

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2065 of 2016
IN
Civil Writ Jurisdiction Case No. 2800 of 2014**

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Md. Eqbal Alam, son of Sk. Salauddin, Resident of Village – Farudapur, P.O.-
Tara, P.S. – Sanhoula, District- Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar through Secretary, Land Reform Department, Government of Bihar, Patna
2. The District Magistrate-cum-Collector, Bhagalpur, District- Bhagalpur
3. The Deputy Collector Land Reforms, Kahalgaon, Naull District- Bhagalpur
4. The Anchaladhikari, Sanhoula, District- Bhagalpur
5. Shah Najan, son of Shah Naim, resident of village- Sanhoula, P.S. Sanhoula, District- Bhagalpur
6. Shah Sajjam, son of Shah Naim, resident of Village- Sanhoula, P.S. Sanhoula, District-Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
For the Respondent/s : Mr. Md.Khurshid Alam-AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 01-08-2017

Seeking exception to an order dated 22.09.2016 passed
by the Writ Court in CWJC No. 2800 of 2014 this appeal has been
filed under Clause 10 of the Letters Patent.

Facts in brief, which are necessary for deciding this
appeal, go to show that the writ petitioner, Md. Eqbal Alam filed the
writ petition against the State Government and the respondent Nos. 5
and 6, Shah Najan and Shah Sajjam and sought possession of the
land in question in view of the order dated 1.5.2013 passed by the
Collector, Bhagalpur in Misc. Case No. 45 of 2012-13 by which an
order passed on 16.11.2012 by the Deputy Collector Land Reforms
was affirmed. The Deputy Collector Land Reforms had decided the



issue and directed for handing over the possession to the petitioner under the Bihar Privileged Persons Homestead Tenancy Act and issued an order (Parcha) directing possession to the petitioner. It is this order which was affirmed by the Collector exercising his appellate jurisdiction under Section 21 of the Act and seeking restoration of possession in view of this order, the writ petition in question was filed and in the writ petition it was found by the Writ Court that a Title Suit bearing No. 394 of 2014 was pending and therefore granting liberty to the petitioner to raise all the issues in the pending title suit, the writ petition was disposed of.

It is the case of the appellant before us in this appeal that Title Suit No. 394 of 2014 was not filed by respondent Nos. 5 and 6, it was filed by a third person, that is their father, namely, Shah Naim, and he claimed his right to the property based on certain right of inheritance available to him and not based on any right that accrued by virtue of the Parcha. It is the case of the appellant before us that once the proceedings under the BPPHT Act have attained finality and when the Parcha granted in favour of the respondent Nos. 5 and 6 was quashed by the Deputy Collector and the Collector, the restoration of possession was a consequence which flew in favour of the appellant and merely because a title suit was pending in which there was no injunction, the possession cannot be denied and in relegating the petitioner to ventilate the issue of possession in the title suit, it is stated that the Writ Court had committed error.



Learned counsel for the respondent Nos. 5 and 6 refuted the aforesaid contention and stated that against the order passed by the Collector an appeal was filed before the Bihar Land Tribunal, Patna being BLT Case No. 159/2014 and thereafter the orders passed by the Collector has been challenged in the Title Suit itself and therefore, the possession could not be granted. He placed reliance on a Division Bench decision of this Court in the case of **Maheshwar Mandal & Anr. Vs. The State of Bihar & Ors.: 2014(3) PLJR 281** to say that for the issue like this the writ application was not maintainable and the only remedy available is to contest the matter under the common law before the Civil Court.

We have heard learned counsel for the parties and on going through the records we find that initially the Parcha was granted in favour of respondent Nos. 5 and 6. The appellant challenged the same in the proceedings before the Deputy Collector Land Reforms who cancelled the Parcha and the Collector under the **Bihar Privileged Persons Homestead Tenancy Act** vide order dated 1.5.2013 passed in Misc. Case No. 45/2012-13, upheld the order of cancellation and consequently the appellant claimed possession by virtue of these orders in the writ petition.

As far as challenge to the order passed on 1.5.2013 by the Collector, Bhagalpur, before the Bihar Land Tribunal is concerned, on the own showing of the Respondent Nos. 4 and 5 itself, as is evident from the counter affidavit, Annexure-B, the same



was withdrawn on 26.9.2014 with liberty to take recourse to remedy of taking up the issue in the pending Title Suit No. 294/2014. Once the proceeding was withdrawn before the Tribunal as is evident from the order Annexure-B dated 26.9.2014 and there was no stay with regard to the order passed on 1.5.2013 by the Collector, Bhagalpur in Misc. Case No. 45/2012, the Writ Court should have allowed the writ petition and subject to any order that may be passed in the Title Suit, should have restored possession to the appellant instead of relegating the appellant to take recourse to remedy to approach the Civil Court in the pending Title Suit.

The Title Suit was an independent proceeding which was to be decided by the Civil Court in accordance with law and if the respondents have any grievance with regard to possession they should have sought injunction from the Civil Court where Title Suit is pending. Once the order dated 1.5.2013 in the proceeding held under BPPHT Act had attained finality after the withdrawal of the case before the Bihar Land Tribunal by the respondents, the restoration of possession based on the order passed by the Collector was the only course open to the Writ Court in the writ petition and thus having not done so, we allow this appeal quash the order dated 22.9.2016 of the Writ Court and direct for restoration of possession to the appellant by virtue of the order dated 1.5.2013 passed by the Collector, Bhagalpur in Misc. Case No. 45 of 2012-13 exercising his power of appeal under Section 21 of the Bihar Privileged Persons



Homestead Tenancy Act, 1947.

However, the respondents will have liberty to seek such relief as permissible including an injunction in the Title Suit pending or by resorting to any other procedure and until and unless injunction is not granted, the possession of the appellant be restored.

We direct the statutory authority to restore possession of the petitioner in accordance with law within two months from the date of receipt of a copy of this order.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

S.Pandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
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