

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8684 of 2018

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Africa Rai @ Ashok Rai Son of Ghogly Rai, Resident of Village-Mozahida,
P.O.-Parbatta, District-Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Land Reforms and Revenue Department,
Government of Bihar, Patna.
3. The District Magistrate, Khagaria.
4. The Additional District Magistrate, Khagaria.
5. The D.C.L.R., Gogari, District-Khagaria.
6. The Sub-Divisional Public Grievance Redressal Officer, Gogari.
7. The Circle officer, Parbatta.
8. Daya Ram Rai, Son of Late Sarath Rai,
9. Ram Pukar Rai, Son of Late Bharat rai,
10. Basisth Narayan rai, Son of Late Janardan Rai, All Resident of Village-
Mozahid, P.O.-Parbatta, District-Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Narayansingh
For the Respondent/s : Mr.Rishi Raj Sinha- Sc19

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 22-11-2022

In this case, the petitioner has prayed for the
following reliefs:-

- “(i) *That the order passed by respondent
no.3, Collector, Khagaria-cum-Second
Appellate Authority of Public Grievance
Redressal Act dated 17.01.2018 be
quashed.*
- (ii) *That the respondent no.7 Circle
Officer, Parbatta, may be directed to
declare the petitioner as local resident*



of Parbatta on the basis of available material on record and produced by the petitioner.

- (iii) *That the Circle Officer, Parbatta may be directed to restore the possession of the petitioner on land measuring 10 decimal, Mauza-Rahimpur, Thana No.373, Khata No.01, Khesra No.18, Tauzi No.525 by verifying their (petitioner) purcha and rent receipt and other documents which was issued by themselves (respondents).*
- (iv) *That any other relief or reliefs may be allowed which will be just, proper and equitable on the opinion of this Hon'ble Court."*

2. The brief facts of this case, as stated in the writ petition, are that in the year 2000-01 the petitioner was provided *parcha* for 10 decimals of land in Mauza-Rahimpur, Thana No.373, Khata No.01, Khesra No.18, Tauzi No.525, by the Circle Officer, Parbatta through Case No.04 of 2000-01. After issuance of *Parcha*, the name of the petitioner was mutated in the records and rent receipts were also issued in his name, which is still existing but suddenly, his neighbours (private respondent nos.8, 9 & 10) started creating trouble and forcefully evicted the petitioner from his land and captured the said land in the year 2009-10. Thereafter, the petitioner filed a petition before the Circle Officer, Parbatta, for restoration of



possession of his land. The Circle Officer, Parbatta, vide letter dated 10.01.2011 referred the matter to D.C.L.R. Gogri. Thereupon, Land Dispute Case No.26 of 2010-11 was instituted. The learned DCLR, Gogri, after hearing the case, passed the order dated 13.07.2011 and rejected the claim of the petitioner on the ground that he is not a resident of Parbatta rather he is a resident of Gram Panchayat Agarpur Machipur, Block-Goradih, District- Bhagalpur. Against the said order, the petitioner filed a petition before the Public Grievance Redressal Officer, Gogari for getting possession of his *parcha* land, who vide order dated 12.08.2017 directed the Circle Officer, Parbatta to enquire into the matter and verify the plot. When nothing was done by the Circle Officer, Parbatta in compliance of the aforesaid order, the petitioner filed First Appeal before the A.D.M., Khagaria-cum- 1st Appellate Authority for getting the possession of his land. The A.D.M. Khagaria-cum- 1st Appellate Authority vide order dated 16.11.2017 directed the Circle Officer, Parbatta, to restore the possession of the petitioner's land. Relevant part of the aforesaid order reads as under:-

"इस तरह जब अपीलार्थी को वर्ष 2000-01 में ही बन्दोवस्ती का पर्चा प्राप्त हो चुका है तो वैसी स्थिति में जब तक सक्षम प्राधिकार के स्तर से उसे रद्द नहीं कर दिया जाता, तब तक अपीलार्थी उस भूमि पर दखल पाने के हकदार हैं, इससे इन्कार नहीं किया जा



सकता। किसी भी स्थिति में पर्याधारी के बाहरी होने की वजह से दयाराम राय के कब्जे को वैध नहीं ठहराया जा सकता। ऐसी स्थिति में अंचल अधिकारी, परबत्ता को यह निर्देश दिया जाता है कि वे उल्लेखित तथ्यों के आलोक में आवश्यक कार्रवाई करते हुए अपीलार्थी को बंदोवस्त भूमि पर नियमानुसार दखल दिलाना सुनिश्चित करें। कृत कार्रवाई से अधोहस्ताक्षरी को भी दिनांक 11.12.17 तक अवगत कराया जाए।”

2.1. When the petitioner was deprived of his land even after the order of the A.D.M. Khagaria-cum-1st Appellate Authority, the petitioner approached the District Magistrate, Khagaria-cum-Second Appellate Authority but the District Magistrate, Khagaria vide order dated 17.01.2018 dismissed the petitioner's claim on the ground that the petitioner is an inhabitant of another district on the basis of the report of the Circle Officer, Parbatta. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner was granted *parcha* of his land by the competent authority and the same was never denied by any official respondents and the District Magistrate, Khagaria has erred in relying on the report of the Circle Officer, Parbatta and without considering the numerous documents provided by the petitioner regarding his address proof of Parbatta has passed the impugned order. He further submits that the District Magistrate, Khagaria did not consider the orders passed by the Sub-



Divisional Public Grievance Appellate Authority as well as 1st Appellate Authority, Gogri wherein they have categorically stated that *parcha* was legally issued to the petitioner for the land in question.

4. Learned counsel for the petitioner further submits that in the supplementary affidavit the petitioner has attached the voter list of the year 1966 in which at serial no.1091 the name of the father of the petitioner has been mentioned as Ghoogly Rai.

5. In this case, a counter affidavit has been filed by the State. In the counter affidavit, the ground taken by the State is that since the petitioner is resident of Bhagalpur district his *parcha* is not valid.

6. I have considered the submissions of the parties. The only ground on which the *parcha* of the petitioner has been cancelled by the respondent authority is that the petitioner is resident of Bhagalpur district and therefore, he cannot be granted *parcha* in the district of Khagaria.

7. Section 4 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 provides that for granting of *parcha* a person should have a permanent tenancy in the homestead held by him at any time continuously for a period of



one year. Apart from the above, Section 2 (i) of Bihar Privilege Persons Homestead Tenancy Act, 1947 defines "privileged person" to mean a person (1) who is not a proprietor, tenure holder, under tenure holder or a Mahajan, and (2) Who, besides his homestead, holds no other land or holds any such land not exceeding one acre.

8. In section 8 of the aforesaid Act, the grounds on which a privileged person may be ejected has been provided, which reads as under:-

“8. Grounds on which a privileged tenant may be ejected.

(1) A privileged tenant shall be liable to ejectment on the following grounds and not otherwise, namely -

(a) on the ground that he has used the holding or any part thereof in a manner which renders the holding unit for the purposes of the tenancy.

(b) on the ground that he has failed to pay the rent of the holding for two years.”

9. In the aforesaid section, it has nowhere been mentioned that *parcha* of any privileged person can be cancelled on the ground of residence of another district. In the opinion of this Court, the petitioner cannot be denied his right as a *parcha*



holder only on the basis of the contention of the State that he is a resident of Bhagalpur district when the document shows otherwise. Moreover, as per Section 4 of the aforesaid Act, it will appear that the petitioner falls under the category of privileged person and therefore, he has rightly been granted the *parcha* and this right has not been confined to a person of a particular district but the person the only prerequisite for grant of *parcha* in that he should be a privileged person. The petitioner is a genuine *parcha* holder and the *parcha* of the petitioner can only be cancelled on the ground as mentioned in Section-8 of the aforesaid Act and it has not been mentioned Section-8 of the Act that *Parcha* can be cancelled on the ground that a person is a non-resident of a particular district for which *parcha* is being granted.

10. In view of the above discussion, this application is allowed.

11. Accordingly, impugned order dated 17.01.2018 passed by the Collector, Khagaria is hereby quashed. The respondents shall treat the *parcha* of the petitioner as valid and he shall not be disturbed from the land in question for which he has been granted *parcha*.

12. If the petitioner has been evicted from his



parcha land, the Collector, Khagaria shall take steps for restoration of the possession of the petitioner over the land in question and the possession should be restored to the petitioner within one month of the date of communication/production of a copy of this order.

(Sandeep Kumar, J)

Vikas/Sunny

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.09.2023
Transmission Date	N.A.

