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**(2010) 08 PAT CK 0191**

**Patna High Court**

**Case No:** CWJC No. 7124 of 2008

Wihar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Aug. 20, 2010

**Citation:** (2011) 59 BLJR 1214 : (2011) 1 PLJR 787

**Hon'ble Judges:** Sheema Ali Khan, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

Sheema Ali Khan, J.

The twelve Petitioners have come to this Court making a prayer for cancellation of the settlement made in favour of the private Respondents, who are 269 in numbers. The lands in question appertains to Khata No. 21, Plot No. 43 of Village-Rampur Ghoghar measuring 387.47 acres. The lands which have been settled to the Petitioners and others like him, measures 120 decimals only.

2. The case of the Petitioners is that they were settled the lands by the ex-landlord and later on vesting of the lands in the State of Bihar, the lands were settled by registered deeds apparent from Volume-IX 22 of 1947 in favour of some of the settlees. 120 persons are affected by the orders passed by the Deputy Collector, Revenue, the Additional Collector and the Collector, Patna as contained in Annexure-5 by which the settlements made in favour of the Petitioners and others were cancelled on the basis of the fact that the authorities suspected the manner in which the settlements were made, and settlements of the lands were made in favour of the private Respondents. The lands have been described as GAIR MAZARUA KHESRE HIND (alluvial land).

3. Annexure-1 is the order of the Land Reforms Deputy Collector, Danapur jointly passed by the Sub-Divisional Officer, Danapur. In the said order, it appears that there was a recommendation for reopening the case with respect to the cancellation

of jamabandi by initiating separate cases against each of the settlees and there was also a recommendation for issuing notices to them. It is accepted and admitted by both, the private Respondents and the State, that separate cases were not initiated for the purposes of cancelling the jamabandi, nor has the State issued notices to all the affected persons, rather the State through a public announcement system, announced that the proceeding would take place on 19.6.2006. It is also admitted that on 19.6.2006, out of the 115 persons who purportedly appeared with their documents, 60 of the names mentioned in the order were dead persons, thereby the Petitioners have tried to establish before this Court, that in fact, there was no Camp Court as alleged or even if there was a Camp Court, it was just a formal proceeding, conducted without application of mind. On the other hand, the private Respondents and the State have taken a stand that the heirs of the dead persons appeared before the authorities.

4. All these facts lead this Court to believe that in fact the entire exercise was done in a frivolous manner, in a hurry, without really giving real opportunity to the affected persons to put forth their cases.

5. Since the stand of the Petitioners was that they had been granted settlement through registered document, this Court had called for Volume-IX from the Registry Office. It came to the knowledge of this Court that Volume-IX was submitted in a title suit in the Court of the Munsif, Danapur. Subsequently, the Registry Office has sent the volume to the Counsel appearing on behalf of the State.

6. On perusal of Volume-IX, it is apparent that there are several registered deeds showing settlement in favour of one or the other settlees. These documents need to be examined by the authorities before any order is passed. As such, the matter is remanded to the Collector, Patna the Additional Collector, Revenue for rehearing the matter.

7. I may make it clear that cases of the settlees cannot be clubbed together, as some of them have the registered documents to support their cases, while the other may have some other documents in support of their claims. At the most, the authorities concerned may club those cases together in which parties have taken a common stand.

8. This Court directs as follows:

(a) A spot verification be done in the presence of the Amin, Halka Karamchari, the Circle Officer, Danapur, the Additional Collector, Patna. This would be essential before initiation of the proceedings;

(b) The Collector or the Additional Collector shall issue notice in the daily Hindi Newspapers DAINIK JAGRAN and HINDUSTAN, the Petitioners, the affected persons and the Respondents are directed to appear on the date fixed in the notice and file their objections alongwith the photocopy of the documents on which they wish to

rely.

9. The main issues to be considered are as follows:

(i) The documents of the Petitioners and other like him who claim to be settlees from the ex-landlord as far back as in the year 1956 by a registered document;

(ii) Consider that the settlees claim to have documents of settlement by the ex-landlord;

(iii) The settlees claim that they are in possession over different plots of land which were demarcated and differently numbered because of the fact that plot No. 43 was a huge chunk of land and, therefore, the plot of lands may not correspond to 43, but have been given different numbers. For this purpose, the revenue records or the map would be relevant to indicate the area which was occupied by the Petitioners and others by way of earlier settlements;

(iv) The Respondents claim that plot No. 43 measures 384.47 acres and the claim of the Petitioners and others are that only 120 acres were settled in their favour. It has been submitted that many of the Respondents have not been settled the land over the plot of land settled to the Petitioners and others;

(v) Consider that while passing further orders for the purposes of deciding the question of settlement, the authorities should sub-divide plot No. 43 and re-number it into 43/1, 43/2 or any other manner they think fit and proper;

(vi) The identity of the plot, the settlement should be demarcated clearly which should be done by visiting the spot in question at the time of handing possession after the proceedings are finally decided.

10. This Court has come to a definite finding that the procedure and the manner in conducting the cancellation, the settlement is bad in law, against the principles of natural justice, against the records, and therefore, has to be set aside. Any consequential orders as a result of Annexure-5 are also set aside. The orders that have been brought to the notice of this Court are Annexures-9, 10 & 11, which are the orders of the settlement of some of the Respondents.

11. While deciding the issues, the authorities i.e. the Collector and/or the Revenue Authorities may take into account the fact that although the Petitioner and the Respondents are both landless persons, the fact remains that the Petitioners had been in possession of the lands for a very long time i.e. for about 50 years or more, since further settlements are to be made, the authorities should keep in mind whether it would be proper to dispossess them, if they are similarly situated in terms of their economic and social status, and in accordance with the provisions of the law which apply to settlement.

12. The case should be disposed of as expeditiously as possible. The authorities are directed to give at least two months' time to file the objections/applications.

13. In the result, this application is allowed to the extent mentioned aforesaid.

14. The State Counsel is also directed to return Volume-IX to the Registry Office. The Collector will call for it and examine it while hearing this matter.

15. The LC. Record with respect to Title Suit No. 163 of 1981 should be returned to the Judge-in-charge, Danapur, Patna.