

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1868 of 2018

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Ramayan Mahto, Son of Late Chanchal Mahto, Resident of Village- Cheriya Bariyarpur, P.O.- Shreepur, Police Station- Cheriya Bariyarpur, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reform and Revenue Department, Government of Bihar, Patna.
2. The Secretary, Chief Minister Secretariat, Government of Bihar, Patna.
3. The Additional Secretary, Land Reform and Revenue Department, Government of Bihar, Patna.
4. The Director, Land Record and Survey, Land Reform and Revenue Department, Government of Bihar, Patna.
5. The Special Work Officer, Land Record and Survey, Directorate of Land Record and Survey, Land Reform and Revenue, Department, Government of Bihar, Patna.
6. The District Magistrate/Collector Cum District Survey & Settlement Officer, Begusarai.
7. The District Consolidation Officer, Begusarai.
8. The Additional Collector, Begusarai.
9. The Sub Divisional Officer, Begusarai Sadar, District- Begusarai.
10. The Sub Divisional Officer, Manjhaul, District- Begusarai.
11. The Sub Divisional Officer, Bakhari, District- Begusarai.
12. The Sub Divisional Officer, Teghara, District- Begusarai.
13. The Sub Divisional Officer, Balia, District- Begusarai.
14. The Circle Officer, Cheriya Bariyarpur, District- Begusarai.
15. The Circle Officer, Khodawandpur, District- Begusarai.
16. The Circle Officer, Chhaurahi, District- Begusarai.
17. The Circle Officer, Gadhpura, District- Begusarai.
18. The Circle Officer, Bakhari, District- Begusarai.
19. The Circle Officer, Nawkothe, District- Begusarai.
20. The Circle Officer, Begusarai, District- Begusarai.
21. The Circle Officer, Barauni, District- Begusarai.
22. The Circle Officer, Birpur, District- Begusarai.
23. The Circle Officer, Matihani, District- Begusarai.
24. The Circle Officer, Samho, District- Begusarai.
25. The Circle Officer, Teghara, District- Begusarai.
26. The Circle Officer, Mansoorchak, District- Begusarai.
27. The Circle Officer, Bhagwanpur, District- Begusarai.
28. The Circle Officer, Bachhwara, District- Begusarai.
29. The Circle Officer, Balia, District- Begusarai.
30. The Circle Officer, Sahebpur Kamal, District- Begusarai.
31. The Circle Officer, Dandari, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar, Advocate.
Mr. Kundan Kumar, Advocate.



For the Respondents : Mr. Pushkar Narayan Shahi- AAG 6
Mr. Mritunjay Kumar, AC to AAG 6

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-09-2018

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

i. For issuance of direction to the respondent authorities to conclude the special survey and settlement throughout district Begusarai strictly in terms of the Bihar Special Survey and Settlement Act, 2011 read with the Bihar Special Survey and Settlement Rules, 2012, as the survey in the district of Begusarai is going on for last four years.

ii. For a further direction to the respondent authorities to expedite the process of the survey settlement in the district Begusarai and conclude the same strictly in accordance with the law within a short span of time as the work of survey and settlement is going on for last four years but de hors the rule and ignoring the provisions of the Bihar Survey and Settlement Act, 2011 and the Rule, 2012.

iii. For a further direction to the respondent authorities to appoint licensed surveyor in terms of Section 15 of the Act, 2011, read with Rule 18, 19 and 20 of the Rule



12 as the licensed surveyor has been assigned a very important role in the process of survey and settlement but till date licensed surveyor has not been appointed but in spite thereof survey is going on for last four years ignoring the provisions of law and rule made there under.

iv. For a further direction as required under Section 7 of the Act, 2011 read with Rule 8 of the Rule 12 as the main work of identification, demarcation of public land, government land, land related to own property resources and like other records of the same has been vested upon the khanapuri party but the said party has not been constituted till date.

v. For a further direction to the respondent authorities to consider the objections of the land holders submitted in Form 2 but none of the objections have been disposed of in terms of the Settlement Act, 2011 and the Rule, 2012.

vi For a further direction to the Respondent authorities to verify digital maps prepared through modern technology and carry out ground drilling exercise strictly in accordance with law as the respondent authorities has never visited the spot more particularly, the lands for physical verification and for testing truthfulness of the digital maps.

vii. For a further direction to the respondent authorities to prepare technical guidelines in terms of Section 25 of the Act of 2011 which is mandatory and without preparing



a technical guideline the survey work could not be completed.

viii. For a further direction to the respondent authorities to rectify the admitted mistakes in the survey in the district of Begusarai as admitted in enquiry report dated 16.08.2017 and also consider petitioners' different reports particularly for indication of land of raiyats who are in possession of the land on the basis of different kinds of patta settlement land granted in bhudan widening of road under ceiling Act etc.

2. It is the case on behalf of the petitioner that despite Bihar Special Survey and Settlement Act, 2011 for preparation of the survey and settlement, the State has not been completed. It is the case on behalf of the petitioner that even as on date, the technical guidelines, as required under Rule 21 of the Bihar Special Survey and Settlement Act, 2012, have not been prepared.

3. It is submitted that even as per Section 21 of the Rules 2012, the Director, Land Record and Survey, Bihar was required to frame technical guidelines within sixty days from the date of the notification of the said rules for meeting any of all the purposes of the aforesaid 2011 Act. It is submitted that unless and until the technical guidance is framed and issued, the work of survey and settlement, for which the Act, 2011 was enacted, has not been completed and, as such, the same is



not possible at all in absence of any technical guidance. It is submitted that, in fact, there is no sufficient manpower appointed/recruited by the State Government to carry out the work under the Act, 2011 and the Rules, 2012.

4. In response to the notice, Mr. P.N. Shahi, learned AAG 6, has appeared on behalf of the respondents.

4.1. A counter affidavit has been filed on behalf of the respondents affirmed by the Deputy Secretary cum Assistant Director, Land Records, Bihar. It appears and it is not in dispute that technical guidelines is yet to be framed and issued. It is submitted that a meeting was convened on 04.06.2018 in which the target of completion of survey in all the districts of Bihar have already been fixed and notified accordingly vide Memo No. 1008 dated 03.07.2018.

4.2. It is further stated and submitted that Section 15 of the Bihar Special Survey Act, 2011 has been amended vide notification dated 04.09.2017 and, in place of "licensed surveyor" it is substituted by the "Amin". It is further submitted and stated that Chapter-III of the Act, 2011 has been deleted and, therefore, whatever was required to be done earlier by the "licensed surveyor" the same is required to be done by the "Amin". It is further stated that in the meeting convened and held on



04.06.2018, a road map has been prepared under which a time limit has been fixed to complete the land survey work in 38 districts of Bihar up to the year 2020-21.

5. Heard learned counsel appearing for the respective parties at length.

5.1. At the outset, it is required to be noted that the Bihar Special Survey and Settlement Act, 2011 has been enacted by the Bihar Act 24, 2011 and come into effect in the year 2011 itself. The statement and object has been stated in the Preamble which reads as under:

Preamble:-(i) An Act Whereas the preparation and maintenance of to-date record of rights is the basic plank on which revenue and land resource management and administration rest;

(ii) WHEREAS, experience shows that revisional survey and settlement operations, following conventional methods, in some parts of the State, have been long drawn out, cumbersome and exorbitantly expensive;

(iii) WHEREAS, revisional survey operations in Purnea, Katihar, Kishanganj and Araria were carried out from 1952 to 1986; in Muzaffarpur, Sitamarhi, Sheohar and Vaishali from 1959 to 1988; in Saharsa, Madhepura and Supaul from 1962 to 2002 and these operations are still on in Darbhanga, Madhubani and Samastipur since 1965; in Bhojpur, Buxar, Rohtas and Kaimur since 1959; in Gaya, Jahanabad, Arwal, Aurangabad and Nawada since 1965; Bhagalpur and Banka since 1965 and in Patna since 1986;



(iv) *WHEREAS, the very purpose of a revisional survey and settlement is defeated if the time span on which it is undertaken is as long as reflected in the foregoing;*

(v) *WHEREAS, no revisional survey and settlement since cadastral survey could be carried out in 12 districts in Bihar, namely, Begusarai, Khagaria, Lakhisarai, Sheikhpura, Jamui and Munger in Munger Division; Saran, Siwan and Gopalganj in the Saran Division; East Champaran and West Champaran in the Tirhut Division and Nalanda in Patna Division;*

(vi) *WHEREAS, Continuous Khatian (Register-1B), Khesra Register and Register-II (Tenants' Ledger) supposed to be maintained in the Anchal Offices in an up-to-date manner, have not been maintained as such, and consequently, transfers, successions, mutations, etc., taking place from time to time, have not been reflected therein;*

(vii) *WHEREAS, computerization of land records as sponsored by the Government of India some years ago has not followed a uniform approach;*

(viii) *WHEREAS, in the event of non-synchronisation of data put into the computer with to-date ground realities, there has been a gap between successive claims of title and a reflection of the same through land records;*

(ix) *WHEREAS, modern technology is available to minimize time spent on survey part, while the settlement aspect may be judiciously squeezed without sacrificing quality, transparency and grievance redressal;*

(x) *WHEREAS, land remaining the mainstay of development activities, current title,*



possession and classification of lands needs to be ascertained conclusively in order that land acquisition operations are not vitiated by unfounded assertions, fraud and fabrication and also that agricultural credit, subsidy, relief and insurance related activities are carried on smoothly.

(xi) WHEREAS, digital maps prepared through modern technology need be verified and compared with the maps prepared through conventional methods as well as a ground truthing of the same is necessary, the technically qualified Licensed Surveyors may be assigned with this task.

(xii) WHEREAS, in the post-mapping stage, it will be necessary to prepare basis record of rights taking into account the up-to-date title, ownership and possession and other requisite details of land, and the aforesaid technically qualified persons may be assigned with this task on an on-going basis.

(xiii) WHEREAS, an in-built computerized and digital system of the maintenance of the Record of Rights including maps in a sine-qua-non for all development processes and the aforesaid technically qualified persons may be assigned with this task on a regular basis.

6. The State Government has enacted Bihar Special Survey and Settlement Act, 2011 to carry out the survey and settlement work. Under Rules 2012 and as per Rule 21, the technical guidance are required to be framed for meeting any of the purposes of the Act, 2011. Under Rule 21, the Director, Land Reforms and Survey, Bihar was required to frame the technical guidance within 60



days from the date of notification of the Rules 2012. It is an admitted position that till date the technical guidelines has not been framed. Unless and until the technical guidelines are framed, the further process of survey and settlement is not possible. Even there shall be a required large number of "Amins" to be appointed for completion of work of survey and settlement.

6.1. From perusal of the counter affidavit and the documents produced along with the same, it appears that there is no sufficient manpower even as of today to carry out the work of survey and settlement. Without sufficient number of manpower and without technical guidance, even if the road map is prepared, the State Government will not be in a position to complete the work of survey and settlement. In the counter it is stated that the preparation of the technical guidelines is under presumption and it is likely to be completed very soon. It is very unfortunate that though the Act has been enacted as far back as in the year 2011 and the Rules have been framed in the year 2012, there is no progress in completing the work of survey and settlement for which the Act, 2011 has been enacted.

6.2. In view of the reasons stated above, we dispose of the present writ application by directing the State Government or Director, Land Records to frame and publish the technical guidelines as per Rule 21 of the Rules



2012 within a period of six weeks from today and, thereafter, the State Government shall recruit the required number of "Amins" as defined under Rule 2 (xi) of 2011 Act to carry out the work of survey and settlement as per the Act, 2011 and Rules, 2012 at the earliest so that the work of survey and settlement, for which the Act, 2011 has been enacted, is completed in the State of Bihar by the State of Bihar within the time prescribed by the committee. According to the minutes of the meeting held on 04.06.2018, the State government is directed to see that the work of survey and settlement under the Act, 2011 is completed at the earliest.

7. With this present petition stands disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2018
Transmission Date	20.09.2018

