

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.644 of 2007

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1. Raghu Nandan Yadav son of Late Prarbhu Yadav
2. Shiv Narayan Yadav son of Late Prabhu Yadav
3. Deo Narayan Yadav son of Late Musuklal Yadav
4. Shiv Narayan Yadav son of Late Musuk Lal Yadav
5. Smt.Khatri Devi wife of Late Ram Nandan Yadav
6. Jaharmal Yadav son of Late Ram Nandan Yadav
7. Vidya Nand Yadav son of Late Ram Nandan Yadav
All are residents of Village Khabdah Kanhaili, P.S.Narpatganj, District Araria
.... Petitioner/s

Versus

1. The State of Bihar
2. The S.D.O. Forbishganj, District Araria
3. The Anchal Adhikari, Narpatganj, District Araria
4. Suk Lal Yadav son of Janardan Yadav, resident of Village Khabdah, Kanhaili,
P.S.Narpatganj, District Araria
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Yadav, Advocate
For the Respondent Nos. 1 to 3:Mr. Sunil Kumar Mandal, SC 3
Mr.Bipin Kumar, AC to SC 3
For the Respondent No.4 : Mr.Ashok Kumar Singh, Advocate
Mr.Ambrish Rahul, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 29-11-2016

Heard.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 02.09.2006 passed in 48D B.T.Act Appeal Case No. 09 of 2005-06 by the respondent S.D.O., Forbisganj, as contained in Annexure-5 to the writ petition, whereby the aforesaid appeal filed on behalf of the respondent no.4 was allowed and the order dated 19.12.1996 passed in 48D Case No. 23 of 1995-96 by the respondent Anchal Adhikari, Narpatganj, as contain in Annexure-3 to the writ petition, has been set aside.

3. The learned counsel appearing on behalf of the



petitioners submits that the petitioners have acquired status of occupancy under raiyats over the lands in question, fully detailed in paragraph 5 of the writ petition; therefore, they filed an application under Section 48D of The Bihar tenancy Act, 1885 (in short “B.T.Act”) before the respondent Anchal Adhikari, Narpatganj for granting them raiyati rights over the lands in question. It is contended that on the basis of the aforesaid petition, 48D Case No. 23 of 1995-96 was registered by the respondent Anchal Adhikari, Narpatganj and it was finally allowed on 19.12.1996. However, according to him, the appellate authority has mechanically set aside the aforesaid order by the impugned appellate order dated 02.09.2006 (Annexure-5), which cannot be sustained in law.

4. The learned Standing Counsel 3, appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the respondent no.4, on the other hand, have contested the matter and have supported the impugned order. The learned counsel appearing on behalf of respondent no.4 submits that the original order passed by the respondent Anchal Adhikari, Narpatganj was in violation of rules of natural justice; therefore it has rightly been set aside by the appellate authority. According to him, the writ petition is fit 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 matter requires reconsideration and a fresh decision right from beginning. It is true that the petitioners had filed their petition under Section 48D of the B.T.Act which gave rise to Case No. 23 of 1995-96 before the respondent Anchal Adhikari, Narpatganj. However, on going through the order passed by the respondent Anchal Adhikari it is apparent that the procedures prescribed under Section 48D of the



B.T.Act and the Rules made thereunder were not strictly followed and all the relevant findings have not been recorded. The reasonable opportunity of hearing was also not given to all concerned including the landlord, yet claim of the petitioners was allowed. This Court further finds that the appellate authority has set aside the order passed by the Anchal Adhikari, Narpatganj on the ground of violation of rules of natural justice, but he ought to have remitted the matter back to the original authority for deciding the claim of the parties afresh in accordance with law, but that has not been done. Without considering the claims of the petitioners with respect to the lands in question the appellate authority could not have rejected the case of the petitioners, after setting aside the order passed by the Anchal Adhikari, Narpatganj on the ground of violation of rules of natural justice.

6. For the reasons recorded above, the impugned order dated 02.09.2006 passed in 48D B.T.Act Appeal Case No. 09 of 2005-06 by the respondent S.D.O., Forbisganj, as contained in Annexure-5 as also the original order dated 19.12.1996 passed in 48D Case No. 23 of 1995-96 by the respondent Anchal Adhikari, Narpatganj, as contained in Annexure-3 to the writ petition, both are set aside and quashed, and the entire matter is remitted back to the Anchal Adhikari, Narpatganj with a direction to decide the aforesaid case filed on behalf of the petitioners afresh in accordance with law, but before passing any final order, reasonable opportunity of hearing must be given to all concerned including the petitioners and the respondent no.4, besides other private individual, if any.

7. In order to expedite the matter, the petitioners as also the respondent no.4 are hereby directed to appear before the respondent Anchal Adhikari, Narpatganj within a period of one month from today with a certified copy of the present order, whereafter the

respondent Anchal Adhikari, Narpatganj shall proceed to decide the case afresh strictly in accordance with the provisions of Section 48D of the B.T.Act and Rules made thereunder.

8. 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 Anchal Adhikari, Narpatganj.

9. In the result, 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)

Tahir/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.11.2016
Transmission Date	