

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10622 of 2007

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1. Md.Eshraphil Ansari son of Md. Hakim
 2. Md. Harik Miya son of Rahamulla Miya
 Both resident of village Simri Halbapatti PS Simari Dist. Buxar
 Petitioner/s

Versus

The State of Bihar & Ors
 Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shree Kant Pandey
 For Respondent nos. 7 & 8 Mr. Aditya Nath Pandey
 For the State Mr. Mahtab Alam, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

07 28.02.2017

1. Heard the parties.

2. Petitioners are aggrieved by order dated 19.5.2007/25.5.2007 passed by the Addl. Collector, Buxar in Misc. Settlement Appeal no. 76 of 2006-07/ 33 of 2006-07 by which he cancelled the parcha granted to the petitioners in Settlement Case no. 16 of 2002-03 and issued direction to the Circle officer, Simari to inspect the land in question and make recommendation for settlement of parcha in favour of suitable person. The Addl. Collector, while passing the impugned order, noticed that S.D.O. had not approved the recommendation of the Circle officer and without approval of the recommendation parcha was issued to the petitioners.

3. It is an admitted position that petitioners filed petition for settlement of khesra no. 2802 area 5 decimal of village Simari with them. The aforesaid land has been recorded as Gairmajarua Malik land of Bihar Sarkar but claim of the petitioners is that the aforesaid land was a **Gaddah** and subsequently, they filled up the aforesaid land



and, therefore, nature of the land became homestead. The Circle officer directed the concerned Gram Sabha for taking necessary steps and subsequently, general notice was issued and after recommendation of Gram Sabha, the Circle officer sent his recommendation to D.C.L.R who, in turn, recommended the proposal to S.D.O. The relevant file was produced before S.D.O and he put his signature below on the recommendation but failed to mention the word 'approved'. Thereafter, parcha was issued in favour of the petitioners. However, private respondent nos. 7 and 8 filed petition before S.D.O. for cancellation of parcha on the ground that they were in possession of the aforesaid settled land and the aforesaid settlement is adjacent to their house. The concerned S.D.O refused to cancel parcha and thereafter, private respondents filed appeal before the learned Collector who transferred the said appeal to Addl. Collector, Buxar who, in turn, passed the impugned order in the manner as stated above.

4. Learned counsel appearing for the petitioners submits that it is apparent from perusal of annexure 5 series that the concerned file was produced before the D.C.L.R and S.D.O and both officials as well as C.O signed the file. It is further submitted by him that the aforesaid fact goes to show that the then S.D.O approved the recommendation made by the C.O and D.C.L.R but the learned Addl. Collector overlooked the aforesaid fact and cancelled the parcha taking ground that the recommendation had not been approved by the concerned S.D.O. Learned counsel for the petitioners relied upon a decision reported in **2013 (2) PLJR SC 61 (Ropan Sahoo and another vs Ananda**



Kumar Sharma & ors) and submitted that in the above stated noted case also, relevant file was only signed by the concerned Minister and the Apex Court of this country observed that signature of the concerned Minister amount to his approval of the concerned proposal. He further submitted that in the present case also the C.O as well as D.C.L.R recommended the proposal and the concerned S.D.O put signature on the proposal which amounts to approval of the proposal and therefore, the learned Addl. Collector has committed error in cancelling the parhca.

5. On the other hand, learned counsel for private respondent nos. 7 and 8 refuted the above stated submissions arguing that, no doubt, the concerned, recommendation was signed by the S.D.O as there were signatures of the S.D.O, C.O and D.C.L.R on the recommendation but, as a matter of fact, mere signature of a particular officer does not demonstrate this fact that the aforesaid officer had applied his mind before putting his signature on the recommendation. He further submitted that moreover, Addl. Collector, Buxar has only directed the C.O. Simari to make physical verification of the plot in question and make recommendation for settlement in favour of appropriate person and, therefore, even if the settlement of the petitioners has been cancelled by the Addl. Collector, Buxar, then also, settlement of land in question may be made in favour of the petitioners, if they are found suitable for the settlement.

6. Having heard the contentions of both parties I went through the record. It is an admitted position that after recommendation of the CO and D.C.L.R, the concerned record was



put up before the S.D.O who put his signature below to the recommendation made by both the above stated officers. It is also an admitted position that the then S.D.O. did not write anything on the concerned record except putting his signature. Therefore, the aforesaid fact goes to show that the concerned S.D.O did not apply his mind before putting his signature on the concerned record. Therefore, in my view, Addl. Collector, Buxar rightly observed that the then S.D.O had not approved recommendation of the C.O. and D.C.L.R. Moreover, Addl. Collector, Buxar has only directed the C.O. Simari to make physical inspection of the plot in question and send his recommendation to settle the aforesaid land to eligible and appropriate person. Therefore, in my opinion, there is no need to interfere with impugned order because the petitioners still have opportunity to get settlement in their favour.

7. In the aforesaid circumstances, this writ petition stands disposed of giving direction to the concerned C.O. Simari to make spot inspection as per direction of the Addl. Collector, Buxar within one month from the date of receipt/production of a copy of this order, if the same has not been done as yet and submit his recommendation to the concerned S.D.O. within the above stated period of one month. It is also made clear that if the petitioners are found eligible and appropriate, concerned official may make settlement with the petitioners giving priority to them.

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(Hemant Kumar Srivastava, J)

