

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12704 of 2017

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1. Santosh Kumar s/o Sri Ashok Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
 2. Arvind Kumar Yadav, s/o Late Radhe Shyam residents of village - Udaini, P.S. - Gopalpur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner, Patna.
2. The Collector, Patna.
3. The Deputy Collector Land Reforms, Sadar, Patna.
- 4.1. Satish Kumar S/o Late Shyam Narain Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.2. Nitish Kumar S/o Late Shyam Narain Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.3. Soni Kumar S/o Late Shyam Narain Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.4. Kiran Devi D/o Late Shyam Narain Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.5. Sugwa Devi D/o Late Shyam Narain Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.6. Rnju Devi D/o Late Shuam Narain Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.7. Anju Devi D/o Late Shyam Narayan Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.
- 4.8. Rubi Kumari D/o Late Shyam Narayan Singh Resident of Village- Udaini, P.S.- Gopalpur, District- Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 12848 of 2017

1. Santosh Kumar S/o Sri Ashok Singh,
2. Arvind Kumar Yadav, S/o Late Radhe Shyam, Both resident of Village- Udaini, P.S.- Gopalpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Patna.
3. The Deputy Collector Land Reforms, Sadar, Patna.



4. Shyam Narayan Singh, S/o Late Ramdhani Singh, Resident of Village-Udaini, P.S.- Gopalpur, District- Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12704 of 2017)

For the Petitioner/s : Mr.Ranjan Kumar Dubey

For the Respondent/s : Mr. Arun Kumar Bhagat, AC to AAG 12

(In Civil Writ Jurisdiction Case No. 12848 of 2017)

For the Petitioner/s : Mr.Ranjan Kumar Dubey

For the Respondent/s : Mr.Navnit Kumar, AC to GP 18

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 5 10-01-2023 Despite valid service of notice, no one appears on behalf of respondent no. 4.1 to 4.8 (heirs of deceased respondent no. 4, namely, Shaym Narayan Singh).

The dispute in this case relates with a piece of land, appertaining to Touzi No. 402, Thana No. 102, Khata No. 136, Plot No. 342, ad-measuring 09 decimals.

The petitioners claim that the aforesaid land belongs to their ancestors, who vide exchange deed, dated 14.12.1928, given 12 decimals, out of total 21 decimals of land, to the ancestor of the respondent no. 4 (since dead) and rest 09 decimals of land remained in possession of the petitioners. The petitioners are successors-in-interest of the aforesaid land and have right, title and possession over the same.

Learned Counsel for the petitioners submits tht respondent no. 4 (since dead) tried to create disturbance upon 09 decimals of land belonging to the petitioners. Accordingly, the



petitioners filed an application before the DCLR, Sadar, Patna, under Section 4 of the Bihar Land Dispute Resolution Act, 2009, for demarcation of the land in question. Land Dispute Case No. 124 of 2014-15 was instituted and after hearing both the parties and after going through the records, the DCLR came to the conclusion that there is dispute of boundary over 09 decimals of land. Vide order, dated 12.03.2015, the DCLR directed for demarcation of the land in question and the Circle Officer, Sampatchak, was directed to demarcate the land and submit his report. In compliance of the order, dated 12.03.2015, the Circle Officer submitted his report on 02.08.2015, holding that respondent no. 4 (since dead) has encroached upon the land in question and after confirmation of the report of the Circle Officer, the DCLR, vide order dated 18.01.2016 appointed the Block Statistical Officer, Sadar, Patna, as Magistrate and has directed to get the encroachment free with the help of the Station House Officer, Gopalpur Police Station, to enable the petitioners to construct their boundary wall. The said order, dated 18.01.2016, by which the Magistrate was appointed by the DCLR was challenged by respondent no. 4 (since dead) before the Commissioner, Patna.

Learned Counsel further submits that the



Commissioner, Patna, instituted the appeal, bearing Land Dispute Appeal No. 20 of 2016 and by the very first order, dated 01.02.2016, the appeal was posted for 23.02.2016. Referring to the order, dated 23.02.2016, he submits that the appeal was adjourned due to non-availability of the Commissioner and next date was fixed in the appeal was on 26.07.2016. However, before 26.07.2016, final order has been passed in the appeal by the Commissioner, Patna, on 03.03.2016 (Annexure-2 in CWJC No. 12848 of 2017), behind the back of the petitioners and without giving any notice to them. By the said order, the Commissioner, Patna, set aside the order passed by the learned DCLR on the ground of lack of jurisdiction in view of the order of this Court, in the case of **Maheshwar Mandal and Another v. The Stater of Bihar and Others**, reported in **2014 (3) PLJR 281**. The petitioners approached the Bihar Land Tribunal against the order, dated 03.03.2016, passed by the Commissioner, Patna, but the Tribunal, without going into the merit of the case, has affirmed the order passed by the learned Commissioner, Patna. He next submits that the order, passed in **Maheshwar Mandal** (supra) was challenged by the State of Bihar, in SLP (Civil) No. 24289 of 2019 and the operation of the judgment passed by this Court, in **Maheshwar Mandal** (supra), has been stayed, vide



order, dated 30.09.2019. In pursuance of the said order, the State of Bihar came out with a circular, dated 15.09.2021, authorizing the DCLR to take steps for compliance of their orders passed earlier.

Learned Counsel for the State is not in a position to controvert the submissions advanced on behalf of the petitioners that the petitioners were not given any opportunity of hearing before the Commissioner, Patna.

I have heard learned Counsel for the parties concerned and have gone through the materials available on record, including the order passed by the Commissioner, Patna.

It transpires that on the first date when the appeal was taken up by the Commissioner, Patna, on 01.02.2016, the appeal was fixed for 23.02.2016 and on 23.02.2016, the appeal was fixed for 26.07.2016. However, before the date fixed in the appeal, the impugned order, dated 03.03.2016, was passed by the Commissioner, Patna.

From perusal of the impugned order passed by the Commissioner, Patna, it does not appear that any notice was ever issued to the petitioners and the opportunity of hearing was given to them.

Accordingly, I come to the conclusion that the



impugned order suffers from violation of principle of natural justice.

In the result, the order, dated 03.03.2016, passed by the Commissioner, Patna, is set aside and the subsequent order of the Bihar Land Tribunal, dated 02.08.2017, affirming the order of the Commissioner, Patna, also gets set aside.

The matter is remanded back to the learned Commissioner, Patna for fresh hearing of the appeal on its own merits after giving opportunity of hearing to both the parties. The learned Commissioner, Patna, is directed to dispose the appeal within a period of four months from the date of receipt/production of a copy of this order, taking into consideration the fact that the appeal is of the year 2016.

This writ application is allowed with the aforesaid observation and direction.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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