

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9304 of 2018

1. Abbas Ansari @ Avas Ansari, Son of Bali Ansari, Resident of Village-Jamua, Police Station and Anchal Dhaka, District-East Champaran.
- 2.1. Noor Jahan Khatoon, Wife of Nazir Ansari, Resident of Village-Jamua, Police Station and Anchal-Dhaka, District-East Champaran, at present resident of Kamla Raman Nagar, Balganwadi, near Furkaniya Chowk, Govandi Mumbai-400043.
- 2.2. Ansari Sabreen, minor daughter of Late Nazir Ansari, under the guardianship of her mother Noorjahan Khatoon, Resident of Village-Jamua, Police Station and Anchal-Dhaka, District-East Champaran, at present resident of Kamla Raman Nagar, Balganwadi, near Furkaniya Chowk, Govandi Mumbai-400043.
- 2.3. Ansari Nazrin minor, daughter of Late Nazir Ansari, under the guardianship of his mother Noorjahan Khatoon, Resident of Village-Jamua, Police Station and Anchal-Dhaka, District-East Champaran, at present resident of Kamla Raman Nagar, Balganwadi, near Furkaniya Chowk, Govandi Mumbai-400043.
- 2.4. Mohd. Talib minor, Son of Nazir Ansari, under the guardianship of his mother Noorjahan Khatoon, Resident of Village-Jamua, Police Station and Anchal- Dhaka, District-East Champaran, at present resident of Kamla Raman Nagar, Balganwadi, near Furkaniya Chowk, Govandi Mumbai-400043.
3. Samad Ansari @ Abdus Samad Ansari, Son of Bali Ansari
4. Md. Taufique Alam, Son of Late Jalaluddin
5. Tauhid Alam, Son of Late Jalaluddin
All residents of village - Jamua, Police Station and Anchal Dhaka, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, East Champaran.
2. Member Administrative, Bihar Land Tribunal, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The Collector, East Champaran at Motihari.
5. The Sub-Divisional Officer, Sikrahna at Dhaka, East Champaran.
6. The Deputy Collector, Land Reforms, Sikrahna, District - East Champaran.
7. The Circle Officer, Dhaka, East Champaran.
8. Khursheed Alam, Son of Late Rabdin, Resident of Village - Jamua, Police Station and Anchal Dhaka, District - East Champaran.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr. Saba Ashfaque, Advocate
Mr. Wasi Akhtar, Advocate
Mr. Md. Fazle Karim, Advocate
For the Respondent/s : Mr. Md. Shahab Khalil, Advocate
Mr. Sajid Salim Khan, SC-25
Mr. Manoj Kumar Manoj, Advocate
Mr. Bijay Kumar Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 09-05-2023

1. Heard learned counsel for the petitioners, learned counsel for the State respondents and learned counsel for respondent no.8.

2. The petitioners have filed the instant application for the following relief:-

“That the petitioner prays for issuance of an appropriate writ and/ or direction to quash the order dated 08.02.2018 in B.L.T. Case No. 1506 of 2015 passed by the Member Administrative, Bihar Land Tribunal, Patna Respondent No.2 whereby the application filed by Respondent No. 8 under section 9 of the Bihar Tribunal Act, 2009 has been allowed without setting aside the impugned orders dated 24.07.2013 passed by the D.C.L.R. and order dated 12.10.2015 passed by the Commissioner, Tirhut Division, Respondent Nos. 4 and 3 respectively as well as for restraining Respondent Nos. 3, 4 and 5 from dispossessing the petitioner from their residential house standing over 2 decimal land appertaining to plot no. 921 khata no. 33 situated at village- Jamua, P.S. Dhaka, District- East Champaran.”

3. The case of the petitioners in brief is that respondent



no.8 filed a petition on 25.7.2005, before the Circle Officer, Dhaka, East Champaran (respondent no.7) praying that the 3 decimal land appertaining to *Khata* no.33, *Khesra* no. 921 in Village- Jamua be settled in his favour. By order dated 2.6.2007, passed in Settlement Case no.6 of 2006-07, without making any inquiry on the recommendation of the then Circle Officer, 2 decimal was settled in favour of respondent no.8 by the Sub-Divisional Officer, Sikrahna at Dhaka, East Champaran (respondent no.5), however, possession was not delivered to respondent no.8 and he never came in possession. The father of petitioner nos. 1 and 3 had constructed their residential house over the same and they continued in possession.

4. Learned counsel for the petitioners submits that the petitioners filed objection before the S.D.O, who by order dated 2.4.2009 passed in Miscellaneous Case no.21/08-09, recommended for cancellation of settlement. By order dated 28.9.2009, the S.D.O directed the Circle Officer to inquire and the petitioners were found in possession. By order dated 7.4.2011, the record was sent to the Collector for cancellation of settlement of the land made in favour of respondent no.8.

5. Learned counsel for the petitioners further submits that the respondent no.8 filed an application under section 4 of the Bihar Land Dispute Resolution Act, 2009 ('the Act' in short),



before the Deputy Collector Land Reforms ('D.C.L.R' in short), which was rejected vide order dated 24.7.2013, passed in Case no.120 of 2011, by the D.C.L.R.

6. Against the order of the D.C.L.R, the respondent no.8 filed an appeal under section 14 of the Act before the Commissioner, Tirhut Division, Muzaffarpur, which was registered as BLDR Appeal Case no.410/2013, which was dismissed by the Commissioner by his order dated 12.10.2015. Respondent no.8 preferred an application under section 9 of the Act in the Bihar Land Tribunal which was registered as BLT Case no.1506 of 2015. The Member (Administrative), Bihar Land Tribunal was pleased to allow the application filed by respondent no.8 by his order dated 8.2.2018. It is against this order passed by the Bihar Land Tribunal that the petitioners have preferred the instant application for the relief as mentioned herein above.

7. Learned counsel for the petitioners submits that so far as the initial settlement in favour of respondent no.8 is concerned, the same was illegal having been made without any inquiry on the recommendation of the then Circle Officer. It was the ancestors of the petitioners who had constructed their residential house and were in possession. Even after settlement of the land in question, the respondent no.8 never came in possession. It is for this reason that by order dated 2.4.2009, passed in Miscellaneous Case



no.21/08-09, the S.D.O had recommended to the Collector for cancellation of settlement made in favour of respondent no.8. It is further submitted that both the orders dated 24.7.2013 passed by the D.C.L.R as also the order dated 12.10.2015 passed by the Commissioner are in favour of the petitioners and the Member (Administrative), Bihar Land Tribunal committed an error in not appreciating the contentions raised by the petitioners.

8. A counter affidavit has been filed on behalf of the State respondents (respondent nos. 4 to 7) and a separate counter affidavit has been filed on behalf of the private respondent (respondent no.8).

9. Learned counsel appearing for the State and its authorities submitted that after inquiry the Circle Officer submitted his report to the S.D.O that due to wrong report, settlement was made in favour of respondent no.8. Recommendation was made for proceeding for cancellation of the *Parcha* and *Jamabandi* running in the name of respondent no.8. Further, great stress was laid to the inquiry report of the Circle Officer, wherein, respondent no.8 was not found in possession.

10. Learned counsel appearing for the private respondent (respondent no.8) submitted that the respondent no.8 applied for issuance of *Basgit Parcha* before the Circle Officer on which Settlement Case no.7/2005-06 was instituted and after



conducting local inspection and finding possession of respondent no.8, *Basgit Parcha* was issued in his favour with respect to 2 decimal of land. After settlement, the respondent no.8 applied for mutation which was allowed and a separate *Jamabandi* was created. He started to pay rent and got rent receipt. Learned counsel submits that both the orders dated 24.7.2013 passed by the D.C.L.R and the order dated 12.10.2015 passed by the Commissioner were illegal and arbitrary for the reason that it is not in dispute that on settlement respondent no.8 came in possession and was wrongly dispossessed by the writ petitioners in the year 2011. It is also not in dispute that as of today the *Basgit Parcha* issued in the name of respondent no.8 still stands and has not been cancelled.

11. Heard learned counsel for the petitioners, learned counsel for the State respondents and learned counsel for respondent no.8.

12. On perusal of the contents of the writ application and various affidavits filed on behalf of the respondents along with the annexures, the relevant facts for the purpose of the instant application in brief are that the respondent no.8 filed a petition on 25.7.2005, for issuance of *Basgit Parcha* over 2 decimal land of plot no.921, *Khata* no.33 in Village- Jamua before the Circle Officer which was registered as Settlement Case no.7/2005-06.



Local inspection etc. were conducted and finding possession of respondent no.8, *Basgit Parcha* was issued in favour of respondent no.8. Copy of the order-sheet of the Circle Officer, the memo of inspection, the inspection report -cum- recommendation of the Anchal Amin etc have been brought on record as annexures to the counter affidavit filed by respondent no.8. After settlement, the respondent no.8 applied for mutation and a separate *Jamabandi* was opened. The respondent no.8 started to pay rent and got rent receipt for the year 2006-07. A copy of the rent receipt has also been brought on record as annexure to the counter affidavit.

13. Subsequently, on an objection filed by the writ petitioners, the S.D.O recommended for cancellation of the settlement made in favour of respondent no.8 but undisputedly no order has been passed thereon and the settlement in favour of respondent no.8 still continues.

14. It subsequently transpires that for the reasons explained by respondent no.8, they came to be dispossessed by the writ petitioners in the year 2011, which led to their filing of Case no.120/2011 for restoration of possession before the D.C.L.R. The said case filed by respondent no.8 was dismissed by the D.C.L.R and the appeal preferred by them before the Commissioner was also dismissed by order dated 12.10.2015. However, the application preferred by them against the order of the



Commissioner, was allowed in favour of respondent no.8 by order dated 8.2.2018 passed by the Bihar Land Tribunal.

15. The facts which one gathers from the narration made herein above is that on the application of respondent no.8 for settlement of 3 decimal land, an inquiry was got conducted by the Circle Officer and on receipt of the reports of the Anchal Amin etc including the report to the effect that the applicant/respondent no.8 was in possession of the land, 2 decimal area of land was settled in favour of respondent no.8 by order passed in Settlement Case no.7/2005-06. From the rent receipt brought on record it transpires that the land in question was mutated in favour of respondent no.8 and a separate *Jamabandi* no.1349 was also created. It is also not in dispute that the said settlement and creation of *Jamabandi* still stands and has not been cancelled.

16. So far as the order dated 24.7.2013 passed by the D.C.L.R is concerned, it transpires that the D.C.L.R has placed reliance on the inspection report wherein it is mentioned that on the land the house of the writ petitioners is there and that a recommendation has been made for cancellation of the settlement in favour of respondent no.8. Similarly, in his order dated 12.10.2015 the Commissioner in passing the said order has mainly relied on the facts that the *Bandobasti/Parcha* on the basis of which respondent no.8 is laying claim over the land in question,



the genuineness of the same not having been established, possession of the land on the basis of those documents cannot be given to respondent no.8.

17. In the opinion of this Court, the D.C.L.R in relying on the recommendation for cancellation of settlement in favour of respondent no.8 failed to take note of the fact that inspite of the said recommendation, the settlement still continues in favour of respondent no.8 and has not been cancelled. Further, in the opinion of the Court, the Commissioner in his order dated 12.10.2015 in observing that the genuineness of the *Bandobasti/Parcha* made in favour of respondent no.8 has not been established by respondent no.8 committed an error as it is neither anyone's case nor allegation that the *Parchas* are illegal or forged. In fact, it is the case of the petitioners that the order passed in Settlement Case no.6/2006-07 is illegal as the same was done without any inquiry and further that on the objection filed by the petitioners, the S.D.O recommended for cancellation of the settlement. These facts show that the settlement in favour of respondent no.8 is genuine, valid and in absence of the same having been cancelled, continues today.

18. In view of the facts and circumstances stated herein above, the Court finds no illegality in the order impugned dated 8.2.2018 passed in BLT Case no.1506 of 2015 by the Member



(Administrative), Bihar Land Tribunal, Patna and holds that respondent no.8 is entitled for the relief prayed for in Case no.120/2011 (Khurshid Alam vs. Abbas Ansari & Ors.) filed by respondent no.8 before the D.C.L.R, Sikrahana.

19. There is no merit in the writ application and the same is dismissed.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
Uploading Date	10.05.2023
Transmission Date	N/A

