

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1863 of 2017

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1. Ranjit Singh,
2. Randhir Singh, Both sons of Late Ram Narayan Singh, resident of
Village- Sipara, P.S. Beur, District- Patna.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary Revenue Land
Reforms Department.
2. The State of Bihar through the Additional Collector, Patna.
3. Arvind Kumar Mouar, S/o Late Ajay Kumar Mouar, resident of Mouar
Lane, P.S. Sultanganj, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bakshi S.R.P.Singh, Sr. Adv.
Mr. Aditya Narayan Singh-1
Mr. Virendra Kumar Roy
For the Respondent/s : Mr. Asif Kalim AC to Aag12
For the Respondent No.3 : Mr.Dr. K.N.Singh,Sr. Adv.
Mr.Mithilesh Kumar with
Mr.Raj Kishore Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

7 16-07-2018 Heard Mr. Bakshi S.R.P. Singh, learned Senior Counsel

for the petitioners and Mr. K.N. Singh, learned Senior Counsel for

the respondent no.3.

Learned counsel for the State is representing respondent
no.1 and 2.

The petitioners have filed this writ petition for setting
aside the order dated 29.11.2016 passed in B.L.T. Case No.297 of
2016 by Member Administrative by which the order dated
08.08.2015 passed in Raiyati Land Case No.03/2015-16 and the



order dated 20.01.2016 passed by Additional Collector, Patna in Raiyati Appeal No.01/2015-16 have been set aside.

The Admitted facts are that the respondent no.3 filed Zamabandi Cancellation Case No.103/2013-14 for cancellation of Zamabandi No.1174 standing in the name of the petitioners. The Additional Collector, Patna vide order dated 10.03.2015 cancelled Zamabandi No.1174 standing in the name of the petitioners on the ground that there is no basis for creation of Zamabandi No.1174. The Additional Collector at the same time directed the D.C.L.R., Sadar Patna to hold inquiry under Sections 5, 6, 7 of the B.L.R. Act in order to find out the person as to who is raiyat of the aforesaid land. The petitioners against the aforesaid order passed in Zamabandi Cancellation Case No.103/2013-14 preferred appeal before the Collector, Patna being Appeal No.02 of 2015-16 and the same is still pending. The D.C.L.R., Sadar, Patna in pursuance of the direction given in Zamabandi Cancellation Case No.103/2013-14 initiated Raiyati Land Case No.03/2015-16 to decide the point as to who is raiyat of the land in dispute. The D.C.L.R. vide order dated 08.08.2015 (Annexure-4) held that since the question of title is involved and who is entitled to be declared as raiyat cannot be decided without deciding the title of the person over the land and accordingly dispose of Raiyati Land



Case No.03/2015-16.

The petitioners preferred Raiyati Appeal No.01/2015-16. The Additional Collector, Patna also held that the dispute involves question of title and accordingly dismissed the appeal on 20.01.2016. Against the aforesaid order, the petitioners preferred B.L.T. Case No.297 of 2016. The Member Administrative held by the impugned order that since the dispute has already been decided in Partition Suit No. 52/27 and thereafter the dispute was created by Karmchari and Anchaladhikari with regard to the raiyati right of the party and declared respondent no.3 as raiyat and directed the D.C.L.R. to fix fair rent of the land and at the same time the Circle Officer was directed to mutate the name of the petitioners and create new Zamabandi in the name of the petitioners and issue rent receipts.

Learned counsel for the petitioners submits that Member Administrative recorded the finding travelling beyond the records. The judgment and decree of Partition Suit No.52/27 was not filed with the Memorandum of grounds preferred before the B.L.T. The D.C.L.R. and the Additional Collector, on the basis of the facts available before them have clearly held that there involves a question of title and before deciding the question of title the raiyati right of a person on the disputed land cannot be



decided. Accordingly, disposed of the case giving liberty to the party to resort proper remedy for declaration of right and title in the Civil Court. It is submitted that Member Administrative, B.L.T. has committed illegality in deciding the raiyati rights of respondent no.3.

On the other hand Mr. K.N. Singh, learned Senior Counsel appearing on behalf of respondent no.3 submits that admittedly Zamabandi No.5 is still standing in the name of respondent no.3. Zamabandi No.5 has not been cancelled. The Additional Collector in Zamabandi Cancellation Case No.103/2013-14 only cancelled Zamabandi No.1174, which was illegally created in favour of the petitioners without any documents and the petitioners have preferred Zamabandi Cancellation Appeal No.02/2015-16 before the Collector, as provided in the Act and the same is still pending. It is submitted that the order of B.L.T. is based on documents and does not require any interference.

Having considered the submissions of both sides, I find that admittedly Zamabandi No.5 was earlier created but the records of Zamabandi No.5 and concerning Register-2 was not available. Zamabandi No.1174 was created in the name of the petitioners. The respondent no.3 filed petition for cancellation of



Zamabandi before the Additional Collector under Section 9 of the Mutation Act and the Additional Collector vide order dated 30.03.2015, as contained in Anenxure-3 cancelled Zamabandi No.1174 standing in the name of the petitioners. Admittedly the appeal preferred by the petitioners is still pending before the Collector against the order of cancellation.

From perusal of the order of the D.C.L.R. in Raiyati Land Case No.03/2015-16, the D.C.L.R. has perused the entire record of the land of Khata No.10 and 63 situated in mouza-Mohanpur, P.S. 27 and came to the conclusion that the declaration of raiyati right involves question of title and therefore without declaration of title raiyati right of the petitioners or other respondents cannot be decided in a proceeding under Sections 5, 6, 7 of the B.L.T. Act and accordingly disposed of Raiyati Land Case No.03/2015-16. The Additional Collector also dismissed the appeal holding that without deciding the question of title, raiyati right of party cannot be decided but from perusal of the record of B.L.T., I find that Member Administrative has presumed the correctness of entry on the basis of judgment and decree passed in Partition Suit No.52/27 but when the learned counsel for the respondent no.3 was requested to produce judgment and decree of Partition Suit No.52/27, no such judgment and decree was



produced. Therefore, I find that the Member Administrative, B.L.T. has committed illegality in declaring raiyati right of the respondent no.3 over the land without deciding the question of title and presumed that the respondent no.3 has got title over the land without having any document and judgment of Civil Court on question of title. The Member Administrative has gone beyond record that names of the respondent no.3 be mutated and rent receipts be issued but there is no need of that as the Zamabandi No.5 is still existing in the name of respondent no.3.

Therefore, I find that the order passed by Member Administrative in B.L.T. Case No.297 of 2016 (Annexure-6) is not sustainable. Accordingly, the order dated 29.11.2016 passed in B.L.T. Case No.297 of 2016 is hereby quashed and accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J)

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