

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16331 of 2014

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1. Jitendra Kumar Thirani son of Late Brij Mohan Thirani at 14, Jatin Bagachi Road, Kolkatta - 700029, represented through its power of attorney holder Pramod Baid son of Surajmal Baid, resident of Saudagar Patti, P.O. and P.S. Kishanganj, District - Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Kishanganj
2. The Deputy Collector Land Reforms, Kishanganj
3. The Anchal Adhikari, Tedhagach, District - Kishanganj
4. Department of Revenue and Land Reforms, Govt. of Bihar through its Principal Secretary, Bihar, Patna
5. The Divisional Commissioner, Purnia
6. The Additional Collector, Kishanganj
7. Md. Khatib Alam S/o Late Navod Ali, R/o Katua , Kaliaganj, P.S. Palasi, District-Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Sinha

For the Respondent/s : Mr. SC10 Sheo Shankar Pd.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

6 17-09-2018 Heard Mr. Hemendra Prasad Singh, learned counsel appearing on behalf of the petitioner, Mr. Anil Kumar, A.C. to S.C.8 and learned counsel for the respondent No.7.

The petitioner has filed this writ petition to quash the order dated 21.06.2014 passed by D.C.L.R., Kishanganj whereby the application filed by the petitioner for opening of Jamabandi after fixation of rent of the lands of Khata No.202 Plot No.1031, 1033 and Khata No.66 Plot Nos.1407 and 1408 situated at Mauja Phulwari, Thana No.66, District-Kishanganj has been dismissed



on the ground that the portion of the land stand in the name of State of Bihar and the same is being settled for holding cattle fair.

Mr. Hemendra Prasad Singh, learned counsel for the petitioner submits that Smt. Savitri Devi, mother of the petitioner was occupancy raiyat of the ex-landlord and after vesting of the intermediary interest, the mother of the petitioner became raiyat. During the revisional survey, the lands were wrongly recorded in the name of State of Bihar but the mother of the petitioner remained in cultivating possession. The State of Bihar filed Encroachment Case No.375 of 1960. The petitioner filed Title Suit No.87 of 1962 for declaration of right, title, interest and confirmation of possession and in the alternative, recovery of possession, if found dispossessed from the suit land. The suit was contested by the State of Bihar. The suit was dismissed by Munsif I, Kishanganj. The petitioner filed Title Appeal No.6 of 1968 and the 2nd Additional Sub Judge, Purnea set aside the judgment and decree of the Munsif and declared the right, title of the petitioner and also held that the land was wrongly recorded in the name of State of Bihar. Thereafter, the petitioner filed the petition before the Circle Officer but the Circle Officer forwarded the matter to the D.C.L.R. The D.C.L.R. without looking into the judgment and decree passed in Title Appeal No.6 of 1968 dismissed the petition



of the petitioner for assessment of rent holding that cattle fair is being held by the State of Bihar on the part of the land.

The State of Bihar has also filed counter-affidavit and admitted that by judgment and decree passed in Title Appeal No.6 of 1968, the right, title of the petitioner has been declared but since long cattle fair is being held on some part of the land of the petitioner. Respondent No.7 is the person, in whose favour, the cattle fair is settled.

Having considered the submission, I find that the petitioner filed the petition for assessment of rent before the D.C.L.R. under Section 4(h) of the B.T. Act. It is not in dispute that Civil Court has already declared the right, title of the petitioner over the land and the order of the Civil Court has become final. The State cannot deny the right, title and possession of the petitioner. Since the D.C.L.R. refused to assess the rent of the land under Section 4(h) of the B.T. Act, the order of D.C.L.R is appealable.

In this view of the fact, I find that since efficacious and alternative remedy is available to the petitioner, the petitioner may firstly exhaust the alternative remedy and agitate all the facts before the Collector for assessment of rent of the lands.

Accordingly, I dispose of this writ petition with liberty to



the petitioner to file appeal before the Collector against the order dated 21.06.2014 passed by D.C.L.R. and on such, Collector shall dispose of the appeal of the petitioner within six months from the date of its presentation.

Accordingly, this writ petition is disposed of.

(Prabhat Kumar Jha, J)

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