

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1464 of 2014
IN
Civil Writ Jurisdiction Case No 18357 of 2009

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1. 1. (i) Md Samshad
2. (ii) Md Ekhlak
3. (iii) Md Jamshed
4. (iv) Md Khurshid
5. (v) Md Murshid
6. (vi) Kamrujamma
7. (vii) Zakia Hussain
8. (viii) Md Harul All S/o Late Sk Gharroo
9. 2. Bibi Jamina W/o Late Sk. Gharroo All Residents of Village Rampur
Mohanpur, Purbi Bhag, P.S. and District Araria.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Sub Divisional Magistrate, Araria.
3. The Circle Officer, Araria.
4. Kishundeo Bahardar S/o Late Dhorai Bahardar @ Dhorai Bahardar Resident of
Village Rampur Mohanpur, P.S. and District Araria.
5. Md Taslim S/o Sk Fakir
6. Md Arfin S/o Sk Hamid
7. Most Aniza W/o Sk Hamid, D/o Sk Jabbar
8. Md Anwarul Haque S/o Shamid
9. Md Azam S/o Shamid
10. Sk Abbas S/o Manouwar Ali
11. Md Illiyas S/o Manauwar Ali
12. Md Noorul Hoda S/o Sk Serajuddin
13. Md Ainul Haque S/o Sk Serajuddin
14. Md Sk Salimuddin S/o Gul Mohammad
15. Md Alimuddin S/o Gul Mohammad
16. Md Sk Kalimuddin S/o Gul Mohammad All Residents of Village Rampur
Mohanpur, Bhudhaswari, Purbi Bhag, P.S. and District Araria.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr Raghieb Ahsan, Sr Advocate with Mr Anil Prasad Singh & Ms Saba Ashfaque, Advocates
For the S t a t e	:	Mr Pawan Kumar, AC to GA I
For Respondent No 4	:	Mr Ramakant Sharma, Sr Advocate with Mr Rajesh Kumar, Advocate

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CORAM: HONOURABLE DR JUSTICE RAVI RANJAN
And
HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 17-09-2018

IAs No 395 of 2015 and 7060 of 2016

These applications have been filed by the proposed heirs of deceased respondent No 4 for substitution of his heirs and legal representatives stating that he died on 15.05.2014 leaving behind the persons as mentioned in paragraph 3 of IA No 7060 of 2016.

2 Having heard the parties, these applications are allowed. Let the names of respondent No 4 be expunged and in his place, names of his legal heirs and representatives, as mentioned in paragraph 3 of IA No 7060 of 2016 be substituted in the Memo of Appeal.

3 IAs No 395 of 2015 and 7060 of 2016 stand disposed of.

LPA No 1464 of 2014

4 We have heard the parties.

5 The order dated 08.05.2014 passed by the learned Single Judge is under challenge in this intra-Court appeal by which *CWJC No 18357 of 2009* filed by the petitioners/appellants was disposed of recording as follows:



“4. Having considered the matter, in my view, the petitioners having participated in the proceedings, in those proceedings not having challenged the validity of the inspection report are precluded from raising their grievance before the Court at this stage. The records of the Circle Officer, the correctness of which is being challenged, have first to be challenged before the Circle Officer. That is settled in the case of State of Maharashtra –Versus- Ramdas Shrinivas Nayak and another since reported in AIR 1982 Supreme Court 1249.”

6 However, so far the amount, which is to be paid by the beneficiaries under Section 48D of the Bihar Tenancy Act to the erstwhile *raiyat*, it has been held that the same has to be decided in accordance with the decision of the State Government as well as the law laid down by this Court in the case of *Raghunath Prasad Singh – Versus- State of Bihar & Others* since reported in 2007 (3) PLJR 769. Such amount should be calculated accordingly and be paid to the *raiyat*.

7 However, the petitioners/appellants are only aggrieved by the aforesaid quoted portion of the judgment as well as the findings recorded in this regard in the said order. It is contended that the appellants, though are purchasers from the *raiyat* but they were neither made parties nor were heard and, therefore, the orders should be set aside and be remanded to the Circle Officer for fresh consideration after complying the principles of natural justice.



8 This issue was raised before the learned Single Judge. However, it has been recorded by him that it is apparent from the record that they were heard and the matter was decided after hearing them. Therefore, on this ground, the petitioners/appellants cannot succeed. It is also stated that the order is based upon an old report which was prepared behind the back of the writ petitioners/appellants/purchasers and even before the proceeding was started. Thus, on that count also, the order impugned has to be set aside.

9 However, we have perused the records. It is apparent, therefore, from the order sheet appended with the order sheet of the Circle Officer, which is available along with the pleadings, that notice was issued upon the *raiyat* and he had stated that he has already sold the land to one Gharroo. It is also stated in the order dated 30.02.2007 that the aforesaid Gharroo and intervener Bibi Zamina had already filed their application before the Circle Officer even then notice was again served. The appellants/petitioners had also moved in appeal before the Sub Divisional Officer. The appellate authority has also considered the same and has recorded in paragraph 3 that it is apparent from perusal of the original record that the appellants appeared before the Circle Officer even then notice was again issued to the purchasers and, thereafter, it is stated that from the order dated



27.07.2006, 18.03.2006 and the subsequent orders, it is apparent that both the sides were present and this is also apparent that the vendor did not appear rather the purchaser appeared. It is also noticed in the appellate order that the appeal has been filed by the purchaser and the original *raiya*s are the respondents in the appeal. So far the report is concerned, it does not appear that the purchasers have ever challenged the report to be wrong. Therefore, the learned Single Judge has rightly recorded in his order that the correctness of the records before the Circle Officer has to be first challenged before him only.

10 Having regard to the aforementioned discussion and the facts and circumstances of the case, we are of the view that no case is made out warranting interference in the order passed by the learned Single Judge. As a result, this appeal is dismissed. However, there will be no order as to costs.

(Dr Ravi Ranjan, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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