

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15512 of 2022

=====

Pramod Kumar Yadav son of Late Ramanand Yadav, resident of Village-
Kaliganj, P.S. Sadar Purnia, District- Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The District Magistrate, Purnia, District Purnia.
3. The Sub- Divisional Officer, Sadar, Purnia.
4. The Anchal Adhikari, Purnia East Anchal within the District of Purnia.
5. The Bihar Land Tribunal, Polo Road, Patna- 800014.
6. Rohin Prasad Yadav, son of Late Foutali Yadav, resident of Village-
Kaliganj, P.S. Sadar Purnia, District Purnia.
7. Mahesh Prasad Yadav, son of Late Foutali Yadav, resident of Village-
Kaliganj, P.S. Sadar Purnia, District Purnia.
8. Smt Premlata Devi Ambastha daughter of Shri Chandranan Prtasad and Late
Savitri Devi, wife of Sri Subodh Kumar Verma, previously resident of
Mohalla Madhubani, P.S. Khjanchi Hat, District Purnia, at present residing
at Mohalla Khonjarpur, Jiba Jha Gali, Anchal Jagdishpur, District Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Suraj Narayan Yadav
		Mr. Binod Kumar Yadav, Advocates
For the State	:	Mr. Rishi Raj Sinha, SC-19
For the Resp Nos. 6 & 7	:	Mr. Ranjan Kumar Dubey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 05-10-2024

Heard Mr. Suraj Narayan Yadav, learned counsel for the
petitioner, Mr. Ranjan Kumar Dubey, learned counsel appearing on
behalf of Respondent Nos. 6 and 7 as well as Mr. Rishi Raj Sinha,
learned SC-19 for the State.

2. The present writ petition has been filed for the
following reliefs :-



“(A) To issue a writ in the nature of certiorari to set aside the order dated 28.07.2022 (Annexure-4) passed by Member (Administrative) the Bihar Land Tribunal, Patna whereby and whereunder he was pleased to allow the B.L.T. Case No. 31 of 2022.

(B) Any other relief or reliefs for which petitioner may be found entitled to in the facts and circumstances of the present case may be granted to him.”

3. Learned counsel for the petitioner submits that the land in question originally belonged to Smt. Savitri Devi wife of Shri Chandranand Prasad under here Foutali Yadav, the grandfather of the petitioner and father of Respondent Nos. 6 & 7 was under Raiyati. The revisional survey in the area was started in the year 1952 and it becomes final in the year 1958. The Foutali Yadav continued in Sikmi possession right prior to year 1952 till his death in the year 1970. He has acquired occupancy interest Foutali Yadav died leaving behind three sons namely Ramanand Yadav and Respondent Nos. 6 & 7. Ramanand Yadav died leaving behind his son namely Pramod Yadav (petitioner). The petitioner belonged to branch of Late Ramanand Yadav and Respondent Nos. 6 & 7 were belonged to the branch of Late Foutali Yadav and from perusal of Khatiyan it appears that the lands in question and some



other lands stand recorded in the name of Foutali Yadav and Rasik Lal Yadav as Sikmidar bearing Sikmi Khata No. 288 and the Malki Khatiyan stands in the name of Smt. Savitri Devi wife of Sri Chandranan Prasad. Learned counsel for the petitioner further submits that the respondent nos. 6 & 7 filed an application on affidavit before the Anchal Adhikari, Purnia East Anchal within the District of Purnia (respondent no. 4) for acquisition of Kaimi right in the land in question against the land lady Smt. Premlata Devi (respondent no. 8). On the application of respondent nos. 6 & 7, Case No. 01 of 2018-19 was registered under Section 48D of the Bihar Tenancy Act (hereinafter referred to as 'the Act'). By order dated 10.10.2018 the respondent no. 4 allowed the application of Respondent Nos. 6 & 7 under Section 48D of the Act. The petitioner has filed an appeal before the Sub-Divisional Officer, Sadar, Purnia (Respondent No. 3) against the order dated 10.10.2018 passed by respondent no. 4. Appeal Case No. 06 of 2019-20 was registered. The appellate authority (respondent no. 3) held that the previous case no. 02 of 2007-08 which was filed jointly by the present petitioner and respondent nos. 6 & 7 was rejected on the ground that the recorded Sikmidar had died and therefore the Simki right was lost. The Case No. 87 of 2009-10 and 88 of 2009-10 under Section 48E of the Act were dismissed



for default since the concerned petitioner did not take any interest. It was also found and held that the Sikmidar Foutali Yadav had three sons and heirs but the Case No. 01 of 2018-19 was filed only on behalf of two respondents i.e. Respondent Nos. 6 & 7. Therefore, the case under Section 48D of the Act suffered from defect of party. In the light of the above discussions and finding the order dated 10.10.2018 has been remanded with a direction to hear the parties to the appeal order dated 29.07.2021.

4. Learned counsel for the petitioner submits that the petitioner was aggrieved by the order dated 28.07.2022 passed by Member (Administrative), the Bihar Land Tribunal, Patna whereby and whereunder he was pleased to allow the BLT Case No. 31 of 2022. The petitioner had purchased the land in question bearing Plot No. 1691 area 28 decimals, Plot No. 1692 area 07 decimals, Plot No. 1693 area 10 decimals, Plot No. 1694 area 0.5 decimals total area 50 decimals under Khata No. 372 from Milind Kishore Ambastha son of Chandranan Prasad through registered Sale Deed No. 630 dated 14.02.2009. On the basis of the aforesaid sale deed, the petitioner applied for mutation in the office of respondent no. 4 who after making due enquiry mutated the name of the petitioner and grant rent receipt. Learned counsel for the petitioner submits



that the land in question are situated under Nagar Nigam, so the case under Section 48 D is not maintainable.

5. Learned counsel for the Respondent Nos. 6 & 7 has filed a counter affidavit stating therein that at the very outset it is relevant to mention here that the filing of appeal at the instance of the writ petitioner was not maintainable in view of the fact that petitioner was not party before the Circle Officer, Purnia (respondent no. 4) in Case No. 01 of 2018-19. Further the appeal was not maintainable since he has not made original land lady namely Premlata Devi as party to appeal and in view of the aforesaid the petitioner has no right to challenge the order dated 31.12.2018 passed in Case No. 01 of 2018-19. He further submits that it is not in dispute that the land in question originally belonged to one Savitri Devi wife of Sri Chandranan Prasad under her Foutali Yadav, father of Respondent Nos. 6 & 7 and grandfather of petitioner was an under Raiyat as such record of rights was prepared in his name in possessionary column as Sikmidar. Learned counsel for the Respondent Nos. 6 & 7 further submits that in due course of time the original land owner namely Smt. Savitri Devi executed registered gift deed dated 18.04.1963 with respect to entire land in favour of her daughter namely Smt. Premlata Devi (Respondent No. 8) and put her in possession also.



The Respondent No. 8 accepted the gift deed and came in possession since then. It is pertinent to mention here that Revisional Survey operation was started in the area in the year 1952 and it became final in the year 1958 in which name of Foutali Yadav recorded as Sikmidar and he continued in possession over the land in question prior to 1952 till his death in the year 1970 and in this way he has acquired occupancy interest. Foutali Yadav died leaving behind him his three sons namely answering opposite parties and Ramanand Yadav (father of the petitioner) who died later on and after execution of the gift deed dated 18.04.1963 itself the land lady namely Smt. Premlata Devi also accepted Foutali Yadav as Sikmidar and after his death to answering opposite parties and permitted them to cultivate the land in question as Sikmidar. The petitioner who is also belonged to the family of answering respondents, filed an application under Section 48D of the Act before the Respondent No. 4 giving rise to Case No. 02 of 2007-08 in which the answering respondents were also made as party. The said application was filed with a view to get Raiyati status in Sikmi land. In fact, the petitioner wants to purchase the disputed land. In this regard, he contacted with Sri Milind Kishore Ambastha, brother of land lady Premlata Devi, and due to this reason he has filed Case No. 02 of 2007-08 filed under



Section 48D of the Act and after passing the order in Case No. 02 of 2007-08 the petitioner got separated from the answering respondents amicably and as such answering respondents have filed Case No. 87 of 2009-10 and 88 of 2009-10 both under Section 48E of the Act and during pendency of the aforesaid cases, the petitioner succeeded in his attempt of purchasing Kaimi right in the related plots from Milind Kishor Ambasta through registered sale deed dated 14.02.2009 for an area of 28 decimals of Plot No. 1691 through vendor of petitioner has no right and title over the said plot including other disputed plots. So far as the dispute in the case related to 17 decimals of land of Plot No. 1691 along with other land of other plots it is relevant to mention here that soon after purchase of Kaimi right, petitioner lost his interest in cases filed under Section 48E of the Act and as such he left pairvi therein and got the same dismissed for default before any enquiry and the answering respondent parties continued their Sikmi possession over the lands in question. It is relevant to mention here that the purchase of Kaimi right by petitioner on 14.02.2009 was a fraudulent transaction. Even vendor has fraudulently shown in sale deed about his father as dead through he was alive at the time and he was practicing lawyer. Since the land in question never belonged to vendor, transfer of the same did not confer any



right on the purchaser rather it is a void document. The petitioner and his vendor attempted to create problems in the rights and continuous possession of the answering respondents, an application was filed by them before the Respondent No. 4 under Section 48D of the Act for acquisition of Kaimi rights in the land in question against land lady namely Smt. Premlata Devi giving rise to Case No. 01 of 2018-19. Accordingly notice was issued to land lady and Halka Karmchari was directed to submit his report. Accordingly, Halka Karamchari submitted his report which was also recommended by the Circle Inspector. Report says that the land in question was in possession of Sikmidar. Over some portion there is residential house and rest are in cultivating possession for more than 50 (fifty) years. Report further says that Khatiyani Raiyat had inducted the father of the answering respondents as Sikmidar, who was recorded as Sikmidar under Sikmi Khata No. 288. Report also suggests that on death of Foutali Yadav, the answering respondents came in possession over the land in question and accordingly, recommendation was made for allowing the Raiyati right in favour of the answering respondents. In the aforesaid case on notice, land lady appeared and filed no objection on affidavit supporting the case of answering respondents. On submission of the report, the



Respondent No. 4 was also made local inspection on 05.10.2018 and found answering respondents in possession over the land in question and accordingly, he allowed the aforesaid case vide order dated 10.10.2018 and directed to deposit the compensation amount in the Anchal Nazarat on 31.12.2018 vide Memo No. 2545 and also issued an order for creation of Jamabandi in favour of the answering respondents and also direction for issuing the rent receipt in favour of the answering respondents.

6. Learned counsel for the Respondent Nos. 6 & 7 further submits that the petitioner being aggrieved by the aforesaid order dated 10.10.2018 filed an Appeal No. 06 of 2019 before the Sub-Divisional Officer, Sadar, Purnia (Respondent No. 3). The claim of the petitioner is mainly based upon the facts that he had purchased the land in question from Milind Kishor Ambastha through registered sale deed dated 14.02.2009 and based upon the same he got mutated his name in revenue record. Further the case of the petitioner that the Respondent No. 4 has passed the order in Case No. 01 of 2018-19 without holding an enquiry and he has next pleaded that previously instituted Case No. 02 of 2007-08 was filed with respect to land in question jointly by the petitioner and answering respondents which was dismissed and on the basis of aforesaid facts the appellate authority allowed the Appeal No.



06 of 2019-20 filed by the petitioner vide order dated 29.07.2021 and the appeal was remanded back. The Respondent Nos. 6 & 7 aggrieved by the aforesaid appellate order dated 29.07.2021, filed BLT Case No. 31 of 2022 before the Bihar Land Tribunal, Patna in which after notice petitioner appeared and filed contesting objection and the learned Member Administrative Bihar Land Tribunal after hearing the parties and going through the material on record allowed the BLT Case No. 31 of 2022 vide order dated 28.07.2022.

7. Learned counsel for the respondents submits that the petitioner has claimed that Khatiyani against some of the land nature of land has been shown as Makan hence no B.T. Act is not maintainable. It is relevant to mention here that this plea is not maintainable in view of the fact that the petitioner is not land lord/land lady. This plea is only available for the land owner/land lady not for stranger. The land lady namely Smt. Premlata Devi appeared before the respondent no. 4 on due notice and she has supported the case of the respondents. The appeal filed by the petitioner before S.D.O. itself was not maintainable in view of the fact that the petitioner was not party to proceeding before the Circle Officer nor he was landlord. It is an admitted fact that property in question was gifted by original land lady namely Smt.



Savitri Devi in favour of her daughter namely Smt. Premrata Devi against whom application under Section 48 D was filed and the same was decided by the answering respondents but from perusal of the order passed in Appeal No. 06 of 2019-20, it transpired that the petitioner has filed appeal only against answering respondents without making land lady as party to appeal. In view of the aforesaid, appeal filed by the petitioner before S.D.O. was itself was not maintainable. Learned counsel for the petitioner has relied upon a judgment in the case of ***Bugani Devi @ Bugni Devi Vs. The State of Bihar through the Collector, District- Araria & Ors. reported in 2014 (1) PLJR 134*** which suggests that Sikmi right is inheritable right. In this regard, it is pertinent to mention here that from perusal of the Annexure-1 of the writ petition (Khatiyani) it will be evident that total area 01 Acre 47 Decimals and the answering respondents have got an order under Section 48 D only with respect to 0.52 decimals of lands as it appears from Annexure-2 of the writ petition. The petitioner is interested in inheriting of Sikmi right he may approach to the concerned authority under Section 48D of the Act.

8. Learned counsel for the respondents further submits that so far as claim of the petitioner on the basis of sale deed, the same was executed in favour of the petitioner by Milind Kishore



Ambastha is concerned, the same is void document since Milind Kishore Ambastha had no right and title in the property because of the fact that mother had executed gift deed dated 18.04.1963 in favour of Premlata Devi and same has not been challenged till date. In view of the aforesaid, any third person executed sale deed with respect to the said land is void and same cannot be looked into for any other person and the learned counsel for the respondents has relied upon a judgment in the case of **Sita Devi & Ors. Vs. Prabhunath Singh & Ors., reported in 2012 (4) PLJR 32.**

9. Having heard learned counsel for the parties and it transpires that the petitioner has claimed his right over the land in question on the basis that the petitioner has purchased the land in question through registered deed from one Milind Kishore Ambastha and Milind Kishore Ambastha has no right in the property in question to execute the sale deed in favour of any person including the petitioner because the fact that the land lady namely Smt. Savitri Devi has executed a gift deed with respect to property in question in favour of her daughter namely Premlata Devi and petitioner has only remedy to inheriting the Sikmi right, he may approach the appropriate/concerned authority under Section 48D of the Act. The petitioner purchasing the Sikmi right



in the related plot from Milind Kishore Ambastha through registered sale deed dated 14.02.2009 through vendor of petitioner has no right and title over the said plot including other disputed plots. So far as the dispute in the case related to 17 Decimals of land of Plot No. 1691 along with other land of other plots and soon after purchase of Kaimi right, the petitioner lost his interest in the cases filed under Section 48(E) of the Act and the same was dismissed for default for enquiry and the respondents parties continued their Sikmi possession over the lands in question and the purchase of Kaimi right by petitioner on 14.02.2009 was a fraudulent transaction. Since the land in question never belonged to vendor, transferred of the same did not confer any right over the purchase rather is a void document.

10. In view of the aforesaid, there is no merit in the writ petition. It is, accordingly, dismissed.

(Rajesh Kumar Verma, J)

Ibrar//-

AFR/NAFR	NAFR
CAV DATE	19.08.2024
Uploading Date	05.10.2024
Transmission Date	N.A.

