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**(1989) 03 PAT CK 0027**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 4361 of 1982**

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| Rajeshwar Prasad and Others | Vs | APPELLANT  |
| State of Bihar and Others   |    | RESPONDENT |

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**Date of Decision :** 17-03-1989

**Acts Referred:**

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 2, 4  
Bihar Privileged Persons Homestead Tenancy Rules, 1948 — Rule 5

**Citation :** AIR 1990 Patna 140 : (1989) 37 BLJR 448 : (1990) 1 PLJR 35

**Hon'ble Judges :** Binod Kumar Roy, J

**Bench :** Single Bench

**Advocate :** Nagendra Roy and A.K. Thakur, for the Appellant; Government Pleader and Ramanand Prasad Yadav, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Binod Kumar Roy, J.—The petitioners, all sons of one Kapildeo Prasad, have come under Articles 226 and 227 of the Constitution of India praying to quash the order dt. 15-4-1987 as contained in Annexure-3 passed by the Anchal Adhikari, Baniapur (Respondent No. 2) under the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as "the Act") in case No. 214 of 1967-68 by which the respondent No. 3 has been pleased to accept the proposal of the Circle Inspector to grant Parchas of one Katha two dhurs of land in plot No. 1418 appertaining to Khata No. 379 of village Baniapur to Respondents Nos. 3 and 4 by grant of an appropriate writ/ order/direction.

2. The facts are short and simple.

3. The petitioners assert that plot No. 1418 aforementioned originally belonged to one Bhago Kuer, widow of late Sheo Gobind Sah, who had died issueless and thereafter Bikau Prasad, the landlord assumed that land and came in possession. On 30th Bhado, 1340, Fasli, the aforementioned landlord orally settled the disputed land with Dulhin Phulkumari Devi, mother of the petitioner, and fixed its rent as five annas and also granted rent receipts. Even a Yaddast was also

prepared in support of that oral settlement. At the time of vesting of his Zamindari, the outgoing landlord filed his return showing the aforesaid plot in the possession of Dulhin Phul Kumari Devi. The State of Bihar also entered her name in the Tenant's Ledger Register II. She also started paying rent to the State of Bihar till her death in 1976 and thereafter the petitioners are in possession of the aforesaid land and they are paying rent to the State of Bihar against rent receipts granted in their favour. The petitioners have got their need, Khunta etc. on the plot in question. They had bathan also which had fallen down recently, respondents Nos. 3 and 4, who have got their houses in homestead plots Nos. 1414 and 1419, had approached the mother of the petitioners for purchasing the land in question. Their proposal, however, was turned down. Thereafter by bringing the Anchal Officials in their collusion, they got a Parcha issued by suppressing the processes. On 17th May, 1975, the petitioners and their mother came to know about the issuance of the Parcha and thereafter, they made an enquiry and came to know that the Karamchari had submitted a report for grant of Parcha in favour of respondents Nos. 3 and 4 on the basis of which case No. 214 of 1967-68 was initiated and the order aforementioned was passed, after directing an enquiry by the Circle Inspector who too, had not issued notice to them. A title suit was filed by the petitioners and their mother for declaration of their title to and for confirmation of possession over the land in question and for a further declaration of non-acquisition of any title by respondents Nos. 3 and 4 by impleading them but at their instance the suit was held to have abated under the provisions of Section 4(c) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956.

4. The writ application was admitted on 29-11-1982 and notice were also issued to respondents Nos. 3 and 4 but no counter affidavit has been filed by them.

5. Mr. Nagendra Roy, learned counsel for the petitioners assailed the impugned order chiefly on the following grounds :

(i) The enquiry and the impugned order stands vitiated inasmuch as no notice was given to the petitioners or their mother.

(ii) Respondents Nos. 3 and 4 have not denied that they owned and possessed homestead plots Nos. 1414 and 1419 and thus they were illegally granted parchas under the Act. The relevant extract of the Records of Rights Annexure-5 of village Baniapur supports his contention.

(iii) The land in question is situated in a Hat and Bazar area to which the provision of the Act do not apply and accordingly, the entire proceedings are vitiated.

6. From a perusal of the orders dt. 2-1-1967 and 15-4-1967 (as contained in Annexure-3) it appears that respondents Nos. 2 and 3 were not held to be either "privileged persons" or "privileged tenants" as defined under Sections 2(i) and 2(j) of "the Act".

Section 2(i) of the Act runs as follows :--"Privileged Persons" means 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 lands or holds any such land not exceeding one acre;

Section 2(j) of the Act runs as follows :- -

"Privileged tenant" means a privileged person who holds homestead under another person and is, or but for a special contract would be, liable to pay rent for such homestead to such person; From a bare perusal of the aforementioned provisions, it is clear that respondents Nos. 2 and 3 should have been such persons who, were holding the homestead in question under the petitioners in regard to which there was no legal material on the record. In the absence of any finding in the aforesaid orders in my view the proceeding was illegally continued and decided.

7. Besides, Rule 5 of the Bihar Privileged Persons Homestead Tenancy Rules, 1948 runs as follows:--

"5.(1) The Collector shall either himself make local inquiry or have such inquiry made by any responsible officer not below the rank of a Circle Inspector or Welfare Inspector and satisfy himself as to the correctness of such applications.

(2) The enquiring officer shall issue a notice in Form F to all the interested parties intimating the date on which the enquiry shall be made and directing parties to produce all the evidence in their possession in support of or against the application.

(3) The enquiring officer shall make a record of the evidence produced before him and, if he is not the Collector, submit his report to the Collector.

(4) The Collector shall after hearing the parties on all points arising out of the application pass such order as to him seems to be just and proper.

(5) The Collector shall prepare a record of homestead held by privileged tenant in Form G. The main record shall be maintained in the office of the Collector and a copy of the record bearing the signature and seal of the Collector shall be made over to the landlord and the privileged tenant."

8. From a bare perusal of the aforementioned Rule 5(2) it is clear that notice in Form F has to be mandatorily issued to all the parties intimating them the date on which the proposed enquiry is going to be made and further directing them to produce all their evidence in support of or against the application. Under Rule 5(3), the Enquiring Officer has been burdened with a duty to make a record of the evidence produced before him and then he has to submit his report.

9. It appears that in the instant case, no evidence whatsoever was produced by respondents Nos. 3 and 4 before the Enquiring Officer. The enquiring officer has not issued even any notice to the petitioners or their mother. The Anchal Adhikari

while passing his order dt. 15-4-1967 has apparently over- looked the aforementioned facts and the legal position and had mechanically proceeded to approve the recommendation made by the Circle. Inspector in his ex parte enquiry. He has also erred in proceeding further in the case without giving any further opportunity of hearing to the petitioners or their mother as envisaged under Rule 5(4) of the Act. In my view the course adopted by the Enquiring Officer as well as by respondent No. 2 are wholly illegal and as a result thereof the impugned order dt. 15-4-1967 as contained in Annexure-3 cannot be upheld.

10. The contentions Nos. (ii) and (iii) raised by Mr. Roy are questions of fact which I do not want to decide, even though, Respondents Nos. 3 and 4 have not filed any counter affidavit.

11. Since I have already held that the enquiry and the impugned order both are vitiated, I propose to remit back the case to respondent No. 2 for a fresh decision in accordance with law and it will be open to the parties to raise such points which they may like. In the result the proceedings in case No. 214 of 1967-68 after the stage of passing of the order dt. 2-1-1967 including the order dt. 15-4-1967 as contained in Annexure-3 are quashed by grant of a writ of certiorari and the respondent No. 2 is directed to decide the proceedings strictly in accordance with law. There shall be no order as to cost however.