

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.517 of 2014

In
Civil Writ Jurisdiction Case No.15788 of 2005

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1. Md. Faruque
 2. Md. Umar
 3. Jamila Khatoon
 4. Jaigun Nisha Sons and daughters of Late Rahimuddin
 5. Most. Khatoon wife of Late Rahimuddin
All resident of village- Kalidas Tola, Bhagmara, P.S. Pothia,
District- Kishanganj

... .. Respondent Nos 4 to 8- Appellant/s
Versus

1. The State Of Bihar
2. The Sub-Divisional Officer, Kishanganj
3. The Anchal Adhikari, Pothia Anchal, District- Kishanganj
... .. Respondent Nos.1 -3- Respondent Nos.1 -3
4. Mofizuddin, Son Of Late S.K. Dabiruddin, Resident Of Village- Chaundi,
Police Station- Pothia, District- Kishanganj.
..... Petitioner-Respondent.
5. Kafil, Son of Kabir,
Resident Of Village- Kadamgachi, Police Station- Pothia, District-
Kishanganj.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raghieb Ahsan, Senior Advocate Mr. Khalid Ahsan, Advocate
For the State	:	Manish Dhari Singh, AC to Advocate General
For the Respondent No.4:		Mr. Ashok Kr. Mallick, Advocate Mr. Murli Dhar, Advocate
For the Respondent N0.5 :		Ms. Saba Ashfaque, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-01-2018

Having heard learned counsel for the parties, we are of the considered view that in this case, the learned Writ Court has primarily interfered into the matter finding that the claim made by



the appellants herein did not meet the requirement of Section 48D of the Bihar Tenancy Act inasmuch as the report of the *Halka Karamchari*, Annexure-2 in the writ petition, based on which the decision was taken, did not indicate that the private respondents were in continuous possession for more than 12 years. Taking note of all these circumstances, the learned Writ Court has allowed the writ petition. In our view, if the learned Writ Court was of the considered opinion that the factual requirement as are contemplated under Section 48D of the B.T. Act was not established from the report of the *Halka Karamchari*, the matter should have been remanded to the Circle Officer to cause an enquiry into the matter and take a decision after hearing all the concerned parties by quashing the impugned order.

The rights, if any, available to the appellants under Section 48 D of the B T Act, as have been taken away, in our considered view, it is a fit case, where the appeal should be allowed in part, the orders passed by the learned Writ Court are interfered with to the extent that the matter should be remanded to the Circle Officer who shall re-examine the entire issue, including the report of the *Halka Karamchari*, Annexure-2 to the writ petition, evaluate it in the backdrop of Section 48 of the B.T. Act, give opportunities to all the parties to lead evidence and thereafter take a decision in



accordance with law. On the parties appearing before the Circle Officer, respondent No.3, with a certified copy of this order, the Circle Officer shall proceed to decide the issue afresh in accordance with law as indicated hereinabove within three months on appearance of the parties. That apart, if required, the original landlord shall also be noticed and heard in accordance to law.

The appeal stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.01.2018
Transmission Date	

