

SC-4
2.1.14

IN THE HIGH COURT OF JUDICATURE AT PATNA.

(CIVIL WRIT JURISDICTION)

C. W. J. C. NO. _____ OF 2014.

Swarnadeo Prasad Yadav. ----- Petitioner.

Versus

The State of Bihar and others.----- Respondents.

Subject:- land dispute

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3.	Annexure-2 A photo copy of the entire order sheet of the Appeal.	
4.	VAKALATNAMA.	

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ OF 2014

Swarnadeo Prasad Yadav. -----Petitioner

Versus

The State of Bihar and others.----- Respondents

SYNOPSIS:

Reliefs of the Case:-

The present writ application is being filed for issuance of an appropriate writ/writs, order /orders or direction/directions for commanding and directing the authority concerned particularly the Commissioner, Kosi Division, Saharsa to take a final decision on the appeal preferred by the petitioner vide Land Dispute Appeal No. 38/1912 and for the other necessary relief/reliefs on the basis of facts and circumstances of the case enumerated and stated herein after.

Important Dates & Facts:-

-	The land under proceeding is ancestral property of the petitioner's family and the father of petitioner acquired the land through the ex-land lord.
-	After vesting return was submitted in the name of father and uncle of the petitioner accordingly Jamabandi is running in the name of ancestor of the petitioner.
1984 Annex.1	That a ceiling proceeding was initiated against the father of the petitioner and was decided by the court of Additional Collector in ex-parte manner, accordingly state had acquired the surplus land shown in ex-parte order and Gazette had published vide No.8/84.
5.9.85	The father of petitioner against said order of acquisition moved before this Hon'ble Court vide C.W.J.C. No.3244/1985 by which the

	order of Collector was set aside by this Hon'ble Court and remanded back to the court below for fresh inquiry.
2.12.86	In the light of order passed in C.W.J.C No.3244/85 the petitioner moved the matter before the court below and the Addl. Collector Madhepura freed the land of petitioner from ceiling proceeding and send a proposal to notified earlier notification no.8/84 since the petitioner's family have coming in peaceful cultivating possession.
12.8.11	The parcha holders have illegally and wrong filed a Misc. petition before the Collector Madhepura and the learned Collector Madhepura has pleased to issue notices and after hearing both sides the learned Collector has pleased to transfer the case to the court D.C.L.R. Madhepura for hearing and disposal.

10.4.12	The petitioner and his brother have filed the written statement and counter claim along with the documents regarding preceding proceedings without considering the argument and documents the D.C.L.R. Madhepura passed in the order against the petitioner.
21.9.12	Being aggrieved by and dissatisfied with the impugned order dated 10.4.12 the petitioner preferred the appeal before the Commissioner Kosi Division Saharsa.
01.3.13 Annex.2	The aforesaid appeal was admitted and notices were issued after long interval and several dates only adjournment was granted due to the motive and the respondent authorities did not take proper care and no final order has been passed and the matter is kept pending unreasonably.
	<i>HENCE THIS WRIT PETITION.</i>

2851

GOVT. OF BIHAR
REGISTRATION, EXCISE & PROHIBITION DEPT.
PATNA SCOUR, PATNA

COURT FEE

Authorization No. 2675

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Rs. 00.00
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**IN THE HIGH COURT OF JUDICATURE AT PATNA
(CIVIL WRIT JURISDICTION)**

C.W.J.C. NO. _____ / OF 2014.

In the matter of an
application under Article 225
of the Constitution of India.

A N D

In the matter of :-

Swarnadeo Prasad Yadav, Son of Late ~~_____~~ war
Prasad Mahto, resident of village Budhama
Lakharaj, P.O. Budhama, P.S. Madhepura, District-
Madhepura. ----- Petitioner.

Versus

1. The State of Bihar.
2. The Commissioner, Kosi Division, Saharsa.
3. The District Magistrate, Saharsa.
4. The Deputy Collector Land Reform, Madhepura.

-----Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the
Chief Justice of the High Court of Judicature
at Patna and her companion Justices of the
said Hon'ble Court.

The humble petition on
behalf of the Petitioner above
named;

Most Respectfully Sheweth:-

1. That the present writ application is being filed for issuance of an appropriate writ/writs, order /orders or direction/directions for commanding and directing the authority concerned particularly the Commissioner, Kosi Division, Saharsa to take a final decision on the appeal preferred by the petitioner vide Land Dispute Appeal No.384 of 2012 and for the other necessary relief/reliefs on the basis of facts and circumstances of the case as

enumerated and stated herein after.

2. That it is stated and humbly submitted that the substantial questions of law involved in the present writ application are as follows:-

- I) Whether the respondent authority particularly Respondent No.2 have failed to appreciate that the basic principle of law committed the wrong while maintain the deliberate silence on the Appeal preferred by the petitioner ?
- II) Whether the respondent authority particularly Respondent No.2 have failed to appreciate the ground formulated by the petitioner in appeal as lower court taken gross erroneous point for deciding the case which is fit to be set aside ?
- III) Whether the appellate authority have not taken care that earlier the Hon'ble High

Court has set aside the order of [redacted] factor passed u/s 10 (2) and acquisition of Surplus Land Notification No.8/84 and distribution of parcha and ignoring the facts the D.C.L.R. passed the order which is not sustainable in the eye of law and is fit to be dismissed ?

IV) Whether the action of the respondent authorities are malafide, arbitrary and without jurisdiction ?

V) Whether the action of the respondent authorities are otherwise bad in law and facts ?

3. That the petitioner is a citizen of India and he is residing within the territorial jurisdiction of this Hon'ble Court.

4. That the land under [redacted] is ancestral property of the petitioner's family and the father of petitioner Late Akhileshwar Prasad Mishra

acquired the land through the ex-land lord by virtue of payment of proper Salami balance (amount) and accordingly mutation had been allowed in the name of the father of the petitioner and paying rent to ex-land lord.

5. That after vesting return was submitted in the name of father and uncle Suresh Pd. Mahto of the petitioner accordingly Jamabandi is running in the name of ancestor of petitioner in the Sirista of State of Bihar. The revisional survey khata recorded in the name of father of petitioner vide records of right, khata no.1 entered in the name of Akhileshwar Pd. Mahto and coming after cultivating and constructive possession.

6. That there was a ceiling proceeding initiated against the father of the petitioner vide ceiling proceeding case No.103/73-74 State Vs. Akhileshwar Pd. Mahto. The ceiling proceeding was disposed of by the court of Additional Collector in

ex-parte manner and proceeded u/s 10 (2). Accordingly state had acquired the ~~sur~~ and shown in ex-parte order and Gazette had published vide No.8/84.

A Photo copy of Gazette Notification No.8/84 is annexed herewith and marked as Annexure-1 to this writ petition.

7. That the father of petitioner ~~ag~~ said order of acquisition under land ceiling proceeding moved before the Hon'ble High Court, Patna vide Civil Writ No.3244/1985 and by which the order of Collector ^{was} set aside by the Hon'ble High Court on dated 5.9.85 and remanded back to the court below for fresh inquiry by providing an opportunity to put the fact before the court by the land holder and after that order to the passed by ~~follo~~ the reliefs.

8. That in the light of order passed in C.W.J.C. No.3244/85 by this Hon'ble Court, the petitioner moved the matter before the court below and the Addl. Collector, Madhepura vide order dated 2.12.86 freed the land of petitioner from ceiling proceeding and send a proposal to de-notified earlier notification no.8/84, since then petitioner's family have coming in peaceful cultivating possession and never dispossessed for a moment. Preceding land is under constructive possession of the petitioner.

9. That this Hon'ble Court set aside the order of Additional Collector and then there was no question of giving delivery of possession to parcha holders.

10. That the parcha holders have illegally and wrongly filed a Misc. petition before the Collector, Madhepura on 12.8.2011 and the learned Collector Madhepura has pleased to issue notices for

appearance to parcha holders in proceeding the present petitioner and filed their claim before the Collector and after hearing from both sides the learned Collector has pleased to transfer the case to the court of D.C.L.R. Madhepura for hearing and disposal under the provision of Land Disputes Resolution Act 2009 and as an amended 2010 of the said Act.

11. That the petitioner and his brother have filed their written statement and counter claim along with the documents regarding proceeding land and without considering the argument and documents the D.C.L.R. Madhepura passed the order on 10.4.12 against the petitioner.

12. That being aggrieved by and dissatisfied with the impugned order of Deputy Collector Land Reforms, Madhepura passed in Land Disputes Resolution Case No.01/12 dated 10.4.12, preferred the appeal before the Commissioner, Kosi Division.

Saharsa vide Land Dispute appeal No.384 of 2012 on 21.9.2012.

13. That the aforesaid appeal was admitted and notices were issued vide order dated 1.3.13 after long interval and several dates only adjournment was granted due to ill motive and the respondent authority did not take proper care and no final order has been passed and the matter is kept pending unreasonably.

A Photo copy of the entire order sheet of the Appeal is annexed herewith and marked as Annexure-2 to this writ petition.

14. That the order of D.C.L.R. Madhepura is grossly erroneous, illegal and prejudiced and the petitioner and his family members shall suffer a irreparable loss and injury from the order of D.C.L.R. Madhepura. The petitioner formulated the

several grounds in the appeal which are liable to be ground for set aside the order of D.C.L.R. Madhepura but the appellate authority was sitting tight over the matter unreasonably till date.

15. That in view of the aforesaid fact the petitioner has persuaded before the Respondent No.2 highlighting the illegality occurred by the Respondent No.4 but the authority concerned have not passed the final order reasons best to known.

16. That in view of the facts and circumstances as discussed above and taking into consideration in its totality it is just and proper that the present writ petition may be allowed with the relief as sought for under paragraph No.1 to the writ application may be granted in favour of petitioner.

17. That the petitioner has got no any other efficacious and alternative remedy other than to move before this Hon'ble Court by way of this writ

petition for redressal of his grievances.

18. That the petitioner has not moved earlier before this Hon'ble Court for grant of relief sought for in the present writ application.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this writ application, issue Rule NISI, Calling upon the Respondents to file Show Cause as to why the reliefs sought for in Paragraph No.1 of this writ application may not be granted to the petitioner and after hearing both the parties make the rule absolute and allow this writ application.

And/ Or

Pass such other order or orders, as
your Lordships may deem fit and
proper under the facts and
circumstances of the case.

And for this the Petitioner shall ever pray.

Affidavit.

I, Swarnadeo Prasad Yadav, aged about 60 years, Son of Late Akhileshwar Prasad Mahto, resident of village Budhama Lakharaj, P.O. Budhama, P.S. Madhepura, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the Contents of the petition have been read-over and explained to me in Hindi which I have understood and the statements made in Paragraph Nos. 4, 5, 7 to 12, 14 to 16 are true to my knowledge and those made in Paragraph Nos.

are derived from records of the case which I believe to be true and the rest are by way of submission before this Hon'ble Court.

3. That annexures are true/photostatic copies of their respective originals.

2/11/2019

Annexure - 1

अंक-४६

पृष्ठ संख्या-२३

मधेपुरा जिला असाधारण गजट, सोमवार, ३ सितम्बर १९८४,

समाहरणालय, मधेपुरा
(राजस्व शाखा)

अधिसूचना सं०-८/८४

मधेपुरा, दिनांक १-९-८४

चूंकि इसके साथ अनुबद्ध तालिका के स्तम्भ १ में उल्लिखित भूधारक द्वारा धारित भूमि के सम्बन्ध में बिहार भूमि सुधार (अधिकतम सीमा निर्धारण एवं अधिशेष भूमि अर्जन) अधिनियम (बिहार लैंड रीफार्म फिक्शंस आफ सीलिंग एरिया एण्ड एक्जीक्यूशन ऑफ सरलस लैंड १९६१ बिहार अधिनियम १२, १९६२) की धारा ११ की उपधारा १ के अधीन विवरण अंतिम रूप से प्रकाशित हो चुका है।

और चूंकि उक्त विवरण के उक्त तालिका के स्तम्भ २ से ६ तक में वर्णित अधिशेष के रूप में दिखाई गई है, इसलिये अब उक्त अधिनियम की धारा १५ की उपधारा (१) में प्राप्त शक्तियों का प्रयोग करते हुए जिला समाहर्ता, मधेपुरा उक्त अधिनियम के प्रयोजनार्थ उक्त अधिशेष भूमि जो लोक प्रयोजन के लिये अपेक्षित है, अर्जित करते हैं।

ह०/—

१-९-८४

समाहर्ता, मधेपुरा

तालिका

अधिशेष भूमि का ह्योरा

भूधारी का नाम, पिता का नाम एवं पता	गांव	खता न०	खेसरा न०	रकबा एकड़ में	अभ्यवित
१	२	३	४	५	६
श्री अखिलेश्वर प्र० सहतो	बुधमा नाखराज	५	१४६	०-५४	
पे० नैमधारी प्र० सहतो		१२	१५०	२-२६	
ग्राम—शालिग्रामी	अंचल—मधेपुरा	१३	१५२	०-२०	
अंचल-साहेबपुर-कमाल		८८	१५१	०-०३	बर्ग ३
जिला—बेगूसराय		७	१५३	०-१६	
		२६	१५७	०-५१	
			३५५		
	बुधमा	१९	६४६	०-६८	
			६५०	०-२०	
		२६	६५५	०-५२	

Ex-879
21/10/2013

21/10/2013 26/10/2013 26/10/2013 26/10/2013

Land Dispute Appeal No-384/2012


Annexure - E

धनुषी १०-प्राथम सं० ५६२।

आदेश-पत्रक

(वेधे परिसेध हुत्तक, १९४१ का नियम १२९)

आदेश पत्रक-- ता. Swarna Deo Prasad Yadav & others
बिला. Ramchandra Mallick & others
केस का संख्या

आदेश की क्रम-संख्या की प्रतीक	आदेश और प्रदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्यवाही के बारे में प्रियंका, तारीख-स्थिति
	<p>2/9-2012 - put up before Commissioner on 12-10-2012 for hearing on the point of admission.</p> <p>Secretary to Commissioner</p> <p>12-10-2012 - petitioner files H.O.M. p-o was otherwise busy. To 9-11-2012</p> <p>Secretary to Commissioner</p>	
	<p>9-11-2012 - Petitioner files H.O.M. Had after point of admission put up for order.</p> <p>JK</p>	<p>1523 11/11/12 FD 20-06-13</p>

आदेश की क्रम संख्या कीस तारीख १	आदेश और पदाधिकारी का हस्ताक्षर २	आदेश पर की गई कार्रवाई के बारे टिप्पणी, तारीख-सहित ३
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दिनांक 01.03.2013

यह अपीलवाद, अपीलार्थी के द्वारा भूमि सुधार उपसमाहर्ता, मधेपुरा के विविध सिलिंग वाद संख्या- 01/2012 में पारित आदेश दिनांक 10.04.2012 के विरुद्ध दाखिल किया गया है।

अपीलार्थी के विद्वान अधिवक्ता को ग्रहण के बिन्दु पर सुना। वाद अभिलेख के अवलोकन से यह स्पष्ट होता है कि भूमि सुधार उपसमाहर्ता, मधेपुरा के द्वारा विविध सिलिंग वाद में उभय पक्षों की सुनवाई के पश्चात आदेश पारित किया गया है, जिसके विरुद्ध अपीलार्थी के द्वारा भूमि विवाद निराकरण अधिनियम- 2009/2010 के अन्तर्गत इस न्यायालय में अपील दाखिल किया गया है। अतः न्याय के हित में संबंधित निम्न न्यायालय का सम्पूर्ण मूल अभिलेख का अवलोकन एवं उभय पक्षों को सुनना आवश्यक प्रतीत होता है।

उपरोक्त परिपेक्ष्य में निम्न न्यायालय से अभिलेख की मांग करें एवं संबंधित पक्षों को नोटिस जारी करें। इसे दिनांक 08.03.2013 को सुनवाई रखें।

[Handwritten signature]



8-3-2013 - petitioner absent. P.O. was otherwise busy till 9-5-2013.

Secretary to Commission

09-05-13

अपीलार्थी उपस्थित / पीठासीन पदाधिकारी द्वारा सुनवाई की। दिनांक 30-6-13 को रखें।

[Handwritten signature]
भायुक्त सचिव

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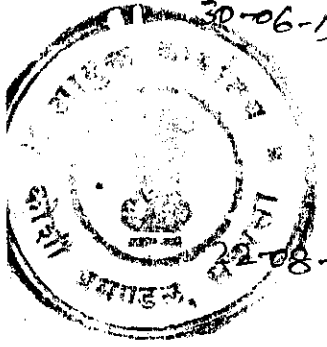
संयुक्ती १२-पारम सं० ५६२१

L.D.A-384/12
भादेश-गलक

(सेवे लमिसोत्र हल्लक, १९४१ का नियम १२९)

भादेश परकी ता.
दिना., य., मन् १२.....
केस का संख्या.....

भादेश परी. कर्म-केसया सीय कारिका	भादेश और पराधिकारी का हस्ताक्षर	भादेश पर की गई जाँचवाई के बारे में टिप्पणी, तारीख-तहिल
30-06-13	<p>अवकाश रहने के कारण दिनांक 22-08-13 को रहे।</p> <p>आयुष्मत् के लक्ष्य</p>	
08-13	<p>आयुष्मत् की ओर से उपस्थिति। जिवाइर नविपक्षी की ओर से दाखिल। दिनांक 13-12-13 को रहे।</p> <p>समाप्ति १३/१०/२०१३</p>	



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6/10/13
3/11/13
3/11/13

प्रमाणित प्रतिलिपि
3/11/13
अभिनेश्वर पाठक,
आयुक्त कार्यालय,
कोशी प्रमण्डल, सहरसा
पारा ७, दिनांक १ सन १९७०
कागज संख्या १०७०

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24°	702	02
90°	902	32
32°	302	72
87°	402	1
23°	202	22
97°	102	6
22°	92	22
70°	133	2
14°	733	02
34°	933	1
22°	333	22
22°	033	
83°	143	62
92°	743	
12°	943	32
37°	143	32

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