

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16755 of 2015

1. Smt. Saroj Devi and Anr wife of Late Sohan Prasad, Resident of Mohalla. Kumharar, Opposite D.A.V. Public School, P.S.. Kadam Kuan, District. Patna
2. Smt. Aarti Kumari, Wife of Shri Ranjit Kumar, Resident of A/III, Peoples Cooperative Colony, Kankarbag, P.S.. Kankarbag, District. Patna

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Patna
3. The Land Reforms Deputy Collector, Patna City, Patna
4. The Sub Divisional Officer, Patna City, Patna
5. The Senior Superintendent of Police, Patna
6. The Circle Officer, Patna Sadar, Patna
7. The Anchal Amin, Fatuha, District. Patna
8. Shri Arvind Kumar, S/o Not known to the petitioners, Resident of Mohalla. Kumharar, Proprietor M/s Golu Traders, P.S.. Agam Kuan, District. Patna
9. Meena Devi, Wife of Shri Sunil Kumar, C/o Prof. Ramnandan Prasad, Jag Jivan Gali, Jagar Narayan Road, P.S.. Kadamkuan, District. Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey, Advocate
For the Respondent/s : Mr. Anuj Kumar, AC to SC-12

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL ORDER

4 15.04.2025 Heard learned counsel for the petitioner, Mr. Bishnu Kant Dubey and learned counsel for the State, Mr. Anuj Kumar.

2. In the present writ application, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 21.08.2015 passed in Land Dispute Case No.65/2012-13



by the Land Reforms Deputy Collector, Patna City, whereby giving a wrong interpretation to Section 4 (2) of the Bihar Land Disputes Resolution Act, 2009, the land dispute case filed by the petitioner for removal of encroachment and for restraining the private respondents from making any construction over the encroached portion of the land has been dismissed/closed on the grounds that the Deputy Collector Land Reforms (for brevity 'DCLR') did not have the power of review or the power to restart the proceeding.

3. The learned counsel for the petitioner submits that from a bare perusal of order dated 30.04.2013 (Annexure-4) passed in Land Dispute Case No. 65/2012-13 filed by the petitioner, it shall be clear that DCLR, Patna City, had himself passed an order directing for survey to be done by Amin after depositing fee of Rs. 1130/- and after the receipt of the report from the Amin, the matter/case was to be put up again before him for passing an appropriate order. The operative portion of the order dated 30.04.2013, is as follows:-

उभय पक्षकारों के विद्वान अधिवक्ताओं के द्वारा प्रस्तुत तर्क एवं उपलब्ध कराये गये कागजात, अंचल अधिकारी, पटना सदर के पत्र के आलोक में स्थल की नापी हेतु वादिनीगण अमीन द्वारा नापी कराने का शुल्क 1130.00 रुपये नजारत में जमा करें। नापी शुल्क जमा करने के उपरान्त अंचल फतुहों के सरकारी अमीन से नापी करने



का आदेश निर्गत करें। नापी प्रतिवेदन प्राप्त होते ही अभिलेख पुनः उपस्थापित करें। आदेश की प्रति थानाध्यक्ष अगमकुंआ एवं अंचल अधिकारी, पटना सदर को भेजें।

4. The petitioner further submits that in compliance of the order dated 30.04.2015, the Amin conducted the survey and submitted his report on 05.08.2013 in which, he observed that encroachment had been done on the petitioner's land. This report was placed before the DCLR, Patna City for passing final order, as per his previous order dated 30.04.2013, but the DCLR, Patna City, instead of taking note of the report submitted by the Amin Fatua, has arbitrarily decided to close the proceeding by contending that under Section 4(2) of the Bihar Land Disputes Resolution Act, 2009, he did not have the power of review or to restart the proceeding. This order was passed by him on 21.08.2015 (Annexure-12). The petitioner, being aggrieved with this order, has challenged the same by filing the present writ application.

5. On 21.03.2025, this Court had directed the State to file a supplementary counter affidavit personally sworn by the District Magistrate, Patna. The said affidavit has been filed and from the perusal of Annexure-R/A to this supplementary counter affidavit, which is an order dated 01.04.2025, passed by the District Magistrate-cum-Collector, Patna, it is manifest that even



the District Magistrate-cum-Collector, Patna, agrees/admits that the impugned order dated 21.08.2015 passed by DCLR, Patna City is not legal and proper. The relevant part of the order dated 01.04.2025 passed by the District Magistrate-cum-Collector, Patna, is quoted herein below:-

उपर्युक्त वर्णित तथ्यों एवं भूमि विवाद निराकरण अधिनियम वाद सं0-65/2012-13 के परिशीलन से स्पष्ट है कि :-

1. भूमि विवाद निराकरण अधिनियम वाद सं0-65/2012-13 में तत्कालीन भूमि सुधार उप समाहर्ता, पटना सिटी द्वारा दिनांक 30.04.2013 को पारित यथावर्णित आदेश, "मापी शुल्क जमा करने के उपरान्त अंचल फतुहों के सरकारी अमीन से मापी करने का आदेश निर्गत करें"। मापी प्रतिवेदन प्राप्त होते ही अभिलेख पुनः उपस्थापित करें। "आदेश फलक का अंश मात्र है।

2. तदोपरान्त मापी प्रतिवेदन प्राप्त होने पर भूमि विवाद निराकरण अधिनियम वाद सं0-65/2012-13 में दिनांक 21.08.2015 को तत्कालीन भूमि सुधार उप समाहर्ता, पटना सिटी द्वारा मापी प्रतिवेदन के आधार पर प्रावधान अन्तर्गत मुखर आदेश पारित न कर भूमि विवाद निराकरण अधिनियम 2009 की धारा-4 (2) की गलत व्याख्या करते हुए वाद की कार्यवाई समाप्त कर दी गयी। इस प्रकार उक्त वाद में अंतिम मुखर आदेश पारित ही नहीं है, जिससे वाद की कार्यवाई पूर्ण नहीं हुई है। अतएव यह पुनर्विलोकन का मामला नहीं बनता है।

अतः उक्त के आलोक में भूमि सुधार उप समाहर्ता, पटना सिटी द्वारा भूमि विवाद निराकरण अधिनियम वाद सं0-65/2012-13 में मापी प्रतिवेदन का अवलोकन एवं सभी पक्षों को सुनवाई का युक्तियुक्त अवसर



देते हुए विधिवत् मुखर आदेश पारित किया जाना समीचीन है। परन्तु उक्त कार्रवाई सी०डब्लू० जे०सी० सं०-16755/2015 श्रीमती सरोज देवी एवं अन्य बनाम राज्य एवं अन्य में माननीय उच्च न्यायालय द्वारा पारित आदेश के अनुरूप की जायेगी।

6. The learned counsel appearing for the State agrees with the order passed by the District Magistrate-cum-Collector, Patna, wherein he has unequivocally held that the order of the DCLR dated 21.08.2015 is improper and is an incorrect interpretation of Section 4(2) of the Bihar Land Disputes Resolution Act, 2009.

7. In view of the submissions made by the parties and after careful perusal of the relevant records, this Court is of the view that the order impugned in the present date application i.e. the order dated 21.08.2015 passed by the DCLR, Patna City in Land Dispute Case No.65/2012-13 is improper and amounts to incorrect interpretation of Section 4(2) of the Bihar Land Disputes Resolution Act, 2009 and hence, the same is quashed. The matter is remanded back to the DCLR, Patna City for a fresh consideration of the entire matter, in light of the report submitted by the Amin on 05.08.2013. The DCLR, Patna city shall pass a fresh order which shall be reasoned and speaking order and after giving due opportunity to the petitioner concerned. The DCLR, Patna City will pass an order preferably



within a period of four weeks from today. The other private parties should also be heard before disposing of the matter.

8. With the aforesaid observations/directions, the present writ application stands disposed of. All the pending Interlocutory Applications will also be deemed to have been disposed of.

(Alok Kumar Sinha, J)

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