

## In The Court of Deputy Commissioner, Ramgarh

Misc. No. 84/09, 85/09, 86/09, 87/09, 88/09, 89/09, 90/09, 91/09

Nageshwar Mahto others Versus Naresh Karmali others.

### Order

23.8.13

All the above cases were heard together because petitioners are same and are related to the same land as given below :-

Mauja	Khata	Plot	Area
Siru	61	3482	67 decimals

The respondents in the above eight cases included Naresh Karmali (84/09), Natwar Karmali (85/09), Rameshwar Karmali (86/09), Sunil Karmali (87/09), Anil Karmali (88/09), Jagan Karmali (89/09), Lakhi Ram Karmali (90/09 and Subash Karmali (91/09). All of them were given 6.5 decimals of land under the same plot no. 3482.

The petitioner has stated that the Recorded Tenant of Khata 61 was Mukan Kurmi. After his death Tulashi Mahto and Nageshwar Mahto came in possession. But Tulshi Mahto died and his sons came in occupation. Further case of the petitioner is that all the above mentioned respondents fraudulently obtained 'Basgit Parcha' despite the fact that they did not fulfil any of the conditions stipulated in BPPHT Act, 1948. It is added that they did not meet the requirements as given in 2(I) and 2(j) of the Act. Nor could they prove the relation of landlord and the tenant.

Heard both the counsels. The counsel for the petitioner pleaded that the respondent did not fulfil the conditions of a privileged person as given in Section 2(i) and 2(j). It was argued that the Circle Officer did not take the report of Revenue Karamchari or The Circle Officer to examine how much did the respondent hold land at the time of issuing 'Parcha'. It was added that no homstead exists even today on the disputed land.

The learned counsel for the respondents replied mainly on the point of jurisdiction of the present court and the delay in filing the petition. It was contended that the court of the Deputy Commissioner had no power to hear the case

under Section 21 o the BPPHT Act. It was further pleaded that the Parchas were issued in 1998 but the present cases were filed in 2009. It was concluded that the cases were hopelessly time barred.

A close perusal of all the records including the lower court record no.1 of 1998-99 (Naresh Karmali), 2/98-99 (Sunil Karmali), 4/98-99 (Natwar karmali), 5/98-99 (Subhash Karmali), 6/98-99(Jagan Karmali), 7/98-99(Rameshwar Karmali), 8/98-99 (Anil Karmali) shows that the Circle Officer has not followed the procedure laid down in the BPPHT Rules. No enquiry was conducted by Karmachari or the Circle Inspector to determine whether the respondents were privileged person as defined by Section 2(i) or privileged tenant. Condition must be proved before a person can be declared a 'Privileged tenant'. It is necessary that the two conditions laid down in Section 2(i) (I) pt 2(i)(2) are met before a person is treated as a privileged person. There is no report in the record proving the fact that the respondent do not hold more than one acre of land.

In the light of facts, arguments and documents placed before the present court, the petitions are allowed and orders of the Circle Officer in all cases excepts 3/98-99 are set aside. The cases are remitted back to the Circle Officer for reopening the proceedings and fresh disposal in accordance with law.

Written and Corrected by

Deputy Commissioner,  
Ramgarh.

Deputy Commissioner,  
Ramgarh.