IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6857 of 1995

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1. Pushpa Choudhary D/o Late Gaya Prasad and wife of Sri Shashikant Choudhary, Resident of Forbesganj-Municipality, presently residing at 32 Professional Flat, Bistupur, Jamshedpur.
2. Kamla Devi D/o Late Gaya Prasad and wife of Sri Birendra Kumar Choudhary, resident of Forbesganj, P.S.-Forbesganj, District- Araria. Presently residing at Ward No.9, under Saharsa Municipality, P.S. & District-Saharsa.
3. Raj Kumari Devi D/o Late Gaya Prasad and wife of Late Ganga Prasad Jayaswal, resident of Mantigarha, District-Darjeeling, presently residing at Forbesganj, P.S.- Forbesganj, District-Araria. ... . **Petitioners.**

Versus

1. State of Bihar.
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Collector, Purnea.
4. The Additional Collector, Land Ceiling , Purnea, District-Purnea.-**Respondents.**

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Appearance :
For the Petitioner/s : Mr. Arun Ambastha, Adv.
Mr Abhai Shankar Jha, Adv.
Mr Vivek Kumar, Adv.
For the Respondent/s : Mr. M. Nasrul Huda Khan, S.C.-18.
Mrs. Babita Kumari, A.C. to S.C.-18.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 30-04-2015

Heard the learned counsel for the petitioners.

The learned counsel for the State-respondents has submitted that he has nothing to say in this matter. It also transpires from the record that no counter affidavit has been filed on behalf of the State-respondents.

Calling in question the resolution dated 11.11.1994 by the Additional Member, Board of Revenue, Bihar, Patna in Revision

Case No. 177 of 1988 and Revision Case No. 188 of 1988 to 216/1988 setting aside the allotment of three separate units to the petitioners, the present writ application has been filed.

Ceiling Case No. 264 of 1976-77 was initiated with regard to the lands of two brothers namely Gaya Prasad and Udaichand Prasad. The present writ petitioners are the three daughters of late Gaya Prasad who had one more daughter who died earlier. After publication of draft statement, the objections were invited and determined by the Additional Collector (ceiling) and thereafter the final publication under Section 11 (1) of the Act was made on 30.07.1984 in the District Gazette. In the said final publication, the three writ petitioners were allotted one unit each. Appeals were filed by the land-holders, purchasers and other interested persons before the Collector raising their grievances against the final publication but the allotment of three units each to the writ petitioners was never questioned. From the perusal of the order dated 02.05.1988 passed by the Collector in appeals also, it is transparent that the allotment of three units each to the writ petitioners was not under challenge and the said allotment of three units was recognized and affirmed by the Collector also. The respondent-State did not prefer any revision against the order of the Collector in appeal. However altogether thirty one revision applications were filed before the Board of Revenue by different parties. All the petitioners in the revisions before the Board of Revenue also did not question the allotment of three units each to the writ petitioners and had pursued their revision applications on other grounds. The additional Member Board of Revenue however by the impugned order which is the common order passed in all the thirty one revision applications has also set aside the allotment of three units each to the writ petitioners.

The learned counsel for the petitioners has mainly questioned the jurisdiction of the respondent Additional Member, Board of Revenue to cancel and set aside the allotment of three units to the writ petitioners even when there was no objection, no appeal, and no revision was filed challenging the said allotment of units to the petitioners by any person much less the respondent-State. It has been canvassed by the learned counsel that the impugned order in this regard is completely without jurisdiction. It has further been argued that there was no evidence at all before the respondent Additional Member, Board of Revenue to come to the conclusion that the father of the three writ petitioners died before 1956. It has been pointed out by the learned counsel that the bald statement on behalf of the State-respondent that Gaya Prasad died before 1956 has been blindly accepted for coming to the conclusion that the three writ petitioners did not acquire any right title and interest in the property of their father Gaya Prasad as he died before passing of the Hindu Succession Act, 1956.

As stated above no counter affidavit has been filed on behalf of the State-respondents denying the averments made by the petitioners in the writ application.

After careful consideration of the matter and the submissions on behalf of the petitioners, it is pellucid that the three writ petitioners are admittedly daughters of Gaya Prasad. In the ceiling proceeding for the land of Gaya Prasad, these three writ petitioners were allotted three units each. The appellate order passed by the Collector which has been brought on record as annexure-1 to the writ application also supports the said fact. It also further shows that the said allotment of three units was not under challenge in appeal by any of the parties and the appellate authority also recognized and maintained the allotment of three units each to the writ petitioner. The respondent-State of Bihar did not file any revision assailing the allotment of the three units to the writ petitioners. However, the Additional Member, Board of Revenue as revisional authority appears to have taken up the validity of the allotment of three units to the writ petitioners although the same was not in issue in any of the revision applications and cancelled the said allotment. It also does not appear from the impugned order that there was any evidence led on behalf of the State-respondent to support its stand that Gaya Prasad, father of the three writ petitioners, died before 1956.

It is well settled by the Apex Court almost on identical facts in the case of **Choudhary Sahu Vs. State of Bihar A.I.R. 1982 S.C. 98** that in absence of any objection, appeal, revision or cross objection by the State-respondents questioning the allotment of units, the same cannot be interfered with. Their lordships have held as follows:-

> "………In these appeals the Collector on the basis of the material placed before him allowed certain units to the various appellants. In the absence of any appeal by the State of Bihar, there was no justification for the Commissioner to have interfered with that finding in favour of the appellants. The facts and circumstances of these appeals are not such in which it would be appropriate to exercise the power under O. 41, Rule 33. The Commissioner as well as the High Court committed a manifest error in reversing the finding regarding allotment of units to the various appellants in the absence of any appeal by the State of Bihar when the same had become final and rights

of the State of Bihar had come to an end to that extent by not filing any appeal or cross-objection within the period of limitation….”

The aforesaid dictum of the Apex Court clearly supports the contentions raised on behalf of the petitioners. This Court therefore holds that the respondent Additional Member, Board of Revenue has acted without jurisdiction in cancelling/setting aside the allotment of three units each to the writ petitioners in absence of any challenge to the said allotment by the State-respondent at any stage. The writ application is accordingly allowed and the impugned order/resolution dated 11.11.1994 passed by the Additional Member, Board of Revenue so far it relates to the cancellation and setting aside of the allotment of three units to the writ petitioners is quashed. The petitioners will be at liberty to take appropriate steps in accordance with law.

The writ petition is, accordingly, allowed.

(V. Nath, J)

Devendra/-

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