

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4018 of 2006

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1. Tetan Mandal son of Late Madhu Mandal
 2. Bindesdhwari Mandal
 3. Parmeshwari Mandal
 4. Kailash Mandal

Petitioner Nos. 2 to 4 are sons of Late Chhedi Mandal,
All are resident of village Ghoraghat, P.S.Forbesganj, District Araria

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Araria
2. The Sub Divisional Officer, Forbesganj, District Araria
3. Anchal Adhikari, Forbesganj, District Araria
4. Yadunandan Jha
5. Jagarnath Jha
6. Shambhu Jha
7. Ashok Kumar Jha
8. Binay Kumar Jha
9. **Uma Kant Jha son of Chaturanand Jha (Expunged Vide order dated 12.03.2015 and substituted by his following heirs and legal representatives)**
 - 9 (a) Lilly Devi
 - 9 (b)Sheela Devi
 - 9 © Bindu Devi
 - 9(d)Nutan Devi
 - 9(e) Ratan Devi
 - 9(f) Bobby Devi
 - 9(g) Sakhi Kumari
 - 9(h) Kajal KumariAll daughters of Late Uma Kant Jha
10. Most. Devaki Devi wife of Late Chaturanand Jha
11. **Most. Rukmani Devi W/o Late Rama Kant Jha (Deleted vide order dated 24.04.2008)**
12. Vivekanand Jha S/o Late laxmi Kant Jha
13. Hiras Kumar Jha son of Late Laxmi Kant Jha
14. **Mostt. Urmila Devi Wife of Late Laxmi Kahan Jha (Deleted vide order dated 12.03.2015)**
15. Hiramala Devi D/o Late Chaturannnd Jha
16. Sulochna Devi D/o Late Chaturand Jha
17. Shushila Devi wife of Yadunandan Jha
18. Arun Kumar Jha S/o Yudanandan Jha
19. Tarun Kumar Jha son of Yadunandan Jha
20. Shailendra Kumar Jha son of Yadunandan Jha
21. Kunti Devi wife of Jagarnath Jha
22. Barun Kumar Jha S/o Jagarnath Jha
23. Sumit Kumar Jha S/o Jagarnath Jha
24. Meera Devi W/o Shambhu Nath Jha
25. Gopal Jha S/o Shambhu Nath Jha
26. Putul Devi W/o Ashok Kumar Jha
27. Praveen Kumar Jha son of Ashok Kumar Jha
28. Naveen Kumar Jha S/o Ashok Kumar Jha

29. Aruna Devi W/o Binay Kumar Jha
30. Ashish Kumar Jha S/o Binay Kumar Jha
31. Jayant Kumar Jha S/o Binay Kumar Jha
32. Ahilya Devi W/o Uma Kant Jha
33. Bipin Kumar Jha S/o Uma Kant Jha

All are resident of village Ghoraghat, P.S.Forbisganj, District Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhimanyu Sharma, Advocate

For the Respondent Nos. 1 to 3 : Mr.Ajay Kumar Sharma, AC to PAAG

For the Private Respondents : Mr.Sarangdhar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 25-01-2016

Heard the parties.

2. The petitioners are aggrieved by the order dated 10.05.2005 passed in Appeal Case No. 51 of 2004-2005 by the respondent Sub Divisional Officer, Forbisganj, as contained in Annexure-6, whereby the aforesaid appeal filed on behalf of the private respondents in terms of Section 48D of The Bihar Tenancy Act, 1885 (in short “the Act”) and the Rules made therein has been allowed and the final order dated 29.09.2004 passed in Case No.15 of 2002-03 by the respondent Anchal Adhikari, Farbisganj, as contained in Annexure-1, allowing the claims of the petitioners with respect to the lands in question in terms of Section 48D of the Act has been set aside and reversed.

3. Learned counsel appearing on behalf of the petitioners submits that the petitioners and/or their ancestors have been coming as Shikmidars over the lands in question, fully detailed in paragraph 2 of the writ petition. Therefore, according to him, they filed a petition under Section 48D of the Act for declaration of their raiyati right over the lands in question, which gave rise to Case No. 15 of 2002-03. It is contended that despite issuance of notices to the landholders, they did not appear in the aforesaid proceeding; therefore, the matter



proceeded ex-parte and finally by order dated 29.09.2004 their claim under Section 48D of the Act was allowed. It is further contended that the landlords, being aggrieved by the aforesaid order, filed Appeal Case No. 51 of 2004-05 before the Sub Divisional Officer, Forbisganj, which has been allowed by the impugned appellate order dated 10.05.2005, but before passing final order, reasonable opportunity of hearing was not given to the petitioners. Hence, it is pleaded that the rules of natural justice has not been strictly followed by the appellate authority and on that ground alone, besides on merits, the impugned appellate order is liable to be set aside and quashed by this Court.

4. The matter has been contested by the learned AC to PAAG, appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the private respondents by filing their respective counter affidavits. Learned counsel appearing on behalf of the respondents submit that evidently, the original order was passed ex-parte and as also against some dead persons by the respondent Anchal Adhikari and therefore, it has rightly been set aside by the appellate authority. According to them, for the reasons recorded in the impugned appellate order, the writ petition is liable to be dismissed .

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the entire matter requires re-consideration and a fresh decision from the stage of the original authority. Evidently, the original order as contained in Annexure-1 was passed ex-parte and opportunity of hearing was not given to the landholders. Furthermore, it appears that some of the landholders were dead and steps for their substitution were not taken by the petitioners. It further appears that the appellate authority has committed same sort of mistakes and he has also not

given reasonable opportunity of hearing to the petitioners before passing the impugned final order, as contained in Annexure-6.

6. For the reasons recorded above, the impugned appellate order dated 10.05.2005 passed in Appeal Case No. 51 of 2004-05 by the respondent Sub Divisional Officer, Forbisganj, as contained in Annexure-6, as also the original order dated 29.09.2004 passed in Case No. 15 of 2002-03 by the respondent Anchal Adhikari, Forbisganj, as contained in Annexure-1, are hereby set aside and quashed and the matter is remitted to the respondent Anchal Adhikari, Forbisganj with a direction to decide the case of the petitioners filed under Section 48D of the Act with respect to the lands in question afresh strictly in accordance with law by keeping in mind the provisions and mandates contained in Section 48 D of the Act and the Rules made thereunder.

7. In order to expedite the matter, the petitioners as also the private respondent Nos. 4 to 33 are hereby directed to appear before the respondent Anchal Adhikari, Forbisganj within a period of one month from today with a certified copy of the present order, whereafter the respondent Anchal Adhikari, Forbisganj shall proceed further and shall decide the aforesaid case filed on behalf of the petitioners afresh strictly in accordance with law, but before passing any final order, an opportunity of hearing must be given to all concerned including the petitioners and the private respondents, besides others, if any.

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

9. 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)

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