

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20650 of 2011

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1. Lalita Prasad

2. Vijay Kumar Sinha, Both sons Of Late Kamta Prasad Resident Of Village-Panditpur, Post Office & Police Station-Rajgir, District Nalanda; At present Residing At Dangi Tola, Station Road, Rajgir, Post Office & Police Station-Rajgir, District-Nalanda At Biharsharif.

.... Petitioners

Versus

1. The State Of Bihar through the Collector, Nalanda at Biharshariff.

2. The Deputy Collector, Land Reforms, Rajgir, District-Nalanda.

3. The Circle Officer-Cum-Collector under the Bihar Privileged Persons Homestead Tenancy Act, 1947, Rajgir Anchal, Rajgir, District-Nalanda at Biharshariff.

4. The Superintendent of Police, Nalanda at Bihar Shariff.

5. Binod Rajbanshi

6. Umesh Rajbanshi

7. Anil Rajbanshi

Respondents no. 5, 6 and 7 are Sons Of Kailash Rajbanshi.

8. Shiv Kumar Rajbanshi Son Of Bangali Rajbanshi

9. Anil Rajbanshi Son Of Rameshwar Rajbanshi

10. Wakil Rajbanshi Son Of Nanhak Rajbanshi

11. Arvind Rajbanshi Son Of Rameshwar Rajbanshi

12. Bineshwar Rajbanshi Son Of Rameshwar Rajbanshi

13. Satendra Rajbanshi Son Of Mahabir Rajbanshi

14. Jogendra Rajbanshi Son Of Bubeshwar Rajbanshi

15. Madho Rajbanshi Son Of Bhagwan Rajbanshi

16. Ram Pravesh Rajbanshi Son Of Palko Rajbanshi

17. Sudhir Rajbanshi Son Of Rambachan Rajbanshi

18. Surendra Rajbanshi Son Of Rambachan Rajbanshi

19. Prasadi Rajbanshi Son Of Jamun Rajbanshi

20. Karu Choudhary Son Of Fuleshar Choudhary

21. Ashok Choudhary Son Of Janki Choudhary

22. Sadhu Rajbanshi Son Of Muneshwar Rajbanshi

23. Kisni Rajbanshi Son Of Daso Rajbanshi

24. Muni Choudhary Son Of Arjun Choudhary

25. Dinanath Rajbanshi Son Of Binod Rajbanshi

26. Bisakhia Rajbanshi Son Of Binod Rajbanshi

27. Pintu Rajbanshi Son Of Munilal Rajbanshi

28. Rameshwar Rajbanshi Son Of Barho Rajbanshi

29. Manoj Kumar Son Of Baldeo Rajbanshi

30. Ramadhin Rajbanshi Son Of Dalo Rajbanshi

31. Baldeo Rajbanshi Son Of Buhai Rajbanshi

32. Parsuram Rajbanshi Son Of Arjun Rajbanshi

33. Pintu Rajbanshi Son Of Baldeo Rajbanshi

34. Rajesh Ram, Son of Lakhan Ram

35. Jagu Rajbanshi Son Of Samli Rajbanshi

36. Govind Choudhary Son Of Janki Choudhary

37. Lala Rajbanshi, Son of Rupchan Rajbanshi.



Respondents No. 5 to 37 are resident Of Village-Dariapur, P.S. Rajgir, District-Nalanda.

.... Respondents

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Appearance :

For the Petitioners : Mr. Upendra Prasad. Adv.
Mrs. Veena Kumari Jaiswal, Adv.
For Respondents No. 5 to 37 : Mr. Dineshwar Prasad Singh, Adv.
For the State Kalpana, AC to GA-8.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 21-02-2017

1. Heard learned counsel for the petitioners, learned counsel appearing for the private respondents no. 5 to 37 as well as learned counsel appearing for the State.

2. The petitioners have challenged the order dated 30.05.2011 passed by Land Reforms Deputy Collector, Rajgir in Land Dispute Case No. 02/ 2011 by which and whereunder he directed the Circle Officer, Rajgir to initiate proceeding under Bihar Privileged Persons Homestead Tenancy Act, 1947 in favour of private respondents of this petition.

3. The brief fact, which lies to file this petition is that petitioners claimed before the Circle Officer, Rajgir that they were settlee of plot nos. 408, 414, 449 and 376 pertaining to Khata No. 27 of Mauza Panditpur since the year 1945 but some persons were making encroachment of the aforesaid land and, thereafter, petitioners prayed before the Circle Officer, Rajgir for measurement of their



plots. The Circle Officer, Rajgir deputed an Anchal Ameen for measurement and thereafter Anchal Ameen got measured the plots and submitted his report in Measurement Case No. 03/ 2001-02. However, even after measurement, some persons including private respondents grabbed some portion of aforesaid plots and thereafter petitioners filed petition under Section 4 of Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as the “Act”) before the D.C.L.R., Rajgir for ejectment of encroachers. On the basis of petition of the petitioners, the D.C.L.R., Rajgir got registered Land Dispute Case No. 02/ 2011 in which he passed the impugned order dated 30.05.2011 against which this writ petition has been preferred.

4. Submission on behalf of the petitioners is that the D.C.L.R., Rajgir had got no jurisdiction to issue such a direction under Bihar Privileged Persons Homestead Tenancy Act, 1947 because under the aforesaid Act, it is only Circle Officer who is empowered to initiate proceeding for issuance of Parcha and, therefore, the order dated 30.05.2011 has been passed by the D.C.L.R., Rajgir without jurisdiction. It is further submitted that the D.C.L.R., Rajgir had got no right to create a third case because admittedly, petitioners had approached the D.C.L.R., Rajgir for ejectment of encroachers from their land but instead of ejecting the encroachers, the D.C.L.R., Rajgir made out a third case which was not



permissible under the law.

5. On the other hand, learned counsel appearing for the private respondents submits that every order passed under this Act is appealable before the Commissioner which is evident from perusal of Section 14 of the aforesaid Act and, therefore, even if it assumed that petitioners are aggrieved by the order of D.C.L.R., Rajgir, then also, they have alternate remedy to challenge the aforesaid order before the Commissioner. It is further submitted that moreover, so-called Hukumnama, on the basis of which the petitioners are claiming to have derived their right, was itself doubtful. He further submitted that moreover, the D.C.L.R., Rajgir has only directed the Circle Officer to initiate a proceeding and the D.C.L.R., Rajgir has not himself initiated any proceeding so, it cannot be said that proceeding for issuance of Parcha has been initiated by the D.C.L.R., Rajgir.

6. Having heard the submissions of the parties, I went through the record. I find that petitioners have alternate remedy to challenge the impugned order before the Commissioner and, therefore, if they feel aggrieved by the impugned order, they may challenge the aforesaid order before the Commissioner.

7. Accordingly, this writ petition, without giving any finding on the merit of the case, stands disposed of giving aforesaid liberty to the petitioners. However, the period spent by the petitioners



in persuading this matter before this Court shall be condoned by the Commissioner at the time of counting limitation, if the impugned order is challenged before the Commissioner under Section 14 of the Act and any prayer for condonation of delay is made on behalf of the petitioners.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.02.2017
Transmission Date	N.A.

