

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7046 of 2008

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Azizul Rahman & Ors

.... Petitioner/s

Versus

Bibi Maheru & Ors

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ray Saurabh Nath

For the State : Mr. AC to AAG 4

For private respondent no. 1 Mr. Md.Anis Akhtar
 Mr. Arif Siddiqui

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

07 20.06.2017

1. Heard learned counsel for the petitioners, learned counsel appearing for private respondent no. 1 as well as learned counsel for the State.

2. Petitioners have preferred this writ petition for setting aside the order dated 03.01.2008 passed by SDO, Barsoi in Revenue Appeal no. 04/2006-07 under section 48(D) of Bihar Tenancy Act by which and whereunder he set aside the order dated 26.07.2005 passed by the Circle Officer, Balrampur in Case no. 15/2005 in a proceeding under section 48(D) of Bihar Tenancy Act on the ground that mother and sister of the petitioners had filed petition of relinquishment before him in respect of disputed plots.

3. The brief fact of the present case is that petitioners filed petition under section 48(D) of Bihar Tenancy Act before the Circle Officer, Balrampur in respect of khata no. 146 khesra nos. 15, 32 area 43, 36 decimals of village Fatehpur. The Circle Officer, Balrampur issued notice to private respondent no. 1 but the aforesaid notice was said to be refused to be accepted by private respondent no. 1 and



thereafter, again, a fresh notice was sent to private respondent no. 1 but again, private respondent no. 1 refused to accept the aforesaid notice. Lastly, notice was hanged and thereafter, the Circle Officer inspected the disputed plots and passed order in favour of the petitioners under section 48(D) of Bihar Tenancy Act. The aforesaid order of the Circle Officer, Balrampur was challenged before SDO, Barsoi in Revenue Appeal no. 04/2006-07. The private respondent no. 1 challenged the order of the Circle Officer, Balrampur on various grounds including non-service of notice upon her. However, SDO, Barsoi allowed the aforesaid appeal on the ground as mentioned above.

4. Learned counsel appearing for the petitioners submits that learned SDO, Barsoi committed error in passing the impugned order because he over-looked the findings as well as inspection report of the Circle Officer, Balrampur and only on the ground of filing of petition of relinquishment, passed the impugned order and failed to consider as to whether the aforesaid petition of relinquishment was genuine or not?. Learned counsel further submits that only State has filed counter affidavit and State has admitted almost all relevant facts but took stand that the petitioners ought to have filed petition under section 48(E) of Bihar Tenancy Act. Learned counsel for petitioners further submits that State has no right to change the stand and moreover, section 48(E) of Bihar Tenancy Act is not relevant in the back drop of the fact of the present case.

5. On the other hand, learned counsel appearing for the private respondent no. 1 submits that, as a matter of fact, no notice or



summon was even served upon private respondent no. 1 and learned Circle Officer, Balrampur passed order under section 48(D) of Bihar Tenancy Act behind the back of private respondent no. 1. He further submits that private respondent no. 1 raised this point before the appellate court that no notice on her was served but the appellate court did not mention the aforesaid fact in the impugned order. He further submits that family members of recorded sikmidar had filed petition of relinquishment and on the ground of the aforesaid petition learned SDO, Barsoi rightly passed the impugned order.

6. Perusal of impugned order dated 03.01.2008 goes to show that learned SDO, Barsoi did not take any step to verify the genuineness of petition of relinquishment and only on the basis of the aforesaid petition learned SDO, Barsoi passed the impugned order. However, SDO, Barsoi did not even think it proper to inspect the disputed plots nor gave any opportunity to the petitioners to rebut the aforesaid petition filed on behalf of so-called family members of the petitioners. Therefore, in my view, learned SDO, Barsoi committed error in passing the impugned order. Moreover, it has been argued on behalf of the private respondent no. 1 that the Circle Officer, Balrampur did not give any opportunity of hearing to private respondent no. 1 and, therefore, in my view, for the ends of justice, matter should be sent to the Circle Officer, Balrampur for a fresh decision.

7. Accordingly, the order dated 03.01.2008 passed by SDO, Barsoi in Revenue Appeal no. 04/2006-07 as well as order dated 26.07.2005 passed by the Circle Officer in Case no. 15/2005 are set



aside and the matter is remitted back to the Circle Officer, Balrampur for passing a fresh order after giving due opportunity of hearing to the parties to the above stated proceeding and furthermore, the Circle Officer, Balrampur shall pass order on petition under section 48(D) of Bihar Tenancy Act within three months from the date of receipt/production of a copy of this order and the parties shall appear before the Circle Officer, Balrampur in the above stated case within four weeks from today.

Shahid

(Hemant Kumar Srivastava, J)

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