

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1204 of 2013

IN

Civil Writ Jurisdiction Case No. 126 of 2005

- =====
1. Ram Krishna Yadav Son of Late Rajeshwar Yadav Resident of Village- Raghunathpur, P.S.- Bhargama, District- Araria
 2. Shri Krishna Yadav Son of Late Rajeshwar Yadav Resident of Village- Raghunathpur, P.S.- Bhargama, District- Araria

.... Appellants

Versus

1. The State of Bihar
2. The S.D.O. Forbesganj
3. The Circle Officer, Bhargama
4. Binod Yadav Son Of Late Resham Lal Yadav Resident Of Raghunathpur (Tola Tappu) P.S. Bhargama District- Araria
5. Hari Narayan Yadav @ Hari Nandan Yadav Son Of Late Uttim Lal Yadav Resident Of Raghunathpur P.S. Bhargama District- Araria
6. Bindeshwari Yadav Son Of Bhuvneshwari Yadav Resident Of Village- Raghunathpur (Tola Tappu) P.S. Bhargama District- Araria
7. Chit Narayan Yadav Son Of Devi Prasad Yadav Resident Of Dinapatti, P.S. Murliganj, District- Madhepura
8. Shiv Nandan Yadav Son Of Uttim Lal Yadav Resident Of Village- Raghunathpur, P.S. Bhargama District- Araria

.... Respondents

=====

Appearance :

For the Appellants : Mr. Bidhanesh Misra, Advocate
Ms. Tanuja Mishra, Advocate

For the State : Mr. Rakesh Prabhat, AC to SC21

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 17-01-2017

Appeal has been filed by the appellants who were also petitioners before the learned Single Judge in CWJC No.126 of 2005. They were aggrieved by the order dated 20.05.2003, passed by the Sub-Divisional Officer, Forbesganj. By virtue of the said order, he had set aside the order dated 24.12.1992, passed in Case No.71 of



1992-93 by the Anchal Adhikari, Bhargama, which had declared the original applicants Rajeshwar Yadav, i.e., the father of the appellants to be the raiyat, over the land in question, under Section 48D of the Bihar Tenancy Act, 1885.

2. Submission of the counsel for the appellants is that they are aggrieved by a part of the order of the learned Single Judge by virtue of which the order of the Circle Officer has also been set aside and the matter remanded back to the Circle Officer for fresh consideration. His grievance rises from the fact that the order of the Circle Officer was in favour of the appellants. If the order of the Sub-Divisional Officer was erroneous then the issue should have been confined to the order of the Sub-Divisional Officer and it should not have trickled down to the level of the Circle Officer for his re-adjudication, which was not even a matter of challenge strictly.

3. The learned Single Judge had this to observe with regard to the reason why even the Circle Officer's order was required to be interfered with. He had this to say in paragraph 11, 12, 13 and 14:-

"11. Coming to the present case, this Court finds that the procedure prescribed under Section 48D of the B.T. Act and the rules made thereunder have not been strictly complied with by the respondent Circle Officer, Bhargama, while allowing the claim of the petitioners or their father under Section 48 of the B.T. Act



by two different orders dated 24.12.1992 (Annexure-8) and 12.11.2002 (Annexure-2). Similarly, respondent Sub-Divisional Officer, Forbesganj, has not applied his judicial mind to the facts of the case and in a most mechanical manner, he has reversed and set aside the first order dated 24.12.1992 passed by the Circle Officer, Bhargama, and has ignored the subsequent order dated 12.11.2002, which is not sustainable in law.

12. For the reasons recorded above, the impugned appellate order dated 20.05.2003 (Annexure-1) passed by the respondent Sub-Divisional Officer, Forbesganj, in Appeal Case No.261 of 1992-93 as also the original order dated 24.12.1992 (Annexure-8) passed in Case No.71 of 1992-93 and subsequent order dated 12.11.2002 (Annexure-2) passed in Case No.10 of 2002-03 by the respondent Anchal Adhikari, Bhargama, are hereby set aside and the matter is remitted back to the respondent Anchal Adhikari, Bhargama, for deciding the claim of the petitioners under Section 48D of the B.T. Act afresh strictly in accordance with law.

13. It appears that with the passage of time many orders/documents are not in possession of the parties and further, there appears to have been change of ownership of lands under dispute also. Whether purchases made by the private respondents are bonafide and from the rightful owners, or, whether the original raiyat, Basudeo Yadav, is still owner of the lands under dispute are also required to be gone into by the respondent Anchal Adhikari, while passing the final order afresh.

14. The petitioners shall be at liberty to file a fresh application in the prescribed form 'C' laying their claims over the lands under dispute under Section 48D of the B.T. Act. They shall be obliged to give full details of the lands under dispute as also full details of the



landholders/raiyats and thereafter the matter shall be proceeded afresh after giving opportunity of hearing to all concerned including respondent Nos.4 to 8."

4. In view of the above, in order to do complete justice, the learned Single Judge has rightly quashed the entire proceeding and remanded the matter to the Circle Officer for a fresh adjudication in accordance with law.

5. The challenge made by the appellants with regard to the said part of the order of remand to the Circle Officer after it being set aside cannot be faulted in view of the findings and the manner in which the order was passed by the Circle Officer.

6. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.01.2017
Transmission Date	NA

