

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2290 of 2016

In
Civil Writ Jurisdiction Case No.15043 of 2005

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1. Indu Devi Wife of Shri Sheo Narayan Ravidas Resident of Village Mehdi, Police Station-Rupouli (Tikapatti), District -Purnia.
 2. Sanjo Devi Wife of Shri Shankar Ravidas Resident of Village Mehdi, Police Station-Rupouli (Tikapatti), District -Purnia.
 3. Seema Devi Wife of Shri Shankar Ravidas Resident of Village Mehdi, Police Station-Rupouli (Tikapatti), District -Purnia.
- Appellants

Versus

1. The State of Bihar
 2. The Sub Divisional Officer at Dhamdaha within the district of Purnia.
 3. The Anchal Adhikari at Rupouli within the district of Purnia.
 4. Most Lakshmi Devi Widow of Late Lachit Mandal
 5. Shri Krishnadeo Mandal Son of Late Lachit Mandal
 6. Shri Neeraj Mandal Son of Late Lachit Mandal No-4 to 6 residnet of Village-Harnaha, Post Office Mahdi, Police Station - Rupouli (Tikapatti), District Purnia.
 7. Smt. Bhutki Devi Daughter of Late Lachit Mandal and widow of Late Jogi Mandal Village and Post office - Sameli, Plice Station - Kursela, District-Katihar.
 8. Shri Dhaneswar Mandal Son of Late Sant Ram Mandal
 9. Shri Duryodhan Mandal Son of Late Sant Ram Mandal No- 8 and 9 residents of village- Harnaha, Post Office at Mehdi, Policeb Station -Rupouli (Tiikapatti), District- Purnia.
 10. Shri Dinesh Prasad Singh Son of Late Ramakant Singh
 11. Shri Damodar Singh Son of Late Saryug Singh No-10 and 11 originally residents of village- Govindpur police Station - Gopalpur District- Bhagalpur and at present of village- Harnaha, Police Station- Rupouli (Tikapatti), District-Purnia.
- Respondents

Appearance :

For the Appellants :	Mr. Arun Prasad Ambastha, Advocate
For the Respondent State:	Smt. Nutan Saya, AC to AAG-12
For the Pvt. Respondents :	Mr. Binoy Kumar Singh, Advocate
	Ms. Sweta Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 12-02-2018



Heard counsel for the appellants, counsel for the State as well as the private respondents.

Writ application of the appellants was dismissed by the learned single Judge vide his order dated 15.11.2016. They were compelled to file the writ application to set aside an order passed under Section 48D of the Bihar Tenancy, Act, 1885, in relation to the land which the petitioners claim to be second purchaser. The purchase was effected through a sale deed dated 17.06.2002 from one Dinesh Prasad Singh, who was said to be the first purchaser. The dispute arose because vide order dated 18.07.1998 passed in Case No.12/1996-97 by the Anchal Adhikari, Rupauli, when the claim of the respondent Nos. 4 to 6 in relation to the land in question under Section 48D of the Bihar Tenancy Act was allowed.

Since a stand was taken that the 48D order was a manipulated and begotten kind of order which was passed by the then Anchal Adhikari, Rupauli, by manipulating the records and that too without hearing anybody especially the so-called Munni Lal Singh, who anyway was dead but despite the above fact, notices were shown to have been validly served through U.P.C. and virtually this ex-parte order under Section 48D was passed.

The Court directed the State counsel to file counter affidavit. No response was coming, therefore, the Court was compelled to



order presence of the Circle Officer and had also to impose cost upon him for not filing counter affidavit as well as not producing the original record relating to Case No.12/1996-97.

The original record reveals all. The order sheet indicates that on none of the dates the so-called respondent Munni Lal Singh or any of his representative was present. The reason was obvious that Munni Lal Singh was dead. The record was manipulated showing service under U.P.C. and thereafter the order under Section 48D was passed in favour of respondents 4 to 6.

Even though the learned single Judge has dismissed the writ application on the ground that 48D order had attained finality because even an appeal preferred before the Sub Divisional Officer, Dhamdaha, stood dismissed and that formed the basis of dismissing the writ application as well.

But the facts which is revealed from the original record it is evident that the 48D order was passed against a dead man and the order was ex-parte and to that extent the said order is a nullity in the eye of law and, therefore, the same cannot be used to assail the right, title and interest of these appellants who were petitioners before the writ Court.

We are of the opinion that a vital error has crept into the decision of the learned single Judge who, may be because of lack



of proper investigation and assistance, could not get to the root of the matter as to the circumstances under which the order under Section 48D of the Bihar Tenancy Act was procured by the respondents 4 to 6.

Appeal is allowed. The impugned order dated 15.11.2016 is set aside. As a consequence thereof even the order dated 18.07.1998 passed in Case No.12/1996-97 by the Anchal Adhikari, Rupauli, as well as the order dated 20.02.2003 passed in Appeal Case No.15 of 2002 by the respondent Sub Divisional Officer, Dhamdaha, Purnea, also needs to be set aside. Appeal stands allowed in terms of the above.

The original record is returned to the State counsel which should be sent back to the Circle Officer, Rupauli, for safe keeping.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	13.02.2018
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