

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1668 of 2015

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1. Vishwavijay Singh son Umashankar Singh, resident of Village- Barachahari, P.S.- Bagaha, District- West Champaran.
2. Yogendra Sah, Son of Late Indrassan Sah, resident of Village- Khoda Parasa, P.S.- Bagaha, District- West Champaran..... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reform, Bihar, Patna.
2. Commissioner, Tirhut Division, Muzaffarpur.
3. Collector cum District Magistrate, West Champaran at Bettiah. .
4. The Superintendent of Police, Bagaha, West Champaran. .
5. Land Reforms Deputy Collector, Bagaha, West Champaran. .
6. Officer-in-charge of Bagaha Police Station in District of West Champaran.
7. The Circle Officer, Bagaha, West Champaran. .
8. The Sub-divisional Magistrate, Bagaha, West Champaran. .
9. Rudal Sahni Son of Late Bari Sahi resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
10. Prakash Yadav Son of Jai Lal Yadav, resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
11. Jagarnath yadav Son of Gena Yadav, resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
12. Ram Awadh Sahni S/o Briksha Sahani resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
13. Ram Awadh Sahni S/o Briksha Sahani resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
14. Briksha Sahani Son of Late Yadu Sahani. resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
15. Jita Yadav, Son of Saheb Yadav, resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
16. Ramaiyan Yadav , S/o Jhagru Yadav, resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
17. Nathuni Yadav, S/o Sahdeo Yadav resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
18. Binod Yadav, S/o Babulal Yadav, resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran.
19. Shambh Sah S/o Briksha Sah, resident of Village- Khoda Parsa, P.S.- Bagaha, District- West Champaran. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Buxi S.R.P. Sinha, Sr. advocate
For the State Respondent/s : Mr. AC to AAG 6
Mr. Uday Shanker Mishra
For the private respondents : Mr. Ravi Shanker Ganguly

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER



5 18-09-2018 Heard both sides.

The petitioners have filed this writ petition for a direction to the Circle Officer, Bagaha, West Champaran, respondent No.7 and the Deputy Collector Land Reforms (DCLR), Bagaha, West Champaran, respondent No.5 to execute the order dated 02.07.2013 passed by respondent No.5 in Land Dispute Resolution Case No. 117/12-13 and for concluding the execution case No. 3/2013-14 pending before respondent No. 5.

The admitted facts are that the petitioners claiming to be the rightful owners of land of Khata No. 89, Mauza Khoda Parsa, Khesra 445, measuring one bigha six Katha and 17 dhur filed Case No. 117/12-13 before the DCLR, Bagaha against respondent Nos. 9 to 19 under the Bihar Land Dispute Resolution Act, 2009 (hereinafter referred to as the Act). The DCLR after hearing the parties found the claim of the petitioners genuine and directed the Circle Officer, Bagaha, respondent No.7, to take action against private respondent Nos. 9 to 19 vide order dated 02.07.2013. The petitioners claimed that they purchased the land and got their names mutated but respondent Nos. 9 to 19 started creating trouble. A proceeding under Section 144 of the Cr. P. C. was also initiated. The petitioners filed petition before the DCLR to get his own order executed and on such Execution case NO. 3/2013-14 was registered and the DCLR directed the Circle Officer to execute the order but the Circle Officer sat over the matter.

The State respondents filed counter affidavit stating that in view of judgement rendered by this court in the case of ***Maheshwar Mandal & Anr v. the State of Bihar & Ors (CWJC No. 1091 of 2013)*** wherein it has been held that the DCLR has got



no jurisdiction to decide the case involving the question of title, the Circle Officer has sworn affidavit that the order of DCLR is not executable.

Respondent Nos. 9 to 19 also filed counter affidavit and submitted that vendors of the petitioners have got no valid right and title to transfer the lands. The title of Mithrani Devi was declared in Title Suit No. 33/64 of 1945 and the High Court also dismissed the appeal. The DCLR while deciding the Case No. 117/12-13 entered into the complicated question of title and held that petitioners have got title over the land by virtue of sale deed. This finding is against the finding of Civil Court confirmed by the High Court. The learned counsel for the respondent Nos. 9 to 19 admitted the facts that respondent Nos. 9 to 19 filed appeal being BLDR Appeal No. 360 of 2013 before the Commissioner, Tirhut Division, Muzaffarpur and the appeal was dismissed for non prosecution. The restoration petition was also dismissed. The respondent Nos. 9 to 19 did not file any writ petition before this court on wrong advice that in view of judgement rendered by this court in the case of *Maheshwar Mandal* (supra) the order of the DCLR is illegal.

In view of submission of both sides, it is admitted that the petitioners filed BLDR Case No. 117/12-13 and the DCLR found the claim of the petitioners genuine and, accordingly, directed the Circle Officer to execute his order dated 02.07.2013 passed in Case No. 117/12-13. The petitioners also filed Execution case No. 3/2013-14 but the Circle Officer sat over the matter on assumption that in view of order passed by division Bench in the case of *Maheshwar Mandal* (supra) and direction issued by Principal Secretary, department of Land Revenue, Government of



Bihar, Patna the order of DCLR is not executable but I find that the Circle Officer should have reported to the superior authority instead of expressing his opinion about the non executability of order of DCLR. The Circle Officer being a junior officer to the DCLR cannot express his own opinion in the execution case. Respondent Nos. 9 to 19 filed appeal and after dismissal of the appeal by the Commissioner, Tirhut Division, Muzaffarpur they did not file any writ petition. In this view of the fact the order of DCLR remained intact unless it is set aside by the superior authority. Accordingly, I direct the DCLR, Bagaha to proceed further and dispose of the Execution case No. 3/ 2013-14 in accordance with law. The respondents 9 to 19 may also file writ petition or resort to appropriate remedy against the order of Commissioner.

With the aforesaid direction, this writ petition is disposed of.

Personal appearance of the Circle Officer and DCLR are dispensed with.

(Prabhat Kumar Jha, J)

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