

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6714 of 2005

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1. Janardan Upadhyaya
2. Anirudh Upadhyaya, both sons of late Dharmdeo Upadhyaya, resident of village Patkhauli, Post Belhi Khas, P.S. Kateya, District Gopalganj.
..... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Gopalganj.
3. The Circle Officer, Kateya Anchal at P.O. & P.S. Kateya, District Gopalganj.
4. Ram Nayan Mali, son of Late Indrasan Mali (died on 6.3.2012 :)
4(a) Basanti Kumari wife of late Ram Nayan Mali
(b) Anju Kumari
(c) Priti Kumari
(d) Durgesh Mali
(e) Mungesh Mali, all daughters and sons of late Ram Nayan Mali, all residents of Village Patkhauli Post Belhi Khas, P.S. Kateya, District Gopalganj.
5. Secretary, Bhudan Yagna Committee, Gopalganj, District Gopalganj.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kr. Dubey, Adv.
For the Respondent No.1 to 3 : Mr. Mrigendra Kumar, AC to GA-4
For the Respondent No. 4(a) to 5: None.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 11-08-2016

Heard the learned counsel appearing on behalf of the petitioners as also the learned AC to G.A. 4 appearing on behalf of the respondent no. 1 to 3. However, none appears on behalf of the substituted heirs and legal representatives of the respondent no.4 as also the respondent Bhoodan Yagna Committee- respondent no.5, though the names of the learned counsel appearing on their behalf are printed in the daily cause list.

2. The petitioners are aggrieved by the final order dated 3.5.2005 passed in Misc. (Bhoodan) Case No. 37 of 2002 by the respondent District Collector, Gopalganj, as contained in Annexure-1 to the writ petition, whereby the aforesaid miscellaneous case filed on behalf of the original respondent no.4, who is now dead and has been

substituted by his heirs and legal representatives has been allowed, and Praman Patra issued to the petitioners by the Bihar Bhoodan Yagna Committee has been directed to be cancelled.

3. The learned counsel appearing on behalf of the petitioners submits that Bihar Bhoodan Yagna Committee, Patna issued a Praman-Patra dated 9.12.1976 (Annexure-3) in favour of the petitioners allotting them the lands in question mentioned in the aforesaid Praman- Patra and fully detailed in paragraph-4 of the writ petition, under the provisions of The Bihar Bhoodan Yagna Committee Act. 1954. It is contended that thereafter the petitioners have been coming in possession over the lands in question, and the lands in question were mutated in their favour. It is next submitted that the original respondent no.4- Ram Nayan Mali, who is now dead and has been substituted by his heirs, subsequently filed Misc. (Bhoodan) Case No. 37 of 2002 before the District Collector, Gopalganj for cancellation of the aforesaid Praman-Patra/ Bhoodan Parcha issued to the petitioners, but at no point of time notice was issued to the petitioners, and without giving an opportunity of hearing to them, the impugned final order was passed on 3.5.2005 (Annexure-1) directing for cancellation of the aforesaid Bhoodan parcha issued in favour of the petitioners. It is pleaded that apart from the merits, on the ground of violation of the principles of natural justice, the impugned order is liable to be set aside and quashed by this Court.

4. The learned AC to G.A. 4 appearing on behalf of the respondent no. 1 to 3 has contested the matter by referring to the averments made in the counter-affidavit filed on behalf of the respondent no. 1 to 3. He submits that, in fact, the petitioners were not entitled for issuance of such Praman- Patra as they are not the



landless persons, and the Praman Patra was wrongly granted to them. Therefore, according to him, it has rightly cancelled by the respondent District Collector, Gopalganj. However, despite query by this Court he has not been able to show that any opportunity of hearing was given to the petitioners or they were heard by the respondent District Collector at any point of time before passing impugned final order dated 3.5.2005 (Annexure-1).

5. As noticed above, none is appearing on behalf of the respondent no.5, though the name of the learned counsel appearing on behalf of it, has been printed in the daily cause list. Substituted respondent no. 4(a) has filed a counter-affidavit contesting the claim raised on behalf of the petitioners, but none is appearing on her behalf as well. The learned counsel appearing on behalf of the parties, after going through the contents of the aforesaid counter-affidavit, has submitted that it has nowhere been stated that before passing impugned final order, opportunity of hearing was given to the petitioners.

6. After having heard the parties and taking into consideration the factual matrices of the present case, as noticed above, this Court is of the opinion that the matter requires reconsideration and fresh decision by the respondent District Collector, Gopalganj on the ground of violation of the rules of natural justice. Apparently, before passing the impugned final order, rules of natural justice was not followed by the respondent District Collector, Gopalganj and, therefore, the impugned order cannot be sustained in law.

7. For the reasons recorded above, the impugned order dated 3.5.2005 passed in Misc. (Bhoodan) Case No. 37 of 2002 by the respondent District Collector, Gopalganj, as contained in

Annexure-1 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the respondent District Collector, Gopalganj with a direction to decide the aforesaid case afresh on merits, but before passing any final order opportunity of hearing must be given to all concerned including the petitioners as also the heirs and legal representatives of the original respondent no.4, besides others, if any.

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

9. In order to expedite the matter, the petitioners are hereby directed to appear before the District Collector, Gopalganj with a certified copy of the present order within a period of one month from today, whereafter the respondent District Collector, Gopalganj shall proceed to decide the case afresh on merits, but opportunity of hearing must be given to all concerned before passing any final order in this case.

10. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. No costs.

(Birendra Prasad Verma, J)

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