IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.853 of 2012
IN
Civil Writ Jurisdiction Case No. 5590 of 2005

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1. Naresh Kumar Mandal @ Naresh Kumar Mandal Son Of Late Sitaram Mandal Resident Of Arga P.S. Birol, District Darbhanga
2. Raj Narain Mandal @ Raj Narayan Mandal Son Of Late Sitaram Mandal Resident Of Arga P.S. Birol, District Darbhanga

.... Appellant/s

Versus

1. The State Of Bihar
2. Member Board Of Revenue Of Bihar, Patna
3. The Additional Collector, Darbhanga
4. The Land Reform Deputy Collector, Biraul, Darbhanga
5. Shiv Lal Mandal @ Shiv Lal Mandal Son Of Late Mahabir Mandal Resident Of Village Arga, P.S. Biraul, District - Darbhanga
6. Bilti Devi W/O Deo Narain Mandal R/O Village - Arga, P.S. - Biraul, District - Darbhanga

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Binoy Kr. Singh No. I
For the State : Mr. Manoj Kumar AC to GP 24
For Respondent No. 5 : Mr. Shashi Nath Jha

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 01-02-2018

Seeking exception to an order dated 14.03.2011 passed in CWJC No. 5590 of 2005 by the learned Writ Court this appeal under Clause 10 of the Letters Patent has been filed.

Appellants herein were respondent nos. 5 and 6 in the writ petition in question and by the impugned order quashed the resolution of the Board of Revenue dated 21.02.2005 passed in

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Revision Case No. 141 of 2003 and the order passed in appeal by the Additional Collector, Darbhanga, on 26.05.2003 in Appeal No. 3 of 2001 has been set aside and the right of pre-emption of the original petitioner, respondent herein Shiv Lal Mandal, has been upheld.

Even for various grounds are raised in the affidavit and material produced before us and even the pendency of a Title Suit with regard to the area in question is indicated we find that in the writ petition, appellants herein Naresh Kumar Mandal and Raj Narain Mandal did not file their counter affidavit. It is their contention that the entire writ petition was heard and decided based on judgment of this Court without appreciating the fact that orders of the Board of Revenue and the appellate authority concluded by concurrent finding of fact has been interfered with without indicating as to what is the perversity in the concurrent finding which warrants interference in a petition under Article 226 of the Constitution.

We have gone through the entire order passed and we find that there is no finding recorded as to how the finding concurrent in nature recorded by the statutory authorities are unsustainable. Even without considering the relevant facts, particularly with regard to the Title Suit pending and various other issues having been adverted to, the writ petition was allowed. In our considered view the learned Writ Court has committed an error allowing the writ petition.

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Accordingly, we allow this appeal, quash the order dt. 14.03.2011 passed by the learned Writ Court and remand the matter back to the Writ Court restoring CWJC No. 5590 of 2005 to its original file with a direction to the office for its listing before an appropriate Bench.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
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