

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3619 of 2012

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Gajendra Choudhur S/O Late Jugal Choudhur R/O Village- Bishunpur Tola
Sonbarsa, P.S.-Baruraj, District- Muzaffarpur

.... Petitioner/s

Versus

1. Punya Deo Mishra S/O Late Ghuran Mishra R/O Village-Paltu
Belwa, P.S.- Chakiya, District- East Champaran
2. The State of Bihar through Secretary, Department of Revenue and Land
Reforms, Govt. of Bihar
3. District Collector, East Champaran, Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s

:Mr.Hemendra Prasad Singh, Sr.Advocate

Mr. Ajit Kumar, Advocate

For the Respondent Nos. 2 & 3 : Mr. Kumar Alok, SC 8

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 01-10-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 15.07.2003 passed in Case No. 2 of 1998 (East Champaran) by the State Government, as contained in Annexure-9, whereby the petition filed on behalf of the petitioner under Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short, "Land Ceiling Act") for re-opening of Land Ceiling Case No. 339 of 1973-74 has been rejected by a reasoned and speaking order.

3. Indisputably, against the impugned order, the petitioner had moved earlier before this Court in CWJC No. 2014 of 2005. The aforesaid writ petition was firstly dismissed for want of prosecution by an order dated 27.02.2006; but, subsequently, the said writ petition was restored by a Bench of this Court on the

prayer made on behalf of the petitioner. Thereafter, it was taken up for consideration on merits, but on one ground or the other, the matter was adjourned on different dates. However, when the aforesaid CWJC No. 2014 of 2005 was taken up for consideration on merits on 14.02.2011, a Bench of this Court passed the following order:

“ Both sides present.

In view of the deficient pleadings on record, this Court was inclined to reject the application as the petitioner has not been able to demonstrate by adequate pleadings that lands claimed by them were clubbed and acquired by reason of notification/orders passed in L.C.Case No. 339 of 1973-74. Petitioner has also not stated in the application with reference to documents about the right, title and interest in respect of the land claimed by him.

Learned counsel for the petitioner prays two weeks time to file affidavit bringing on record relevant pleadings supported by documents.

Let such affidavit be filed within three weeks failing which the application shall stand rejected without further reference to a Bench.

If the order is complied with, the case shall be listed after four weeks within top 15 matters.”

4. From the plain reading of the aforesaid order dated 14.02.2011, it is apparent that this Court was not satisfied regarding the claims raised on behalf of the petitioner with respect to the lands in question as also with respect to the impugned order dated 15.07.2003 (Annexure-9). However, learned counsel appearing on behalf of the petitioner prayed for two weeks' time, but the Court, instead of two weeks, granted him three weeks' time for filing supplementary affidavit bringing on record the relevant materials/documents in support of his claim with respect



to the lands under dispute. The aforesaid order dated 14.02.2011 was peremptory in nature. When the matter was listed once again on 15.03.2011, learned State counsel pointed out that the order dated 14.02.2011 has not been complied with by the petitioner. In that view of the matter, by order dated 15.03.2011 (Annexure-10) passed in CWJC No. 2014 of 2005, it was held that on account of non-compliance of the Court's peremptory order dated 14.02.2011, the aforesaid writ petition has already stood dismissed and no fresh order is required to be passed, as writ petition has already stood dismissed on account of non-compliance of the Court's order dated 14.02.2011.

5. Learned senior counsel appearing on behalf of the petitioner submits that after the aforesaid order dated 15.03.2011 (Annexure-10), the petitioner did not file any petition for restoration of aforesaid CWJC No. 2014 of 2005 and instead filed the present writ petition on 22.02.2012. According to him, since the earlier writ petition was not dismissed on merits, therefore, the doctrine of res judicata shall not be attracted in the present case and the matter may be decided on its own merits. In support of his above contention, he has placed reliance upon a judgment of the Apex Court in the case of **M/s. Tilokchand Motichand Vs. H.B.Munshi, Commissioner of Sales Tax, Bombay : [AIR 1970 SC 898 (paragraph 6)]**.

6. Per contra, learned SC 8, appearing on behalf of the respondent Nos. 2 and 3, submits that present writ petition is not maintainable, as it is hit by the doctrine of res judicata. According to him, the petitioner had admittedly moved earlier this Court in CWJC No. 2014 of 2005 against the impugned order dated 15.07.2003 (Annexure-9), which was dismissed for the



reasons recorded in the order dated 15.03.2011 passed in aforesaid CWJC No. 2014 of 2005 (Annexure-10), therefore, the present writ petition is not maintainable. It is pointed out that if the petitioner was at all aggrieved by the aforesaid order dated 15.03.2011, he could have filed a petition for restoration of the aforesaid writ petition, but instead of doing that, he filed the present writ petition. It is contended that if such practice is allowed, then no lis shall come to an end for ever. In support of his above contention, he has placed reliance on an unreported judgment dated 5th October, 2004 of the Karnataka High Court in the case of **D. Sangya Naik Vs. Department of Telecom by its Head.**

7. After having heard the parties, this Court finds that against the impugned order, admittedly, the petitioner had earlier approached this Court in CWJC No. 2014 of 2005. The plea raised on behalf of the petitioner against the validity and correctness of the impugned order was not acceptable to the Court which is evident from the order dated 14.02.2011, re-produced above. This Court was not satisfied with the claims of the petitioner regarding lands in question, yet in order to give one more opportunity, he was granted three weeks' peremptory time for filing a supplementary affidavit bringing on record all the relevant materials in support of his claims over the lands in question. Admittedly, the aforesaid order dated 14.02.2011 passed by a Bench of this Court was not complied with, therefore, on account of non-compliance of the court's peremptory order, aforesaid writ petition stood dismissed after expiry of period of three weeks, which has been noticed in the order dated 15.03.2011 (Annexure-10) passed by a Bench of this Court.

8. In the considered opinion of this Court, if the petitioner was at all aggrieved by the aforesaid order dated 15.03.2011, the only remedy available to him was to file a restoration petition explaining therein the cause which prevented him from complying the order dated 14.02.2011 within the time prescribed. Indisputably, the petitioner did not avail of the aforesaid remedy available to him, but chose to file the present writ petition. If the litigant is allowed to file litigations one after another in the same subject matter before the same Court of law, then no lis shall come to an end, and the doctrine of res-judicata would become redundant.

9. For the reasons recorded above, the present writ petition is dismissed, but with a liberty to the petitioner to apply for restoration of the previous writ petition.

(Birendra Prasad Verma, J)

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