

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2119 of 2015

In

Civil Writ Jurisdiction Case No.3062 of 2002

Pramod Chand Bothra S/o Late Abhoy Chand Bothra Resident of Village -
Chhatapur, P.S. - Chhatapur, District – Supaul ... Appellant
Versus

1. The State of Bihar.
 2. The District Collector, Supaul.
 3. The Deputy Collector Land Reforms, Tribeniganj, District - Supaul.
 4. Akhtar Ali S/o Late Asgar Ali resident of Village + PS - Chhatapur, Dist.
Supaul ... Respondents
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Appearance :

For the Appellant : Mr. Chandra Bhushan Das, Adv.
For the State : Mr. Arun Kumar Bhagat, AC to AAG XII

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 13-09-2018

This intra-Court-appeal arises from a judgment and order, dated 20.08.2015, of a learned Single Judge passed in C.W.J.C. No. 3062 of 2002 whereby the learned Single Judge while allowing the writ petition after quashing the order of the District Collector, Supaul, passed in Miscellaneous Revenue Cases No. 81 and 82 of 1995 has also proceeded to quash the order of the Deputy Collector, Land Reforms, Triveniganj, district Supaul, dated 12.12.1994, passed in Cases No. 1 of 1994-95 and 4 of 1995-96 in exercise of power vested under Sections 5, 6 and 7 of the Bihar Land Reforms Act (hereinafter referred to as, 'the Act'), whereby Jamabandi was created in the name of the father of the petitioner, Abhoy Chand Bothra, who after filing the writ petition has deceased and stand substituted by the appellant herein.



2. The appellant feels aggrieved by that part of the judgment of the learned Single Judge whereby the order of the Deputy Collector, Land Reforms, Triveniganj, Supaul, dated 12.12.1994, whereby Jamabandi was created in the name of the father of the petitioner, has been quashed.

3. We have heard Mr. Chandra Bhushan Das, learned counsel for the petitioner-appellant and learned counsel for the State.

4. On query made to Mr. Das as to the maintainability of the appeal considering that the writ petition was allowed, it is submitted by Mr. Das that it is the quashing of the order passed by the Deputy Collector, Land Reforms, in Cases No. 1 of 1994-95 and 4 of 1995-96, which has aggrieved the petitioner to move this Court as that was passed by the Deputy Collector, Land Reforms, in his favour and there was no occasion for the learned Single Judge to quash the said order, after having quashed the order passed by the Collector, Supaul, on lack of jurisdiction.

5. Mr. Das, in reference to an order passed by the Additional Collector, enclosed as Annexure 3 to the supplementary affidavit filed by the appellant-petitioner before the learned Single Judge, has submitted that an order was passed by the Additional Collector in Case No. 10 of 1961-62 in exercise of power vested under Section



4(h) of the Bihar Land Reforms Act, 1950 (hereinafter referred to as, 'the Act') whereby the Additional Collector while upholding the vesting of the estate in the State of Bihar, has reserved his opinion in so far as land related to the 'Haravat Estate' is concerned. According to Mr. Das this order of the Additional Collector was put to challenge until the Supreme Court and has been confirmed at each stage. According to Mr. Das it is recognizing the right of the appellant-petitioner thereunder that the Deputy Collector, Land Reforms, has proceeded to pass the orders in Cases No. 1 of 1994-95 and 4 of 1995-96, creating Jamabandi, which was illegally interfered with by the District Collector, Supaul, prompting the appellant-petitioner to move this Court in the writ jurisdiction, but, the learned Single Judge while upholding the grievance of the petitioner to quash the order of the District Collector, Supaul, has committed an error in quashing the order passed by the Deputy Collector, Land Reforms, as well when it suffered no infirmity.

6. Per contra, it is argued by Mr. Arun Kumar Bhagat, Assisting Counsel to the learned Additional Advocate General XII, that the reason, for interfering with the order passed by the Deputy Collector, Land Reforms, is present in the order of the learned Single Judge, which is self explanatory and calls for no



interference. He submits that the remand order of the learned Single Judge would cause no prejudice to the petitioner because the matter has been remitted to the Deputy Collector, Land Reforms, for passing fresh order in accordance with law and when all issues are open for presentation.

7. We have heard learned counsel for the parties and we have perused the records and we take notice of the limited issue raised in this appeal whereby the learned Single Judge has chosen to interfere with the order passed by the Deputy Collector, Land Reforms, in Cases No. 1 of 1994-95 and 4 of 1995-96 whereby Jamabandi was created in the name of the appellant-petitioner's family. The learned Single Judge has upheld the plea of lack of jurisdiction in the order of the District Collector to interfere in matters relating to creation of Jamabandi, but, having done so, the learned Single Judge has opined that even the Deputy Collector, Land Reforms, Tribeniganj, while directing for creating Jamabandi in the name of the writ petitioner, had exceeded his jurisdiction because his orders were not in consonance with the position reflecting from the order of the Additional Collector, Saharsa, passed in exercise of power vested under Section 4(h) of 'the Act', which has been upheld until the Supreme Court. Learned Single Judge has also taken note of the fact that neither the writ petitioner



nor his ancestors were intermediary nor belonged to the 'Haravat Estate'. Learned Single Judge taking note of the absence of discussion in the order of the Deputy Collector, Land Reforms, as to the foundation for creation of Jamabandi has chosen to remand the matter to said authority.

8. In our opinion, learned Single Judge while quashing the order of Collector has found the same fault in the exercise of Deputy Collector, Land Reforms, to quash his order as well on the well settled principle that where quashing of an order gives rise to another illegal order, both orders need to be quashed. Accordingly, the discretion has been exercised by the learned Single Judge and which is sound on principle as well as on facts noted.

9. We also note that no prejudice is caused to the appellant by the remission of the matter to the Deputy Collector, Land Reforms, because all issues have been kept open and it is now for him to support his claim for creation of Jamabandi with supporting documents and the law on the issue.

10. According to Mr. Das the claim of the appellant-petitioner is supported by the order passed by the Additional Collector under Section 4(h) of 'the Act'. In our opinion, since learned Single Judge while remanding the matter has directed the



Deputy Collector, Land Reforms to bear in mind the said order of the Additional Collector, even on this count, there is no cause for any indulgence with the order impugned.

11. Finding no other issues for indulgence, we dispose of the appeal without interfering with the order of the learned Single Judge, which suffers no infirmity.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Shamshad/-

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