

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3095 of 2019

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Md. Irfan, aged about 60 years, son of Md. Muslim, Resident of Village-Gothani, P.O. Balha Gothani, P.S.- Kusheshwar Asthan, District- Darbhanga, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors Bihar
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
3. The Commissioner, Darbhanga Division, Darbhanga.
4. The Collector and District Magistrate, Darbhanga.
5. The Sub-Divisional Officer, Biraul Darbhanga, Bihar
6. The Circle Officer, Kusheshwar Ashtan, District- Darbhanga
7. The Deputy Collector Land Reforms Biroul, Darbhanga.
8. Dr. Anil Kumar Singh, son of Dr. Dwarika Prasad Singh resident of Village-Attapur Police Station- Hasanpur, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Manish Kumar No 13 Mr. Rohit Kumar
For the State	:	Mr.Subash Chandra Yadav, GP-15 Mr. Rakesh Kumar Shrivastava, AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 18-02-2019 Heard learned counsel for the parties.

2. This writ application has been filed against an order dated 04.10.2018, passed by the Bihar Land Tribunal (for short ‘the Tribunal’) in B.L.T. Case No. 522 of 2017, whereby an order passed by the Collector, Darbhanga dated 29.03.2017 in Miscellaneous (Basgit Parcha) Appeal No. 17 of 2009-10, has been set aside.

3. Evidently, the order dated 29.03.2017, passed by the Collector was in exercise of the power under Section 21 of



the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter to be referred to as 'the Act').

4. It is noteworthy that after having set aside the order of the Collector, the learned Chairman of the Tribunal has, by the impugned order, remanded the matter back to the Collector of the district for passing an order afresh, after hearing the parties, in accordance with law and the manner prescribed.

5. Learned counsel, appearing on behalf of the petitioner, assailing the impugned order dated 04.10.2018, has submitted that even if the Tribunal was satisfied that the order of the Collector required interference, instead of remanding the matter back to the Collector, the Tribunal should have remanded the matter back to the Circle Officer, who has competence to issue the *Basgit Parcha*.

6. I will consider this aspect of the matter after noticing the short facts of the case.

7. Respondent no.8 is admittedly the land owner of the land, in question, which he and his brother had purchased through a registered sale deed dated 29.03.1963. The petitioner had filed an application for grant of *Basgit Parcha* over 13 decimals and 10 decimals of land purchased by the private respondent in respect of Plot Nos. 488 and 489, respectively.



The petitioner claimed himself to be the privileged person and privileged tenant in occupation of the land in question under the tenancy of the private respondent and his brother.

8. It appears from the order of the Tribunal that the order of the Circle Officer was passed on the application on 03.02.1994. The Tribunal has noted that before the said order dated 03.02.1994 was passed, no notice was ever issued to the land owner. The Tribunal has mainly taken into account the two facts to allow the application, namely, (i) There was nothing on record to show that the petitioner was in possession of the land in question as a privileged tenant of the land in question. (ii) There is no finding recorded by the Collector to the effect that the petitioner was a privileged tenant and he was in possession over the land in question.

9. Learned counsel, appearing on behalf of the petitioner, has submitted that the finding of the Tribunal to the above effect is erroneous. He has relied on a report of the Circle Officer to contend that the petitioner was, in fact, in possession over the land in question. The report of the Circle Officer bears the signature of the Deputy Collector Land Reforms and others also. It is accordingly his submission that the Tribunal has erred while interfering with the order of the Collector in the



background of the above-noted facts. He has also submitted that the Tribunal has thus failed to notice the factum of the possession of the petitioner over the disputed land.

10. What is evident from the impugned order of the Tribunal, the materials available on record and submissions advanced on behalf of the petitioner that despite service of notice, the petitioner had not appeared before the Tribunal. Had he appeared, he could have raised the claim which he is raising now. In any view of the matter, once the Tribunal has remanded the case back to the Collector, the petitioner shall certainly have an opportunity to explain his case before the Collector. The plea that the matter could have been remanded back to the Circle Officer is not sustainable. The Tribunal has interfered with the order of the Collector and the Collector had passed the order in exercise of the power under Section 21 of the Act. Since the Collector was exercising his statutory power, the Tribunal has rightly remanded the matter back to the Collector, for adjudication of the disputes between the petitioner and the contesting respondents.

11. Situated thus, I do not find any cogent reason to interfere with the impugned order.

12. The petitioner shall be at liberty to raise all the



pleas which is available to him, before the Collector, Darbhanga, where the matter has been remanded back. It goes without saying that the Collector, being the revisional authority, shall not be prejudiced by any observation made by the present order or the order of the Tribunal.

13. Learned counsel for the petitioner has argued that, in the facts and circumstances of the case, this Court should grant the *status quo*. I need not pass any such order, in the present facts and circumstances.

14. The petitioner shall be at liberty to apply for grant of *status quo* before the Collector, which shall be disposed of in accordance with law, in the background of the stand, which the petitioner may take before the Collector

15. The writ application stands disposed of with the aforesaid observation.

(Chakradhari Sharan Singh, J)

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