

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17741 of 2017

Vinod Kumar Tiwari, S/o Late Tripuranand Tiwari, R/o Pokhra Mohalla, West of R.N. College, Hazipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate cum Second Appellate Tribunal, Public Grievance Redressal, Samastipur.
3. The Additional Collector-cum-First Appellate Tribunal, Public Grievance Redressal, Samastipur.
4. The Sub-Divisional Public Grievance Redressal Officer, Shahpur Patory, Samastipur.
5. The Circle Officer cum Public Grievance Redressal Officer, Shahpur Patory, Samastipur.
6. Md. Hanif,
7. Md. Kalam,
8. Md. Jamal,
9. Md. Pedu, all are sons (6 to 9) of Late Ghulam Rasul Khalifa, Resident of Village+PO+PS- Shahpur Patory, District- Samastipur.
10. Anand Bhagwan Choudhary,
11. Ram Bhawan Choudhary @ Ballo Choudhary, Both (10 & 11) are sons of Late Tapeswar Choudhary, Resident of Village+P.O.- Shahpur under, P.S.- Shahpur Patory, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Abhishek Kumar, Advocate
For the State	:	Mr. Rishi Raj Sinha SC19

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 25-09-2018

Heard both sides.

2. The petitioner has filed this writ petition for setting aside the order dated 21.09.2017 (Annexure-13), passed by the District Magistrate-cum-Second Appellate Tribunal, Public Grievance Redressal, Samastipur (respondent no.2) whereby the Second Appeal No.505/2A/2017 was disposed of.



3. The relevant facts for disposal of this writ petition can be summarized as follows:

Survey Plot No.712 of Khata No.185, Area 13 Acres 2 Decimals situated in Mauza Chaksalem, P.S. Shahpur Patory was purchased by the grandfather of the petitioner. The grandfather of the petitioner also purchased different lands along with other lands of the same village from English Kothi in the year 1907 and came in possession. The lands were mutated. Grandfather of the petitioner died in the year 1938 leaving behind his three sons, namely, Suresh Chandra Tiwary, Tripuranand Tiwary @ Mohan Tiwary and Mrinalkant Tiwary @ Fanibhushan Tiwary and four daughters, namely, Rajeshwari Devi, Shakuntla Devi, Saraswati Devi and Kamla Devi. After death of Ramdhari Tiwary @ Dhari Tiwary, the grandfather of the petitioner, all the three sons of Ramdhari Tiwary came in joint possession and some parts of Plot No.712, Area 7 Bighas 12 Kaththas 12 Dhurs was sold in favour of Ghulam Rasul Khalifa, Smt. Siya Devi and Tapeswar Tiwary through a sale deed executed in the year 1956. The remaining part of the land remained in possession of the father and uncle of the petitioner. The petitioner also came in possession. The petitioner filed petition before the Circle Officer, Shahpur Patory for demarcation of his land of Khata No.185, S.P. No.712 situated in



village Chaksalem and on such Demarcation Case No.26 of 2002-03 was registered. The Circle Officer directed the petitioner and private respondents to be present for demarcation of the land and accordingly, issued letter on 10.12.2002 (Annexure-7). When no measurement was done, the petitioner had no option but to move before the Sub-divisional Public Grievance Redressal Officer, Shahpur Patory, Samastipur by filing Complaint Case No.505 of 2017. The Circle Officer appeared and stated before the Public Grievance Redressal Officer that due to deposit of insufficient fees for demarcation, the demarcation of land could not be held. The petitioner thereafter deposited Rs.900/-. On such the Circle Officer fixed 31.05.2017 for measurement and demarcation but no measurement was held. The Sub-divisional Public Grievance Redressal Officer, Shahpur Patory, Samastipur directed the Circle Officer, Shahpur Patory (Respondent no.5) to complete the demarcation of the land till 05.06.2017 but till date no measurement was done. The petitioner filed appeal being First Appeal No.505/IA/2017 before the Additional Collector-cum-First Appellate Tribunal, Public Grievance Redressal, Samastipur (Respondent no.3) who again directed vide order dated 21.07.2017 to make demarcation of the land of the petitioner but no action was taken by the Circle Officer. Thereafter the petitioner filed petition



before the District Magistrate-cum-Second Appellate Tribunal, Public Grievance Redressal, Samastipur (Respondent no.2) who dismissed the petition of the petitioner holding that the demarcation involves question of right and title and, therefore, demarcation could not be done.

4. The learned counsel for the petitioner submits that the Collector has illegally dismissed the appeal of the petitioner as the Circle Officer reported that Plot No.712 is not existing on the site and the same involves question of title. It is submitted that petitioner wants only measurement and demarcation of his land bearing Plot No.712, Khata No.185 for which he deposited required fees.

5. The learned counsel for the respondents has very fairly submitted that if the land of the petitioner is not existing on the spot, it is the Circle Officer who has to get the land measured and report the same facts.

6. Having considered the facts aforesaid, I find that the petitioner has filed the petition before the Circle Officer for measurement and demarcation of his land bearing Khata No.185, Plot No.712 situated in village Chaksalem. If according to the report of the Circle Officer, the same is not existing on the spot, the Circle Officer should have reported this matter to the petitioner



after getting the lands measured on the spot but dismissal of the appeal of the petitioner by the Collector is absolutely illegal and unjustified. Accordingly, I set aside the order dated 21.09.2017 of the Collector as contained in Annexure-13 with a direction to the Circle Officer, Shahpur Patory, Samastipur to get the land of the petitioner measured and give the report to the petitioner within four months from the date of receipt of the order.

7. Accordingly, the writ petition stands disposed of with the aforesaid direction.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.10.2018
Transmission Date	NA

