

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7302 of 2006**

1. Badsah Singh  
2. Lal Babu Singh  
Both sons of Jagdish Singh  
Both are resident of village Indauli, P.S. Jamo Bazar within Basantpur Anchal, District Siwan.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. The Commissioner, Saran Division, Chapra.  
3. The Additional Collector, Siwan.  
4. The Subdivisional officer, Maharajganj.  
5. The D.C.L.R., Maharajganj, district Siwan.  
6. The Circle Officer, Basantpur Anchal, District Siwan.  
7. Bibi Devi, Wife of late Kashi Mahto, resident of Village Indauli P.S. Jamo Bazar within Basant Ancha, District Siwan.  
8. The Collector, Siwan.

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Srinandan Prasad Singh, Sr. Adv, Mr. Ashok Kumar 1, Adv, Mr. Kaushal Kumar Singh, Adv Mr. Manish Kumar, Adv and Mr. Surendra Prasad, Adv

For the Respondent No.7: Mr. Amarendra Narayan, Adv

For the State : Mr. Vijay Kumar Verma, AC to GA.3

**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL ORDER**

16 22-09-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner, in this writ application

reads as follows:-

*“the order dated 29<sup>th</sup> of November, 2001, passed by the Additional Collector, respondent no. 3 in Case No. 153/1998-99 and 21/2001-02 by which he has set aside the order of the Subdivisional Officer dated 22<sup>nd</sup> of September, 1998 (Annexure-2).*

*The order dated 4<sup>th</sup> of February, 2006, passed by the Commissioner (respondent-4), by which he has rejected the settlement Revision no. 42/2001-2002 filed by the petitioner and has affirmed the order of the Collector (Annexure-3).*

*For stay of operation of the order contained in Annexure-3 and 4, pending final hearing of this application.”*

3. Though, a large number of questions have been raised in this writ application, while assailing the two impugned orders passed by the Additional Collector and the Divisional Commissioner, the one which would go to the root of the matter and in fact which has been noticed by this Court in its earlier order dated 22.01.2008, namely, the jurisdiction of the Additional Collector to entertain and hear the appeal against the order of the S.D.O., which is reproduced here in below:-

*“In this case, Mr. Shivnandan Prasad Singh, learned Senior Counsel appearing on behalf of the petitioners has basically assailed the correctness of the impugned order passed by the Additional Collector dated 29.11.2001 and its revisional order, dated 04.02.2006 on the ground that the land in question which has now been directed to settle with respondent no. 7 is not actually a Government land. He further submits that there was a clear finding of the Sub Divisional Officer that the land is a GAIR MAZARUA KHAS LAND already settled with the father of the petitioners and inherited by the petitioners. The Additional Collector in fact appears to have assumed jurisdiction against the order of the Sub Divisional Officer refusing settlement of land in favour of respondent no. 7 on the ground that every order passed by the Sub Divisional officer becomes automatically appealable before him and therefore if the Sub Divisional Officer was vested with the powers to settle land to the members of the Schedule Castes, Schedule Tribes and Backward Class Annexure I & II, the same could be examined and reversed by him.*

*Counsel for the respondent no. 7 though has filed a counter affidavit but when this question was asked from him as to how this land can be said to be Government land when there is no finding either in the order of the Additional Collector or in the appellate order of the Commissioner, he seeks time to explain this aspect by filing a supplementary counter affidavit. He further submits that he will produce before this Court the order of the State Government authorizing the Sub Divisional officer to make settlement in case of members of the Schedule Castes, Schedule Tribes and Backward Class Annexure I & II.*

*The Additional Collector who has passed the impugned order is also directed to file a counter affidavit*


*personally in this case justifying his order to the effect that the land in question is Government land and, therefore, he in capacity of Additional Collector had the power to hear in appeal against such order of the Sub Divisional Officer refusing to make settlement in favour of respondent no. 7. He will be also under obligation to explain in his counter affidavit as to on what basis he has come to a finding that the land in question of plot no. 338 is not included in the jamabandi created in the name of the father of the petitioners and specially when the Sub Divisional officer had given a categorical finding that the land in question sought to be settled in favour of respondent no. 7 actually is a land for which jamabandi is running in the name of the father of the petitioners. This Court is really peeved with the approach of the Additional Collector who had not answered the two basic questions while upsetting the order of the Sub Divisional Officer in course of giving a direction for settling the land in question in favour of respondent no. 7.*

*Be that as it may, this Court expects that a counter affidavit with full provisions of making settlement of Government lands and right of hearing appeal against such orders by the Additional Collector is brought on record in the counter affidavit which must be filed by the same Additional Collector who had passed the impugned order.*

*Having heard counsel for the petitioner and the State as well as respondent no. 7 in the matter of interim relief, this Court directs that during the pendency of this application, the status quo as existing today in respect of the land in question shall be maintained.*


*List this case after four weeks at the same position in the list.”*

4. When the said order was not carried out the concerned authority namely, S.D.O., D.C.L.R and the Circle Officer had appeared in person on 18.03.2008 and sought adjournment for filing of their counter affidavit. Thereafter, the counter affidavit was filed by the Additional Collector, Siwan, the author of the impugned order and the personal appearance of respondent nos. 2 to 6 were dispensed with. The matter thereafter had remained pending.




5. Today, learned counsel for the parties have been heard at length. Mr. Sri Nandan Prasad, learned senior counsel for the petitioner has reiterated his submission as with regard to the jurisdiction of the Additional Collector passing the impugned order at the instance of respondent no. 7. Learned counsel for respondent no. 7, on the other hand has sought to defend the two impugned orders taking a plea that under the Government circular dated 03.05.1971, the power of settlement of GAIR MAJARUA KHAS LAND in favour of S.C. and S.T. and period of 02.01.1964 or thereafter from East Pakistan and Burma settled in India have been vested in the S.D.O., but the power of settlement of land for the Soldiers and the family members of the Soldiers who have died during the war, is vested only in the Collector of the district and therefore, when the prayer made by the respondent no. 7 claiming to be the mother of a Constable of CRPF, who had died in action, was rejected by the S.D.O., she had carried an appeal to the Additional Collector. According to the learned counsel for the respondent no. 7, the Collector of the district will also include the Additional Collector.

6. In this case, as noted above the author, Additional Collector himself has filed his counter affidavit and in support of his again passing the impugned appellate order, he has come out to



say that the power of settlement of Government land or GAIR MAJARUA KHAS LAND is regulated by the provision of Section-49(L) of Bihar Tenancy Act. He has also conceded that as against the order of allowing review under Section-49(L) of the Bihar Tenancy Act, an appeal is provided under Section-49(O) of the Bihar Tenancy Act, wherein, the entertaining and hearing of appeal has been exclusively vested in the Collector of the district but then there was practice going on, of hearing the order of the S.D.O and as such when the appeal filed by respondent no. 7, was admitted by his predecessor, the same was decided by him. He has also tried to justify the order on merits.

7. As noted above, long and short of the case will be only the jurisdiction of the Additional Collector to entertain and hear the appeal filed by respondent no. 7. As noted above, an application was filed by one Sanjay Prasad for settlement of government land in which the father of the two petitioners was made the Opposite Party, this giving rise to Case No. 5/1996-97 before the S.D.O. Maharajganj, Siwan. It appears that after getting the inquiry made, the prayer made on behalf of respondent no. 7 for settlement of Government land was rejected by the S.D.O., by his order dated 22.09.1998. This, order was made subject matter of appeal at the instance of respondent no. 7, before the Additional



Collector, who had set aside the order of the S.D.O., dated 22.09.1998, and the Additional Collector, Siwan in his order dated 29.11.2001, had directed for settlement of the land in favour of respondent no.7, on the ground that respondent no. 7 was a lady of a backward category and also the dependent of Soldier dying in action. Against the said order the petitioners have carried their revision before the Divisional Commissioner, which also was dismissed by order dated 04.02.2006, affirming the order passed by the Additional Collector.

8. Having thus, regard to the question already noticed by this Court in the earlier order dated 22.01.2008 as with regard to the jurisdiction of the Additional Collector in entertaining appeal filed by respondent no. 7, this Court in view of the provision made in Section-49(L) of the Bihar Tenancy Act, reading as follows:-

*“49L. Resettlement of certain tenancies.-(1)  
Whenever-*

*(a) the right of settlement of any tenancy, or any portion thereof is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49K, or*

*(b) Subs. by Act 19 of 1955[a protected tenant] surrenders his tenancy, or a portion thereof, or abandons his residence and ceases to hold his tenancy, the landlord may, subject to the provisions of sections 86 and 87-*

*(i) settle the tenancy, or a portion thereof, with Subs. by Act 19 of 1955[a member of the Scheduled tribes, Scheduled castes or Backward classes,] or*

*(ii) with the approval of the Collector in writing, settle the same with a person who is not Subs. by Act 19 of 1955 [a member of the scheduled tribes, scheduled castes or backward classes] or retain it in his own possession:*

*Provided that the Collector shall not withhold his approval if he is satisfied that the landlord is unable to settle*

*the land with Ins. By Act 8 of 1987[another person, who is a member of the scheduled tribes, scheduled castes or backward classes' and that the surrender or abandonment referred to in this sub-section was not made with the object of evading the provisions of sections 49C, 49F or 49G.*

*(2) If any landlord resettles or otherwise deals with any tenancy in contravention of the provisions of sub-section (1), the Collector may, subject to the proviso to sub-section (1), 49K, eject any person with whom settlement has been made or who is in possession of the land in contravention of the provisions of sub-section (1), and may settle the land with Subs. by Act 19 of 1955[a member of the scheduled tribes, scheduled castes or backward classes,] or, if he is unable to settle the land with Subs. by Act 19 of 1955[a member of the scheduled tribes, scheduled castes or backward classes,] shall restore the land to the landlord.*

as also the provision of appeal and revision under Section-49O of the Bihar Tenancy Act, reading as follows:-

*“49O. Appeal and revision.- (1) An appeal if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under sections 49G, 49H, 49K, 49L or 49M by any officer in the district exercising the power of a Collector, and the order of the Collector on appeal shall be final:*

*Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.*

*(2) Notwithstanding anything in sub-section(1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall lie to such officer as the State Government may appoint in this behalf and the order of such officer on appeal shall be final:*

*Provided that in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the State Government may appoint to deal therewith.*

*(3) An appeal as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.*

will have little option but to hold that when the legislature intends the power of appeal to be exercised by the Collector of the district,

such power had to be exercised by him and him alone. The Additional Collector may seek equivalence to the Collector but unless the statute could have provided for such equivalence as is completely absent in the reading of provision of Section-49 (O) of the Bihar Tenancy Act, it has to be necessarily held that the impugned order passed by the S.D.O., rejecting the proposal or settlement of land in favour of respondent no. 7, could not have been made subject matter of appeal before the Additional Collector.

9. As a matter of fact, the reliance placed by learned counsel for respondent no. 7 on circular of the State Government dated 03.05.1971:-

“विषय— बिशेषाधिकार प्राप्त (त्तपअपसमहमक च्मतेवदे) व्यक्तियों के साथ गैरमजरुआ मालिक एवं खास जमीन की बन्दोबस्ती करने के निमित्त अनुमंडल पदाधिकारियों की शक्ति प्रदान करना।

राजस्व विभागीय पत्रांक-5-एल0 आर0एल0ए0 211/70-6561 एल0 आर0, दिनांक 24.10.70 के क्रम में निदेशानुसार मुझे कहना है कि जमींदारी उन्मूलन के फलस्वरूप देहाती क्षेत्रों में कृषि योग्य बंजर भूमि एवं अन्य भूमि जो सरकार में निहित हो गयी है उसकी बन्दोबस्ती में निम्नांकित वर्ग के लोगों को प्राथमिकता दी जाती है :-

(क) अनुसूचित जाति (ख) अनुसूचित जनजाति (ग) पिछड़ा वर्ग (सूची- I), (घ) कार्यरत सैनिक तथा वैसे सैनिक के परिवार जो युद्ध में वीरगति प्राप्त किए हों, तथा (ड.) पूर्वी पाकिस्तान एवं वर्मा से आए हुए शरणार्थी जो 2 जनवरी 1964 को या उसके बाद भारत में आए हों।

उपर्युक्त (घ) को छोड़कर शेष वर्गों के लोगों के साथ जमीन की बन्दोबस्ती करने की शक्ति प्रत्येक अनुमंडल पदाधिकारी को प्रदत्त है (घ) पर वर्णित लोगो के साथ जमीन बन्दोबस्ती करने में जिला के



समाहर्त्ता सक्षम है।

2. बिहार प्रिभिलेज्ड परसन्स होमस्टीड टेनेन्सी ऐक्ट के अन्तर्गत विशेषाधिकार प्राप्त व्यक्तियों को वास का खर्चा देने के दौरान यह पाया गया कि बहुत से ऐसे व्यक्ति हैं जिन लोगों ने गैरमजरूआ खास मालिक या गैरमजरूआ आम जमीन पर भी मकान बना लिया है, उन्हें बिहार प्रिभिलेज्ड परसन्स होक स्टीडटेनेन्सी ऐक्ट के अन्तर्गत वास का पर्चा देना संभव नहीं है क्योंकि उक्त अधिनियम सरकार में निहित जमीन पर लागू ही नहीं होता है। इसके निमित्त एक ही उपाय है कि उस जमीन की बन्दोबस्ती वैसे लोगों के साथ की दी जाय/अनुसूचित जाति/अनुसूचित जनजाति, पिछड़े वर्ग सूची-। इत्यादि के अंतर्गत आनेवाली विशेषाधिकार प्राप्त व्यक्तियों के साथ बन्दोबस्ती सम्प्रति प्रदत्त शक्तियों के अन्तर्गत स्थानीय पदाधिकारी (अनुमण्डलाधिकारी, समाहर्त्ता) कर सकते हैं, परन्तु अन्य श्रेणी के विशेषाधिकार प्राप्त व्यक्ति के साथ सरकार द्वारा ही बन्दोबस्ती की जा सकती है। परन्तु इस प्रक्रिया में काफी श्रम, समय लगेगा। अतः सरकार ने पूर्ण विचार विमर्श के बाद विशेषाधिकार प्राप्त व्यक्तियों के साथ जमीन बन्दोबस्ती के लिए निम्न प्रकार शक्तियां प्रदत्त करने का निर्णय किया है:-

(क) जिस गैरमजरूआ साख एवं मालिक जमीन पर विशेषाधिकार प्राप्त व्यक्ति का मकान बना हुआ है उसकी बन्दोबस्ती उक्त व्यक्ति के साथ की दी जाय। ऐसी बन्दोबस्ती करने की शक्ति सभी अनुमण्डल पदाधिकारियों को प्रदत्त की जाती है।

(ख) बन्दोबस्ती के दौरान घर एवं सहन की जमीन अगर 12.5 डिसमिल से फाजिल हो तो उसकी बन्दोबस्ती में सरकार के आदेश की आवश्यकता होगी।

(ग) ऐसी बन्दोबस्ती में विशेषाधिकार प्राप्त व्यक्तियों में 12.5 डिसमिल तक जमीन के लिए कोई सलामी नहीं ली जायेगी।

(घ) विशेषाधिकार प्राप्त व्यक्ति का मकान अगर गैरमजरूआ आम जमीन पर होगा तो उसकी बन्दोबस्ती उसी हालत में की जायेगी जबकि जमीन की प्रकृति बदल गयी हो, और वह जनता के उपयोग में नहीं हो। किन्तु आम


जमीन की बन्दोबस्ती करने के पहले आम इस्तहार द्वारा जनता को सूचित करना होगा ताकि कोई भी इस प्रस्ताव के विरुद्ध आपत्ति दे सकेंगे। अगर वह जमीन आपत्तिरहित होगी तब ही उसकी बन्दोबस्ती की जायगी। इस तरह बिशेषाधिकार प्राप्त व्यक्तियों के साथ गैरमजरूआ आम जमीन की बन्दोबस्ती (मकान के लिए ) करने का अधिकार प्रमण्डलीय आयुक्तों को होगा।

पत्र प्रेषित होने की तिथि से ही यह आदेश लागू समझा जायेगा। [ \*पत्र संख्या 4/खा0 0-4 नीति-109/71-2034 रा0, दिनांक 3.5.1971 ] ।”

(underlining for emphasis)

will also go to show that the power of settlement of the land for a soldier or the family members of the soldiers in Indian Armed Force, who have died in action in war is vested only in the Collector of the district.

10. Thus, if the power of settlement was vested only in the Collector of the district, the application filed by respondent no. 7 before the S.D.O., was itself of no use and avail. It is different thing that the application of respondent no. 7 is neither brought on record nor is found in the Anneuxre-1 initiating the proceeding of Case No. 5/1996-97, which as noted above is based on an application filed by one Sanjay Prasad before the Anchal Adhikari, Basantpur, Siwan. Learned counsel for the parties, however, would now like to accept that Sanjay Prasad was brother of the deceased constable of the CRPF and respondent no. 7 is the mother of Sanjay Prasad as well as the deceased constable.



11. Be that as it may, once the application was filed before the Anchal Adhikari for settlement of land without disclosing such settlement on the basis of claim of military person, has exclusively been noted in the aforementioned circular, the view taken by the S.D.O., treating it to be a general application for settlement for which he was having power to specific category including backward category, this Court would not find anything wrong in the disposal of the same by the S.D.O., but now when learned counsel for respondent no. 7 wants to justify such appellate and revisional order directing settlement of land in favour of respondent no.7, on the ground of she being the mother of the soldier dying in action it has to be held that the whole proceeding therefore was to be initiated only before the Collector of the district.

12. As a matter of fact, once the respondent no. 7 or by her son Sanjay Prasad had filed an application either before the Anchal Adhikari or had contested proceeding before the S.D.O. and had become unsuccessful the appeal against the same could have been carried before the Collector of the district. Thus, in either way namely the settlement claimed by respondent no.7 on the ground of soldier dying in action or she being the lady of the backward category, the decision against her taken by the S.D.O.,

could have been only decided by the Collector of the district. Admittedly, that was never done.

13. The Commissioner of the division in fact had not even addressed to the issue of jurisdiction, which was exclusively raised by the petitioners before the Additional Collector, consequently in revision carried out by them before the Divisional Commissioner.

14. Thus, for the reasons indicated above both, the impugned orders passed by the Additional Collector and the appellate order passed by the Divisional Commissioner, are hereby set aside and the matter is remitted back to newly added respondent no. 8 to decide as to whether respondent no. 7 would be entitled for settlement in particular as with regard to the piece of land, which is being claimed whose ownership title and possession is claimed by the petitioners.

15. Before parting with this Court must clarify that the Collector of the district while deciding the appeal filed by respondent no. 7, shall go into all the aspects particularly as to whether the land in question in which settlement was being claimed by Surendra Prasad or respondent no. 7 was a Government land, inasmuch as, the prayer of Surendra Prasad which gave rise to proceedings before the S.D.O., was only in

relation to Government land. Secondly, the Collector of the district will examine as to whether respondent no. 7 comes into the category of dependant of military personnel as defined by the State Government in its circular dated 03.05.1971. And thirdly, he will also go into the question as to whether such settlement of land of the petitioners for which Jamabandi was still running in the name of the petitioners could be made subject matter of settlement in terms of Section 49(L) of the Bihar Tenancy Act or State Government circular dated 03.05.1971.

16. With the aforementioned observation and direction, this application is disposed of.

**(Mihir Kumar Jha, J)**

Ranjan/-  
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