

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9802 of 2009

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Kedar Sao son of Late Banbari Sao, resident of village- Narsinghauli, P.O- Tal
Sharma, P.S- birupur, Dist- Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Lakhisarai
3. The Anchal Adhikari, Barahiya Anchal, dist- Lakhisarai
4. The Anchal Nirikshak, barahiya Anchal, Dist- Lakhisarai
5. Prakash Ram, son of Late Baldeo Ram, resident of village Malpur alias
Narsinghauli, P.S.Barahiya (now Birupur), Dist- Lakhisarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar
Mr. Arvind Kumar Sharma
Miss. Ritika Rani
Mr. Deepak Kumar
Mrs Kumari Neha

For the Respondent/s : Mr. Manoj Kumar AC to GP-4
Mr. Pravin Kumar Gupta
Mr. Binay Kumar
Mr. Bishweshwar Ram

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
ORAL JUDGMENT
Date: 23-02-2017

Heard learned counsel for the petitioner as well as learned
counsel appearing for the State.

No one appears on behalf of the respondent no.5 though
counter affidavit has been filed on his behalf. It is not out of place to
mention here that on previous occasion also, respondent no. 5 failed to
appear before this Court.

2. The grievance of the petitioner is that the learned
Collector, Lakhisarai, cancelled the Parcha dated 02.07.1973, issued



in his favour without any valid reason, through the impugned order dated 12.06.2009 passed in Misc. (Parcha Cancellation) Case no. 6/2002-2003.

3. The fact giving rise to file this writ petition is that the Circle Officer, Barahiya, issued Basgit Parcha in favour of petitioner on 02.07.1973 after due verification and inspection of plot no. 235 of village- Narsinghauli, P.S- Barahiya, District- Lakhisarai. In the survey khatian, the aforesaid plot no. 235 was recorded as Gair Majarua Malik but in possession column, the name of Gajanan Kahar was entered at the time of spot inspection. The petitioner was found in possession of 4 decimals of the land over the aforesaid plot whereas respondent no. 5 was found in possession of remaining 2 decimals of land over the aforesaid plot. However, respondent nos. 4 and 5 claimed that they have purchased the disputed land in the year 1972 through registered sale deed from the original Raiyat of the aforesaid plot but the concerned officials, concealing the aforesaid facts, issued Basgit Parcha in favour of the petitioner, who is not a land less person.

4. Admittedly, petitioner and respondent no. 5 fought several round litigations in civil court in respect of the aforesaid land but there is nothing on the record to show what happened to the aforesaid litigations. However, the respondent no. 5 filed a petition under section 21 of Bihar Privileged Persons Homestead Tenancy Act



before the Collector, Lakhisarai, in the year 2002 on the basis of which Misc. Case No.6/2002-2003 was registered.

5. In the aforesaid case, the Collector, Lakhisarai, issued notice to the petitioner but even after service of notice upon him, the petitioner failed to appear and, thereafter, learned Collector, Lakhisarai vide impugned order dated 12.06.2009 cancelled the Purga dated 02.07.1973 issued in favour of the petitioner on the ground that the petitioner was not a land less person and he could not clarify his entitlement to get Basgit Purga in his favour at the time of issuance of the aforesaid Purga.

6. The Petitioner being aggrieved by the aforesaid impugned order dated 12.06.2009 passed by the Collector, Lakhisarai, in Misc. (Purga Cancellation) Case no. 6/ 2002-2003 has come before this court .

7. Submission on behalf of the petitioner is that the Collector, Lakhisarai, cancelled the aforesaid Basgit Purga after 36 years of its issuance. He further submits that section 21 of the Act came into picture in the year 1989 whereas the Purga in favour of the petitioner was issued in 1973 but even then the Collector, Lakhisarai, exercised its power vested to him under section 21 of the aforesaid Act though the aforesaid section has no retrospective effect. It is further submitted that, moreover, Section 2(h) of the aforesaid Act says that even if a person holds possession of one acre land, then also,



he shall come under the definition of privileged person. It is further submitted that learned Collector, Lakhisarai, mentioned in his impugned order that 45 decimals of land was in the name of the petitioner and, therefore, the petitioner was a privileged person for getting the Basgit Purcha. He further submitted that even if it is assumed that petitioner had 45 decimals of land at the time of issuance of Basgit Purcha, then also, the aforesaid land was less than one acre. Moreover, it is submitted that except the disputed area of 4 decimals of land, petitioner does not have any land.

8. The respondent no. 5 has contested this writ petition on the ground that in a civil suit petitioner admitted that 45 decimal lands belonged to him but no one has appeared to place any material before this Court to support the pleading of respondent no. 5.

9. Learned counsel appearing for the State submits that the order of learned Collector clearly goes to show that petitioner was not a land less person and that was the reason, he was not entitled to get Basgit Purcha in his favour and the learned Collector having inquired into the matter cancelled the Purcha issued in favour of the petitioner exercising his power as mentioned in Section 21 of the Act.

10. It is an admitted position that the learned Collector, Lakhisarai, cancelled the Purcha issued in favour of the petitioner after 36 years of its issuance by exercising his power vested to him under Section 21 of the Act. A Division Bench of this Court in the



case of **Om Prakesh Singh Vs. State of Bihar and Ors. { 2004(2) PLJR page 621}**, held that the power under section 21 of the Act cannot be applied with retrospective effect and, admittedly, in the present case, the Collector, Lakhisarai, exercised the power vested to him under section 21 of the Act with retrospective effect. Moreover, Section 2(h) of the Act shows that even if a person holds one acre land, then also, the said person will come under the definition of privileged person and, therefore, in my view, the learned Collector, Lakhisarai, committed an error in cancelling the Purcha issued in favour of the petitioner passing the impugned order.

11. Thus, on the basis of aforesaid discussions, this writ petition is allowed and the impugned order dated 12.06.2009 passed in Misc. (Parcha Cancellation) Case no. 6/ 2002-2003 by the Collector, Lakhisarai, is quashed.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2017
Transmission Date	01.03.2017

