

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Miscellaneous Jurisdiction)

M.J.C.No. of 2013

((Arising out of C.W.J.C 1669 of 2011))

Fulchand RishideoPetitioner

Versus

The State of Bihar and OthersRespondents

SUBJECT- MODIFICATION

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2. Copy of order dated 19.4.12

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Miscellaneous Jurisdiction)

M.J.C.No. of 2013

(Arising out of C.W.J.C 1669 of 2011)

In the matter of an
application under article
226 of the Constitution
of India.

AND

In the matter of
Fulchand Rishideo, S/o Late Rasik Rishideo, R/o Vill-
Itahri, Nathnagar, PS Alamnagar, Dist Madhepura
.....Petitioner

Versus

1. The State of Bihar through The Chief Secretary,
Government of Bihar, Patna
2. The District Magistrate, Madhepura.
3. The Sub-Divisional Magistrate, Udakishunganj,
Madhepura.
4. The Circle Officer, Alamnagar, Madhepura.

5. The Circle Inspector, Narkatiaganj.

.....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 petitioner above
named.

MOST RESPECTFULLY SHEWETH:-

1. That this humble application for modification/clarification of order dated 19.4.2012 passed in C.W.J.C 1669 of 2011 to the petitioner and rest of the villagers may be allotted land and then they may be asked to vacate the present land on which they are living.
2. That the petitioner has not moved before this Hon'ble court for modification of order dated 19.4.2012 passed in C.W.J.C 1669 of 2011 on any earlier

occasion, hence this application before this Hon'ble Court for the first time.

3. That the petitioner is a citizen of India and resides within the territorial jurisdiction of this Hon'ble Court.
4. That the petitioner is a resident of Village Itahri, Madhepura.
5. That after hearing the parties including the respondent state this Hon'ble Court vide order 19.4.12 had observed as follows:-

"The solution to the problem is that the State Government may again approach the Kameshwar Singh or any other person for sale of his land, or they may fill mud on the proposed land with the help of the petitioners, so that it can become habitable. In any event, the petitioners will be required to vacate the land of respondent nos. 5 to 10 as they have no right on the said land. It is the responsibility of the Government to manage the same within six months from the date of receipt of a copy of this order. This writ application is accordingly disposed of."

A copy of the order dated 19.4.2012 is annexed herewith

and marked as
Annexure 1 to this
application.

6. That the authorities have asked the villagers to vacate the land and have also threatened that force will be used to affect the same.
7. That no attempt has been made by the authorities to find the alternative site for dwelling of the villagers.
8. That in this rough winter the authorities are forcing the women and children and the elderly to leave their house stay under the sky.
9. That one hand the authorities have not complied with the order of this Hon'ble Court and on the other hand are evicting the occupant.
10. That the villagers of the petitioners have built houses on the strengths of the basgit purcha issued to them by the state.
11. That the authorities are misinterpreting the order of this Hon'ble Court which has caused filing of this modification application.
12. That the act of the state is not the act of a welfare state.
13. That the petitioner deserves the sympathy of this Hon'ble Court.
12. That the modification/clarification of the order dated 19.4.12

It is, therefore, humbly prayed that your Lordships may graciously be pleased to modify the order dated 19.4.12 passed in C.W.J.C 1669/2011 No to the extent as mentioned in Para 1 of this petition.

And/or

Pass such any other order or orders as your lordships may deem fit and proper in the interest of justice.

And for this the petitioner shall ever be indebted.

AFFIDAVIT

Fulchand Rishideo, aged about 47 years S/o Late
Rasik Rishideo, R/o Vill- Itahri, Nathnagar, PS Alamnagar,
Dist Madhepura

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 this petition have been read over and explained to me in Hindi which I have understood and are true to my knowledge and belief .
3. That the Annexure are photo/true Copies of their respective originals.

Annexure-1

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**IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1669 of 2011**

Fulchand Rishideo, S/o late Rasik Rishideo, R/o Vill- Itahri, Nathnagar,
P.S- Alamnagar, Distt- Madhepura.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Madhepura.
3. The Sub Divisional Magistrate, Udakishunganj, Distt- Madhepura. Null
4. The Circle Officer, Alam Nagar, Madhepura.

.... Respondents

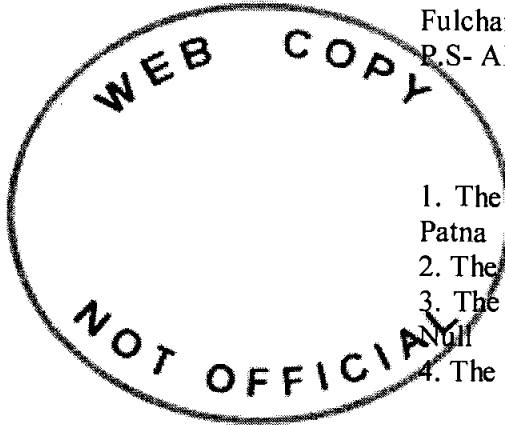
Appearance :

For the Petitioner : Mr. Saket Tiwary, Advocate
For the Respondent/s : Mr. Yogendra Pd. Sinha, A.A.G-15

**CORAM: HONOURABLE JUSTICE SMT. SHEEMA ALI KHAN
ORAL ORDER**

11 19-04-2012

The facts of this case are that certain lands were acquired in the land ceiling proceeding and final publication made in the year 1992 that came to be questioned on the ground that certain lands were sold prior to the cut off date i.e. 07.03.1992. This led to a writ petition before this Court followed by fresh final publication for the land acquired in the year 1994. In the meantime, the State Government acted upon the final publication of 1992 and settled the land with the petitioner who came in possession of the land in question. Eventually, the private respondents succeeded and the lands were released. At that time lands were not in possession of the private respondents in this case. Since the petitioner was in possession of the land by virtue of a Government Order arising out of the ceiling proceeding, it cannot be said that they have right to remain on the lands in question as a matter of right. When



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revision application of the petitioner came to be dismissed.

In the meantime, the State Government tried to make alternative arrangements to settle the petitioners on alternative piece of land. According to the petitioner it was water logged and inhabitable.

The State counsel has filed counter affidavits stating that the petitioners coming from the weaker sections of the society are entitled to be settled on alternative piece of land. The state has in fact endeavored to give them certain lands as mentioned earlier, which the petitioners refused to accept.

On 02.01.2012, the counsel for the State was directed to take instructions from the District Magistrate, Madhepura with respect to land appertaining to Khata No. 127, Plot Nos. 1267 and 1268, measuring 1.80 decimals situated in anchal Alamnagar, village Itahari on the point as to whether it is submerged in water 12 months of the year.

In reply to the specific query of this Court a supplementary counter affidavit has been filed wherein the District Magistrate, Madhepura and the Sub-Divisional Magistrate, Udakishunganj verified this fact personally with respect to the nature of the land proposed to be given to the petitioners and others. It has also been stated that the proposed land was water logged during the rainy season. The local officers have approached one Kameshwar Singh, son of late Ram Prakash Singh of village Itahari and he had orally agreed to sell the land to the Government. However, the petitioner had also approached the said Kameshwar Singh and asked him not to sell the lands to the Government as the petitioner and others do not want to shift from

WR
NO

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The solution to the problem is that the State Government may again approach the Kameshwar Singh or any other person for sale of his land, or they may fill mud on the proposed land with the help of the petitioners, so that it can become habitable. In any event, the petitioners will be required to vacate the land of respondent nos. 5 to 10 as they have no right on the said land. It is the responsibility of the Government to manage the same within six months from the date of receipt of a copy of this order.

This writ application is accordingly disposed of.

(Sheema Ali Khan, J)

Ashwini/-