

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5197 of 1987

With

Interlocutory Application No.5608 of 2014

And

Interlocutory Application No.7422 of 2014

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1. Sita Ram Mistry son of Gurusahay Mistry
 2. Ram Sharan Mistry son of Guru Sahay Mistry
 3. Bulchand Sharma son of late Kharag Sharma
 4. Bundi Jamadar son of Sukhi Jamadar
 5. Doman Mahto son of late Harkishun Mahto
 6. Meghan Gope son of late Loka Gope
 7. Ruplal Gope @ Ruplal Yadav
 8. Jagdish Jamadar son of Saukhi Jamadar
 9. Rajendra Mistry son of Mahabir Mistry
 10. Saryug Mistry son of Mahabir Mistry
 11. Chhattri Jamadar son of Rohan Jamadar
 12. Sheo Paswan son of Domu Paswan
 13. Bhuneshwar Mistri son of Sukan Mistri
 14. Saudagar Chaudhary son of Karan Chaudhari
 15. Baudhu Yadav son of Hari Yadav
 16. Chaturbhuj Pandit son of Jitan Pandit
 17. Prameshwar Paswan son of Ramdhani Paswan
 18. Chandu Jamadar son of Sundar Jamadar
 19. Harihar Jamadar son of Sukhi Jamdar.
 20. Dumar Mistri son of late Govind Mistri
 21. Etwari Mahto son of late Mallu Mahto
 22. Sumangal Jamdar son of late Jhapsi Jamadar
 23. Yugeshwar Paswan son of late Ramdhani Paswan
 24. Daso Paswan son of Tetar Paswan

All residents of village Issua, P.S. Giriyak, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Land Reforms, Deputy Collector, Nalanda.
3. Surendra Pd. Son of late Sri Narain Prasad
4. Akal Mahton son of late Karan Mahton
5. Nand Kishore Pd. Son of Kashi Mahto
6. Sukhdaiya Devi wife of Baldeo Prasad
7. Tetari Devi wife of Gopali Mahton
8. Sudama Devi wife of late Nathun Mahton
9. Nago Devi wife of Rewat Mahto
10. Lukhar Mahton son of late Tota Mahton.
11. Etwari Mahton son of late Karan Mahton
12. Ganauri Mahton son of Dukan Mahton
13. Jamuna Mahton son of late Sukar Mahton
14. Ramjee Mahto @ Ramchandra Pd. Son of late Somari Mahton.
15. Suresh Prasad son of Pukar Mahton
16. Lala Mahton son of late Mahto Mahton
17. Giria Devi wife of late Sri Narain Mahton

18. Shyam Lal Mahton son of Govind Mahton
19. Jiria Devi wife of Arjun Prasad
20. Kailash Prasad son of late Sukhlali Mahton
21. Kashi Mahton son of late Domu Mahton (died and substituted vide order dated 26.04.1988 by his following heirs
21(a) Biresh Prasad
21(b) Surendra Prasad
22. Sukhi Mahton son of late Khublal Mahton
23. Bhatani Devi wife of Sukhi Mahton
24. Balmiki Mahton son of Sanichar Mahton
25. Chando Mahto son of late Dhaju Mahton
26. Sahdeo Prasad son of late Kesar Mahto
27. Ramchandra Pd. Son of late Loka Mahon
28. Tilak Mahto son of late Loka Mahton
29. Fulo Devi wife of lala Mahton
30. Budho Devi wife of late Sukhlali Mahton
31. Mangal Mahto son of late Tekan Mahto
32. Yakoob Khan son of late Gafoor Khan
33. Jago Mahto son of Bhojal Mahton
34. Tilak Mahton son of late Tulsi Mahton (deleted vide order dated 19.4.1988).
35. Janki Devi wife of Bulchand Mahto
36. Sohrai Mahto son of Kari Mahton
37. Punia Devi wife of Pato Mahton.
38. Shanti Sinha wife of Rajnandan Prasad
39. Pato Mahto son of late Bandhu Mahton.
40. Mangal Mahton son of late Sukar Mahton
41. Keshar Mahto son of late Thkur Mahton.

All are residents of Village Issua, P.S. Giriyak, District Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s : None.
For the Respondent No.1 & 2 : Mr. Rajiv Kumar Singh, GP-2
For the Respondent No.3 to 41: Mr. Shyameshwar Dayal
Mr. A. Narayan

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

28 05-08-2015 The petitioners, 24 in number, have filed the present writ petition under Articles 226 and 227 of the Constitution of India assailing the validity and correctness of order dated 02.11.1987 (Annexure-6) passed in Bataidari Case No. 2 of 1987-88 by the respondent D.C.L.R., Biharsharif, whereby Anchal Adhikari, Giriyak was appointed as a Chairman of the Batai Board (Reconciliation Board) for deciding Batai claim of the petitioners

afresh. Both parties were directed to nominate their two Panches. By the aforesaid order dated 02.11.1987 itself the private respondent No. 3 to 41 were directed to be impleaded as party in the aforesaid Batai case as they claimed to be purchasers of the land in question from the heirs of the ex. landlord.

2. By order dated 20.11.1987 notices were issued to the private respondents and operation of the impugned order dated 02.11.1987 was stayed. Subsequently, the writ petition was admitted for hearing by order dated 25.05.1988 and further proceeding before the respondent D.C.L.R. was stayed.

3. Despite repeated calls, none appears on behalf of the petitioners in support of the present writ petition, though the name of the learned counsel appearing on behalf of the petitioners is printed in the daily cause list. However, learned G.P.2 appearing on behalf of the respondent no. 1 and 2 and the learned counsel appearing on behalf of some of the surviving respondents submit that in view of the order of stay passed by this Court, as referred to above, final recommendation was not made by the Bataidari Board in the light of the impugned order dated 2.11.1987 (Annexure-6) regarding the lands in question, as the further proceeding pending before the D.C.L.R., Bihar Sharif itself was stayed vide order dated 25.5.1988 passed by a Division Bench of this Court.

4. Since the order dated 02.11.1987 almost 28 years have elapsed. Now, I.A. No.5608 of 2014 has been filed on behalf of the respondent no.3 to 9, 11 to 26, 28 to 31, 35 and 37 to 41 stating there in paragraph 3 that during the pendency of the writ petition, petitioner no. 3,4,5,6,7,11,13,14,15 and 22 have died long ago on different dates leaving behind their heirs and legal representatives, but no steps have been taken for their substitution.



Therefore, it is pleaded that the writ petition has become incompetent. It has further been stated in paragraph-4 of the aforesaid interlocutory application that several respondents including respondent no. 4,6,9,10,11,12,13, 17, 22, 29, 30, 31, 32,33, 40 and 41 have also died long ago on different dates leaving behind their heirs and legal representatives as indicated there in that paragraphs, but steps have not been taken by the petitioners for their substitution. Learned counsel appearing on behalf of the surviving respondents submits that in the aforesaid facts and circumstances, whole writ petition is liable to be dismissed.

5. Learned G.P.2 appearing on behalf of the respondent no. 1 and 2 has pointed out that I.A. No. 7422 of 2014 has been filed on behalf of the petitioners for substitution of the deceased petitioners and the deceased respondents, but no vakalatnama has been filed on behalf of the proposed heirs of the deceased petitioners. As noticed above, none appears on behalf of the petitioners in support of the main writ petition as also I.A. No. 7422 of 2014.

6. Admittedly, the present writ petition arises out of a proceeding under Section 48E of the B.T. Act, but by the impugned order dated 02.11.1987 only Anchal Adhikari was appointed as a Chairman and the respondent no. 3 to 41 were directed to nominate their panches. In view of the stay order passed by this Court, no progress has been made in the aforesaid Batai case.

7. Under the provisions of Section 48E (10) of the B.T. Act, Batai Board is required to make its recommendation within a period of 6 months, but since the date of the impugned order,



almost 28 years have already elapsed. Therefore, this Court is of the opinion that the Batai Case No. 2 of 1987-88 cannot proceed on the basis of the impugned order dated 02.11.1987 on account of lapse of almost 28 years. Impugned order has practically lost its efficacy. Batai Board, if any, will have to be reconstituted afresh. Furthermore, on account of death of several writ petitioners and the several respondents, as noticed above, their heirs and legal representatives might have lost their interest and may not be interested in the Batai case any further. Apparently, by the impugned order dated 2.11.1987 (Annexure-6), no legal right has been created either in favour of the petitioners or in favour of the respondent no. 3 to 41 regarding the lands in question.

8. In above view of the matter, this Court is of the opinion that the interest of justice shall be sub-served, if the surviving petitioners or the heirs and legal representatives of the deceased petitioners, who, if at all, are interested, as also the surviving private respondents or the heirs and legal representatives of the deceased respondents, are granted liberty to file their separate or joint fresh petition under Section 48E of the B.T. Act before the prescribed authority for grant of appropriate relief. It is ordered accordingly.

9. If such a petition is filed on behalf of either party either jointly or separately, then the respondent D.C.L.R., Biharsharif, Nalanda or any other competent authority under the B.T. Act shall be at liberty to pass a fresh order in accordance with law, without being prejudiced or influenced by any finding recorded in the impugned order dated 2.11.1987 (Annexure-6), but before passing any final order opportunity of hearing must be given to all concerned including the adversary having claim over

the lands in question. If any such proceeding is initiated, then the parties shall be at liberty to raise all the issues of facts and law, which may be available to them.

10. The main writ petition as also I.A. No. 5608 of 2014 and I.A. No. 7422 of 2014 are finally disposed of with observations and directions made above.

(Birendra Prasad Verma, J)

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