.2003; therefore, the present writ petition was confined only with respect to correctness and validity of the order dated 20.5.2003 (Annexure-8) passed by the respondent District Collector, Khagaria.

From the pleadings of the parties as also the materials available on the record, it is not in dispute that the private respondent nos. 4 to 10 or their ancestor had filed their application before the Circle Officer, Gogri under the provisions of the Act, 1947 and the rules made thereunder for issuance of homestead parcha in their favour with respect to the lands claimed by them. It is also not in dispute that on the basis of the aforesaid petition, Homestead Parcha Case No. 8 of 1975-75 was registered and finally their claim was allowed by the respondent Circle Officer, Gogri by his order dated 30.12.1974 . It is further not in dispute that the aforesaid order passed by the respondent Circle Officer, Gogri under the provisions of the Act, 1947 and the rules made thereunder was not challenged before



the higher forum or court either by the original writ petitioner or anybody else for more than 20 years. However, on the ground of purchase made by the original writ petitioner, he filed the aforesaid Basgit Parcha Case No. 3 of 1997-98 on 4.11.1997 under Section 21 of the Act, 1947 before the District Collector, Khagaria, which has been rejected by the impugned order on merits as also on the ground that when the homestead parcha was issued in favour of the private respondents, the District Collector had no jurisdiction to entertain such petition against the final order passed by the Circle Officer, Gogri under the provisions of the Act, 1947.

The learned Senior counsel appearing on behalf of the petitioner submits that while allowing the claims raised on behalf of the private respondents, the respondent Circle Officer, Gogri did not comply the mandatory provisions of the Act and the rules made thereunder. Therefore, homestead parcha issued in favour of the private respondents in the year 1974-75 cannot be sustained. However, in response to a query made by this Court, he has fairly conceded that the original writ petitioner has not made any prayer for setting aside the order passed by respondent Circle Officer, Gogri in Homestead Parcha Case No. 8 of 1974-75. He also conceded that such a prayer made in the writ petition was subsequently deleted by him by his note dated 14.8.2003.

The learned State counsel appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the respondent no. 4 to 10 have opposed the prayer made on behalf of the original petitioner and have supported the impugned order passed by the District Collector, Khagaria by referring to the averments made in the counter-affidavit filed on behalf of the respondent nos. 4 to 10. They also contended that since final order dated 23.12.1974 passed by

the respondent Circle Officer, Gogari has not been challenged by the original writ petitioner in the present writ petition, therefore, the writ petition is fit to be dismissed, as no effective relief can be granted to the petitioner.

After having heard the parties and taking into consideration the materials available on the record, this Court finds that the claims raised on behalf of the private respondents for issuance of homestead parcha in their favour with respect to a small parcel of land was allowed in the year 1974-75 by order 23.12.1974 passed in Homestead Parcha Case No. 8 of 1974-75 by the respondent Circle Officer, Gogari, but that order was never challenged by the petitioner or his vendor or any other persons. Aforesaid order passed by the Circle Officer allowing the claims of the private respondents has not been challenged even in the present proceeding filed under Article 226 of the Constitution of India. The petitioner has challenged only the validity and correctness of the order dated 20.5.2003 passed by the District Collector, Khagaria in Homestead Parcha Case No. 3 of 1997-98.

At this place it would be relevant to mention here that under the original scheme of the Act, 1947, any order passed by the Circle Officer of the area was final subject to remedy available under Section 18 of the Act. In the original Act 1947, Section 21 was not there. The Act, 1947 was amended by Bihar Act 11 of 1989 whereby section 21 was inserted; and supervisory/ revisional power was vested in the District Collector of the area. The aforesaid amending Act 11 of 1989, came into force on 25.9.1989 which was applicable prospectively.

In above view of the matter, the order dated 23.12.1974 passed by the Anchal Adhikari Gogari in Basgit Parcha Case No. 8 of 1974-75 could not have been subjected to a proceeding under Section

21 of the Act before the District Collector, Khagaria. Therefore, the respondent District Collector, Khagaria has rightly dismissed the aforesaid Basgit Parcha Case No. 3 of 1997-98 by his impugned order dated 20.5.2003 (Annexure-8).

For the reasons recorded above, this Court is of the opinion that the petitioner has failed to make out a case for interference by this Court. Furthermore, the equity is also in favour of the private respondent nos. 4 to 10. They were granted homestead parcha for a small parcel of land in the year 1974-75. It would be in-equitable to dislocate and dispossess them from this small parcel of land after more than 40 years. Apparently, the writ petition is devoid of merits and is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	29-09-2016
Transmission Date	