

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12299 of 1999

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1. Most. Runuwa Devi Wife of late Santokhi Hajara @ Paswan.
2. Udit Paswan Son of late Santokhi Hajara @ Paswan
3. Kaleshwar Hajara Son of late Santokhi Hajara @ Paswan
4. Upendra Paswan Son of late Santokhi Hajara @ Paswan
5. Lakshman Paswan Son of late Santokhi Hajara @ Paswan
All Residents of Village- Babu Mahal, P.S. Chandan, District- Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Collector, Banka.
3. The Circle Officer, Chandan, P.S. Chandan, District- Banka.
4. The Commissioner, Bhagalpur.
5. Pradhan Murmu S/o late Chhotka Murmu Resident of Village- Mahiya Simar, P.S. Chandan, P.O. Bhairganj, District- Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kr. Das 2
For the Respondent/s : Mr. Vijay Shankar Jha
Mr. Amrendra Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

8 24-11-2017 Heard both sides.

The petitioner has filed this writ petition against the order dated 13.11.1997 passed by Additional Collector, Banka in Case No.9 of 1995-96 by which the sale deed, the plain Hukumnama executed in favour of the husband of the petitioner was cancelled.

The learned counsel for the petitioner submits that Additional Collector cancelled the Hukumnama executed in favour of the husband of the petitioner in view of the provisions



contained in Section 49(1) of the Bihar Tenancy Act but a Full Bench of this Court in the case of Bhageran Thakur vs. Kewal Singh and Others, 1969 PLJR 30 held the provisions of Section 49(c), Bihar Tenancy Act, 1955 as ultravires of Article 19(1)(f) of the Constitution and on such, the Single Bench of this court set aside the order. Parduman Soren filed L.P.A. No.1097 of 1998 against the order passed in CWJC No.2379 of 1998 and L.P.A. No.1098 of 1998 against the order passed in CWJC No.2416 of 1998 which were referred to Full Bench and the Full Bench held that Section 49(c) of the Bihar Tenancy Act has already been held to be ultravires the Constitution as infringing the fundamental right enshrined in Article 19(1)(f) of the Constitution and, therefore, the order setting aside the Hukumnama and to return the land to the executant of the Hukumnama is illegal.

The learned A.C. to S.C.18 did not dispute the fact.

Having considered the facts aforesaid, order dated 13.11.1997 passed in Case No.9 of 1995-96, so far it relates to the petitioner, is set aside. The writ petition is allowed.

(Prabhat Kumar Jha, J)

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