IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.304 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 9030 of 2009

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1. Badshah Rai

2. Nawal Kishore Rai

3. Raj Kishore Rai, All are sons of Late Paras Nath Rai

4. Chandra Kanta Devi Daughter of Late Paras Nath Rai, Wife of Raj Kishore Rai All are residents of village Ramgarh, Tole Bhulauni, P.O. Simariya, P.S. Nautan, District Siwan.

.... Appellant/s

Versus

1. The State of Bihar.

2. The Collector, Siwan.

3. Brahma Bhagat Son of Late Shiv Nandan Bhagat resident of village Ramgarh, Tole Bhulauni, P.O. Simariya, P.S. Nautan, District Siwan.

4. Tirath Nath Prasad

5. Ram Janak Prasad

6. Shambhu Nath Prasad all are sons of Gopal Bhagat resident of village Mathiya, P.S. Mirganj, District Gopalganj.

7. Additional Member, Board of Revenue, Patna, Bihar.

.... Respondent/s

with

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Letters Patent Appeal No. 375 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 9072 of 2009

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1. Badshah Rai.

2. Nawal Kishore Rai.

3. Raj Kishore Rai. All are Sons of Late Paras Nath Rai.
4. Chandra Kanta Devi daughter of Late Paras Nath Rai, Wife of Raj Koshore Rai, All are residents of Village-Ramgarh, Tole Bhulauni, P.O. Simariya, Police Station- Nautan, District- Siwan.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Collector, Siwan.
3. Brahma Bhagat, Son of Late Shiv Nandan Bhagat, resident of Village Ramgarh, Tola Bhulauni, P.O. Simariya, Police Station- Nautan, District- Siwan.
4. Tirath Nath Rai
5. Ram Janak Prasad,
6. Shambhu Nath Prasad, all are sons of Gopal Bhagat, resident of Village- Mathiya, Police Station- Mirganj, District- Gopalganj.
7. Additional Member Board of Revenue, Patna, Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh, Advocate

For the Respondent/s : Mr. Ajay, G.A. 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: 29-06-2017

Seeking exception to an order dated 10.12.2015 and 11.12.2015 passed by the learned Writ Court in C.W.J.C. No. 9030 of 2009 and C.W.J.C. No. 9072 of 2009 respectively and dismissing the writ petition filed by the writ appellant challenging an order dated

20th of December, 2008 passed by the Board of Revenue in a revision filed in the matter of deciding an issue under Section 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, these appeals have been filed under Clause 10 of the Letters Patent.

2. In the matter of pre-emption under Section 16(3) of the Ceiling Act, the learned Writ Court and the Board of Revenue have placed reliance on a spot inspection conducted by the D.C.L.R. in Case No. 12/76-77 and 13/76-77 to hold that the applicant Paras Nath Rai did not have any land adjoining to Plot Nos. 1237 and 1238. The learned Writ Court also placing reliance on the aforesaid spot inspection has non-suited the applicant.

3. The only question that was canvassed before us primarily on behalf of the appellants was that the orders passed by the original authority and the appellate authority have been set aside based on this spot inspection and the findings recorded by the Board of Revenue based on the same, whereas this spot inspection was conducted without notice to the applicant, behind his back, in an *ex parte* manner and, therefore, based on the same the findings recorded by the Revisional Court namely the Board of Revenue and upholding of the same by the learned Writ Court is clearly unsustainable as it violates the principles of natural justice.

4. Even though learned counsel for the private respondent tried to indicate that the order for spot inspection was passed in the presence of the applicant, he was aware of the spot inspection and the spot inspection was done correctly, we find that the applicant in the writ petition itself has raised a question with regard to the perverse spot inspection conducted behind his back without granting him an opportunity of being present in the spot inspection and the learned Writ Court has not adverted to consider this aspect of the matter. Even in the order passed by the Board of Revenue in the Revision Petition this question has not been properly considered. That being so, on this ground alone, the matter has to be remanded back to the Board of Revenue for considering as to whether based on the spot inspection conducted by the D.C.L.R. as indicated hereinabove the matter can be proceeded with.

5. Accordingly, finding the Board of Revenue to have committed an error in relying upon the spot inspection which was done as alleged based on the *ex parte* inspection conducted, we allow this appeal, quash the order passed by the Writ Court and the Board of Revenue on 20th of December, 2008 and remand the matter back to the Board of Revenue to consider the question afresh after hearing all concerned after deciding as to whether the spot inspection conducted by the D.C.L.R. on 29.07.1998 is proper and based on the same

whether the decision can be taken after hearing all concerned. Let the issue be decided by the Board of Revenue within a period of three months from the date of appearance of the parties.

6. With the aforesaid, the Letters Patent Appeals are allowed. The Board of Revenue, if on due consideration feels that a fresh report with regard to the factual aspect is required, he shall be free to call for such report after following the due process of law.

7. With the aforesaid, we allow this appeal and dispose of the same.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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