

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9420 of 2019

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Gaffar Mian Son of Late Idu Mian Resident of Village- Khiri, P.S.-
Bhagwanpur, District- Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Kaimur, Bhabhua.
3. The Circle Officer, Bhagwanpur, Kaimur, Bhabhua.
4. Bina Agrawal Wife of Late Suresh Chandra Agrawal Resident of Village-
Khiri, P.S.- Bhagwanpur, District- Kaimur (Bhabhua), at present Bhabhua
Ward No.16, P.S.- Bhabhua, District- Kaimur (Bhabhua).
5. Rajeev Kumar Agrawal Son of Late Suresh Chandra Agrawal Resident of
Village- Khiri, P.S.- Bhagwanpur, District- Kaimur (Bhabhua), at present
Bhabhua Ward No.16, P.S.- Bhabhua, District- Kaimur (Bhabhua).
6. Sanjeev Kumar Agrawal Son of Late Suresh Chandra Agrawal Resident of
Village- Khiri, P.S.- Bhagwanpur, District- Kaimur (Bhabhua), at present
Bhabhua Ward No.16, P.S.- Bhabhua, District- Kaimur (Bhabhua).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Rakesh Kr. Shrivastave, AC to GP-15
		Mr. Ram Ishwar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 30-07-2019 Heard learned counsel for the parties.

2. The order passed by the Bihar Land Tribunal, Patna in B.L.T. Case No. 599 of 2015 is under challenge in the present writ application whereby the petitioner's challenge to an order dated 29.09.2018 passed in Basgit Purcha Appeal Case No. 02/2005-06 by the Collector, Kaimur at Bhabhua has been turned down.

3. The facts, which have been recorded in the impugned order, are not in dispute. The petitioner was



granted Basgit Purcha under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 (for short 'the Act') treating him to be a privileged tenant of one Shiv Govind Prasad Agrawal whose heirs are on record as private respondents no. 4 to 6. The order granting Basgit Purcha under the Act was challenged by the son of said late Shiv Govind Prasad Agrawal, namely, Suresh Chandra Agrawal by making an application under Section 21 of the Act. The Collector found the manner of issuance of Basgit Purcha to be in conflict with the provisions of law and accordingly he had set aside the order of the Circle Officer granting Basgit Purcha, by an order dated 03.11.2004 and remanded the matter back to decide the same afresh in accordance with the provisions of the Act. On remand, the Circle Officer, after hearing the parties, by an order dated 02.06.2005 held that the proceedings in Basgit Purcha Case No. 10/1981-82 was erroneous and accordingly cancelled the Basgit Purcha granted to the petitioner. An appeal was thereafter filed by him giving rise to Basgit Purcha Appeal Case No. 02/2005-06 which too was dismissed by an order dated 02.06.2005, which came to be challenged before this Court by filing writ petition giving rise to CWJC No. 6016 of 2009. The writ



petition was transferred to Bihar Land Tribunal for adjudication in exercise of power under Section 15 of the Bihar Land Tribunal Act, 2009 and upon transfer, B.L.T. Case No. 599 of 2015 came to be registered, wherein the impugned order has been passed.

4. Be it noted that the petitioner did not question the order dated 03.11.2004 passed by the Collector, Kaimur whereby the matter was remanded back to the Circle Officer for taking a decision afresh. The petitioner did participate in the proceeding before the Circle Officer on remand made by the Collector. The Tribunal, upon examining the materials on record and the facts pleaded on behalf of the parties has specifically come to a finding on the basis of the petitioner's own admission that he had a house and a homestead land was purchased by his son. The Tribunal, relying on this Court's decision in the case of *Rajendra Sah vs. State of Bihar* reported in **2006(2) PLJR 443** has held that the petitioner could not be treated to be a privileged tenant within the meaning of Section 2(j) of the Act.

5. Learned counsel appearing on behalf of the petitioner assailing the impugned order has submitted that the Collector's order dated 03.11.2004 passed in exercise of



power under Section 21 of the Act itself was illegal as the Collector did not have the authority under the Act to set aside the order of the Circle Officer whereby Basgit Purcha was issued. He has referred to Section 21 of the Act which came to be introduced in 1989 by way of amendment. He has submitted that since Basgit Purcha case before the Circle Officer was initiated in 1981-82 and the order for grant of Basgit Purcha was issued in 1982, subsequent amendment introduced in the Act conferring power on the Collector under the said section, shall have no application. He has relied on a decision of this Court in case of Om Prakash Singh vs. State of Bihar & Ors. reported in 2004(2) PLJR 621 to bolster his contention.

The said submission is not acceptable for the reason that not only that the petitioner accepted the order dated 03.11.2004 passed by the Collector whereby the matter was remanded back to the Circle Officer, he fully participated in the proceeding before the Circle Officer. He did not raise any objection on this ground at any point of time and, therefore, he is estopped from questioning the correctness of the proceeding before the Circle Officer on remand.

6. In view of the discussions above, I do not find



any illegality or infirmity in the impugned order. This writ application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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