

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.624 of 2019

In

Civil Writ Jurisdiction Case No.8472 of 2019

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Bhagwant Lal Choudhary S/o Late Mahavir Choudhary Resident of Village-
Ward No.17, Mohalla - Rahika Tola, Nagar Parishad, P.S. Araria, District-
Araria.

... Petitioner ... Appellant

Versus

1. The State of Bihar through District Magistrate, Araria.
2. The Bihar Land Tribunal Patna.
3. The Sub Divisional Officer Araria, District -Araria.
4. The Circle Officer Araria, District-Araria.
5. Md. Fakhre Alam S/o Late Sk. Abdul Majeed
6. Sabnam Khatoon Widow Wife of Late Md. Khurshid Alam
7. Shahnawaz Alam S/o Late Md. Khurshid Alam
8. Md. Shahbaz Ansari S/o Late Khurshid Alam
9. Md. Mahboob Alam S/o Late Sk. Abdul Majeed
10. Md. Noor Alam S/o Late Sk. Abdul Majeed,
Respondent nos.5 to 10, Resident of Village-Ward No.17, Mohalla-Rahika
Tola Nagar, Nagar Parishad, P.S. Araria, District- Araria.

...Respondent 2nd party ... Respondent

11. Abdul Kadir S/o Late Md. Siddique
12. Abdul Kalim S/o Late Md. Siddique
13. Md. Sonu S/o Late Abdul Raheem,
Respondent Nos.11 to 13 Resident of Village-Ward No.17, Mohalla-Rahika
Tola Nagar Parishad, P.S. + District, Araria

Respondent 3rd party / Respondents

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Appearance :

For the Appellant/s : Mr. Manish Kumar
For the Respondent/s : Mr. Md. Khurshid Alam (Aag12)

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

Date : 20-02-2020

Heard the parties.

Being aggrieved by judgment and order dated 25.4.2019 passed by a learned Single Judge passed in C.W.J.C. No.8472 of 2019, appellant has preferred this Letters Patent Appeal.

Appellant had filed an application under Section 48-D of Bihar Tenancy Act, 1885 before the Circle Officer, Araria for declaration of raiyati right in which the appellant stated that his ancestors were in cultivating possession over the land and thereafter appellant is in cultivating possession and has acquired occupancy right and even in the revisional survey records, the name of father of appellant was entered as Sikimidar and after death of his father, appellant got share in plot no.9526 and remained in cultivating possession over said plot which came in his share on partition.

In the enquiry made by the Anchal Amin and Circle Officer, physical possession of the appellant was found on the land and house constructed thereupon, on the basis of which, the Circle Officer allowed the claim of appellant under Section



48-D of the B.T. Act, against which, the landholder filed appeal before the Sub-Divisional Officer stating therein that the original landholder was Manjoor Alam and others and during R.S. Survey Kayami khatiyani as well as sikmi khatiyani was prepared and in Sikmi Khatiyani, name of Mahabir Chaudhary was recorded in possession column and landholder sold this land to respondents by a registered sale dated 29.10.68 and since then they are in possession of the land and their names have been mutated and rent receipts being granted to them.

No notice was ever issued to them and since the land is situated within municipality as such provision of B.T. Act is not applicable and Circle Officer has wrongly declared raiyati right in favour of respondents. However, the appellate authority affirmed the order passed by the Circle Officer by which respondents' raiyati right was declared by the Circle Officer, against which, appellant preferred appeal before the Bihar Land Tribunal giving rise to B.L.T. Case No. 879 of 2015 which was heard and allowed by the tribunal by its order dated 26.10.2018.

The Tribunal has allowed the appeal of respondents on the ground that land in question admittedly falls within municipal area and as such provision of B.T. Act is not applicable as such the application filed by the respondents under



Section 48-D of the B.T. Act could not have been entertained by the Circle Officer. The Tribunal has further held that the nature of land is not agriculture rather the residential houses of appellants were found over the land for which holding tax is also being paid to the Municipality as such appellants do not come within the definition of under raiyat/ occupancy raiyat under Section 5 of the B.T. Act as lands exclusively for cultivation purpose comes within purview of B.T. Act. Right of under raiyat is sub-servient to the right of raiyat and as such house over the land for purpose other than the cultivation will exclude application of provision of Section 48-D of B.T. Act and right over a land as under the raiyat can only be for the purpose of cultivation and not for any other purpose and allowed the appeal filed by respondents and aggrieved by which, opposite party preferred writ petition before this Court which was dismissed by the impugned order as the writ Court did not find any infirmity or illegality in the order passed by the Bihar Land Tribunal.

After hearing the counsel for the appellant as well as perusing the order passed by the learned Single Judge and materials available on record, this Court does not find any error or infirmity in the order passed by the learned Single Judge



requiring any interference by this Court.

Accordingly, this appeal is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2020
Transmission Date	NA

