

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12400 of 2016

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Shablam Devi Wife of late Parmeshwar Sah Resident of Village- Phulparas,
P.S. Phulparas, District Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
2. The Collector, District Madhubani.
3. The Additional Collector, District Madhubani.
4. The Anchal Adhikari Phulparas, District Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dhirendra Kumar Jha
For the State	:	Mr.Subhash Chandra Yadav- Gp-15
		Mr. Rakesh Kumar, AC to GP 15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 08-03-2019 Heard learned counsel for the parites.

This writ application has been filed for a direction to the respondent-authorities to restore the petitioner's possession over the land, in question, appertaining to Khesra No. 277, Khata No. 292, and Thana No. 105 in the district of Madhubani admeasuring 04 katha and 06 dhur.

It is the petitioner's claim that the said land was settled with the petitioner's husband and his three brothers under the Bihar Privileged Persons Homestead Tenancy Act, 1947.

It is stated in the writ application that the rent receipts were being issued on payment of rent by the petitioner's



husband regularly. Since because of flood the house of the petitioner's husband was washed away, they had to shift to some other place, but when they returned back, they were objected to by the Officer-in-charge of the police station, as in the meanwhile the police Station had come up over the land in question. The petitioner is said to have approached the authorities for restoration of possession of the land, in question, which has been denied, as has been asserted by the petitioner.

A counter affidavit has been filed on behalf of the State of Bihar. While admitting that *Jamabandi* is running in the name of the petitioner's husband Parmeshwar Sah and others, it has been averred that the land in dispute was a *Kacha* road and some portion of it was occupied by the police station before 1970. It has also been stated that, in course of inquiry, it was learnt that there was never any house over the land in dispute, which was ever possessed by the petitioner. It is further stated in the counter affidavit that the *Parcha* issued to the petitioner is false, fabricated and has been obtained in collusion with Anchal Amlas.

It is also stated in paragraph 5 of the counter affidavit that the petitioner has her own homestead establishment at the distance of one kilometer from the disputed plot, where she



resides with her son. To reiterate the aforesaid stand, it has further been stated in paragraph 17 of the counter affidavit that the Additional Collector misdirected himself, on the basis of forged and fabricated *Parcha* and issued the letter to Anchaladhikari and Officer-in-charge of the police station, asking them to restore the petitioner's possession. The statements made in the counter affidavit have not been denied by filing any rejoinder.

Mr. Dharendra Kumar Jha, learned counsel, appearing on behalf of the petitioner has submitted that the very fact that *Jamabandi* is still running in the name of the petitioner's husband, is enough to establish that the petitioner's husband was granted *Parcha*, based on which he was occupying the said piece of land. He has also submitted that merely by denying the claim of the petitioner stating the *Parcha* itself to be forged and fabricated, the State-respondents cannot deny the petitioner's rightful and legal claim.

Learned counsel, appearing on behalf of the State-respondents, on the other hand, has submitted that the writ application is founded on incorrect facts. According to him, in view of categorical stand taken in the counter affidavit, the petitioner is not entitled to any relief.



The nature of dispute which has arisen, as has been noticed above, in view of contradictory stand taken on behalf of the petitioner and the State-respondents, this Court, in exercise of power under Article 226 of the Constitution of India cannot resolve the issue. The questions to be adjudicated are disputed questions of facts.

Learned counsel, appearing on behalf of the petitioner, has attempted to convince this Court that the documents clearly show that the petitioner's husband was granted *Parcha*.

If it is the claim of the petitioner that possession of the land is not being restored to the petitioner, she has a statutory remedy under the Bihar Land Disputes Resolution Act, 2009. It is true that in the light of this Court's decision in the case of **Maheshwar Mandal and others Vs. State of Bihar and others**, reported in **2018 (3) PLJR 1007**, the competent authority, under the Act, cannot decide the title of the parties. But if the petitioner's claim is based on unquestionable documents, the competent authority can certainly examine the same and take a final decision. I need not record any finding in view of the nature of dispute, as has been noted above.

This writ application is disposed of with the



observation that the petitioner shall be at liberty to approach the competent authority under the Bihar Land Disputes Resolution Act,, 2009, by making an appropriate application. It is further observed that if any such application is filed, the competent authority must ensure that the same is decided within a time limit, as prescribed under the Act and the Rules framed thereunder.

(Chakradhari Sharan Singh, J)

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