

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.842 of 2014

In

Civil Writ Jurisdiction Case No.17750 of 2008

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Bibi Hadisha Khatun, wife of Md. Mahoshin Nadar, R/o Village-
Lachchaminiya, Anchal Banma-Itahari, P.S.- Salkhua, District- Saharsa.

... .. Petitioner- Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. District Magistrate, Saharsa.
3. Superintendent of Police, Saharsa.
4. D.S.E., Sarb Sikcha Abhiyan, Saharsa.
5. S.H.O. Salkhua Police Station, District- Saharsa.
6. Md. Zaffar Alam, S/o Late Qyamuddin, R/o Village- Lachchaminiya, P.S.-
Salkhua, District- Saharsa.

... .. Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. S. A. Alam, Advocate
Ms. Anjum Perveen, Advocate

For the Respondent/s : Mr. Nadim Seraj, GP 5
Mr. Shailesh Kumar, AC to GP 5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-02-2018

Seeking exception to an order passed by the Writ Court on
26.11.2012 in Civil Writ Jurisdiction Case No. 17750 of 2008, this
appeal has been filed under Clause 10 of the Letters Patent.

Appellant claims to be the owner of the land in question
bearing Khata No.299, Plot no.4362 (Old), 4303 (new) purchased
through the registered sale deed bearing no.16551 dated
15.12.2005 from one Saiyed Jamiur Rehman and others. When a
school building was being constructed in the area said to have



been purchased by the appellant, appellant made a complaint to the Collector and it is seen that the District Magistrate, Saharasa directed the Circle Officer to cause an enquiry and submit a report. The Circle officer is seen to have visited the spot, made enquiries from persons on the spot and the neighbours and submitted a report by holding that no right accrues to the appellant and sale deed seems to have been false. However, while doing so, the Circle Officer did not notice the appellant, did not hear her and even did not bring on record any document to show that the sale deed was a false and fabricated document. The learned Writ Court dismissed the writ petition on the ground that it is a civil dispute and, therefore, a civil suit should be filed.

During the course of hearing today, learned counsel for the appellant made a fair statement to say that the appellant would be satisfied if proper enquiry is caused into the matter of execution of the sale deed and after hearing the appellant, the District Magistrate or the officer authorised by him, passes an appropriate order.

Learned counsel for the State refuted the aforesaid and argued that once the Circle Officer has already conducted an enquiry and submitted the report, no further enquiry is required.



Having heard learned counsel for the parties, we went through the records of the writ petition and we find from the counter affidavit filed by the respondent nos.2, 3 and 5 in paragraph 7 that even though it is indicated that on complaint raised by the appellant, the District Magistrate directed for an enquiry into the matter by the Circle officer, but on a perusal of the pleadings available on record in the writ petition, we find that the Circle officer went to the spot, conducted an spot enquiry, made oral enquiry from certain persons and he is said to have submitted a report. Neither the report is available on record, nor the reasons for holding that the sale deed is false and fabricated document is available on record. That apart, from the pleadings available, it is clear that the Circle Officer caused an enquiry behind the back of the appellant by visiting the spot without notice to the appellant and without granting an opportunity of hearing to the appellant. The appellant in her reply to the counter affidavit of respondent nos.2, 3 and 5 filed before the Writ Court has specifically averred that the entire enquiry was held behind her back and no notice was issued to her.

Taking note of all these circumstances, we allow this appeal and the writ petition and quash the order passed by the learned Writ Court on 26.11.2012 in Civil Writ Jurisdiction Case



No.17750 of 2008 and direct the District Magistrate concerned to authorise an officer to cause an enquiry with regard to the claim of the appellant. The authorised officer shall notice all concerned, including the appellant, hear the appellant, evaluate the documents and thereafter submit a report to the District Magistrate, who shall, based on the report so submitted, pass an appropriate order with regard to the issue and dispute in question. The entire exercise shall be conducted by the Collector within a period of three months from the date of receipt of a certified copy of the order.

Till the enquiry is not conducted by the Collector, status quo with regard to the area in question, as is existing today, shall remain maintained.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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