
(2004) 02 PAT CK 0027
In the Patna High Court
Case No : LPA No. 117 of 1995

Kailash Mehta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Citation : (2004) 1 BLJR 646 : (2004) 2 PLJR 308

Hon'ble Judges : Navin Sinha, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

1. No one appears, in spite of valid service of notice, on behalf of private respondent No. 6.
2. The appeal is directed against the order dated 17.1.1995 passed by learned single Judge dismissing the writ application filed by the petitioner challenging the order passed by the Collector in Miscellaneous Revenue Appeal No. 1 of 1992, setting aside the order of settlement of land made in favour of the appellant-petitioner by the Additional Collector by order dated 20.12.1991.
3. The dispute in this case relates to land of Plot No. 1543 area 17 dec. and Plot No. 5544 area 24 dec. situate in village Puraini in the district of Madhepura. The said land has been recorded as Gair Mazarua Aam land in the recent Revisional Survey Record of Rights showing the land in unauthorised possession of one Hari Mishra. The appellant, an Army Personnel, applied for settlement of land through proper channel and proposal for settlement was made by the Anchal Adhikari through Sub-Divisional Officer, Uda Kishunganj and thereafter the Additional Collector by order dated 21.12.1991 approved the recommendation and ordered for settlement of the said land. Thereafter, the land has been settled and Parwana has been issued in favour of the appellant. The appellant has paid rent and has been granted rent receipts. Respondent No. 6 raised objection before the

Additional Collector who did not accept the objection and ordered the settlement. Thereafter, respondent No. 6 filed appeal before the Collector, who by order dated 4.10.1993 set aside the aforesaid order in exercise of powers u/s 2 of the B.T. Act and Section 3 of the Board's Miscellaneous Rules. The learned single Judge has dismissed the writ application on the ground that the land was a raiyati land and not Gair Mazarua Aam land.

4. We have perused the order of the Collector. From perusal of the said order it appears that he has not given any definite finding about the nature of the land, on the other hand he has noticed that in the survey records the land has been recorded as Gair Mazarua Aam land. However, he has interfered with the order on the ground that no inquiry was made with regard to the objection raised by the respondent No. 6.

5. In our view, when the Collector found that there was no proper enquiry, before passing the order of settlement, then after setting aside the order he should have remanded the matter to the Additional Collector to hold proper enquiry and afford opportunity of hearing to the parties before taking final decision in the matter. In our view, this is a case where the decision has to be taken by the Additional Collector after giving opportunity of hearing to both parties after holding due enquiry. Accordingly, the order of the Collector, by which he has set aside the settlement order is not interfered with, but the matter is remitted back to the Additional Collector, to consider the matter afresh after giving opportunity of hearing to the parties and after holding due enquiry. It is made clear that the Additional Collector will decide the matter on the basis of the materials on record without being influenced by the observations made by the Collector in the order.

6. In the result, the appeal is allowed, the impugned order passed by the learned Single Judge is set aside and the matter is remanded back to the Additional Collector for reconsideration, as indicated above. Appeal allowed.