

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19983 of 2013

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Archana Kumari, Wife of Shri Trayawank Ray, Resident of Village- Amhara, P.S.-
Bihta, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
2. The Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
3. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
4. The Chief Engineer, Planning And Monitoring, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
5. The Superintending Engineer, Planning and Monitoring- 4, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
6. The Chief Engineer, Water Resources Department, (Irrigation), Anishabad, Patna- 2
7. The Superintending Engineer, Ganga Sone Flood Control Circle, Mithapur, Patna
8. The Executive Engineer, Sone Canal Division, Khagaul, Patna
9. The Sub-Divisional Officer, Sone Canal Sub-Division, Bikram, Patna
10. The Junior Engineer, Sone Canal Sub-Division, Bikram, Patna
11. The Deputy Secretary, Water Resources Department, Sinchai Bhawan, Secretariat, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate
For the Respondent/s : Mr. Lalit Kishore, PAAG
Mr. Anil Kumar Sinha, GA-9
Mr. Pawan Kumar, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

C.A.V. JUDGMENT

Date: 18 -03-2015

Petitioner has prayed for recall of order dated 25.06.2012, passed in C.W.J.C. No. 756 of 2012 whereunder this Court dismissed the said writ petition with cost assessed at Rs. 5,000/-, affirmed by Division Bench under order dated 20.03.2013, passed in L.P.A. No. 1353 of 2012. She also preferred S.L.P. (Civil) No.

17648/2013 against those orders, which was also dismissed in limine under order dated 08.05.2013.

2. The ground for recall of the aforesaid order dated 25.06.2012 is that the said order was passed by this Court oblivious of the material fact that there was a valid Government order of settlement of the lands in question in favour of petitioner in the light of the circular/ instructions of the Government contained in Letter No. 31/एल भूमि -50-06/99-663 dated 11.03.1999 of the Deputy Secretary, Government of Bihar, Water Resources Department, Letter No.-31/एल भूमि -50-24/99-10 dated 04.01.2000 of the Deputy Secretary, Government of Bihar, Water Resources Department and the amended instruction contained in Memo-31/बाद-90-60/98-3077 dated 17.10.2000 of Commissioner-cum-Secretary, Water Resources Department, Bihar, Annexure-4 series and approval of the Government communicated under Letter No. मो0-4-कार्य-पी0-466/05-06 571/ Patna dated 20.04.2005, Annexure-21 and Letter No. मो0-4-कार्य-पी0-466/05-06-1011 Patna dated 09.06.2005, Annexure-23 from the office of Superintending Engineer, Planning and Monitoring Circle-4, Water Resources Department, Patna to Chief Engineer, Water Resources Department, Patna in response to his Letter Nos. 1506, 571 dated 11.04.2005, 20.04.2005 instructing Chief Engineer, Water Resources Department, Patna to complete the formalities of settlement of the lands in question in favour of petitioner

by 30.06.2005. Copy of the aforesaid two letters, Annexures-21, 23 were forwarded to the Executive Engineer, Sone Canal Division, Khagaul under Letter No. 1028 dated 11.05.2005 and 1557 dated 02.07.2005, which is also evident from perusal of Annexures- 21, 23.

3. In the light of the forwarding Letter No. 1557 dated 02.07.2005 of the Superintending Engineer, Patna Executive Engineer, Sone Canal Division, Khagaul, Patna informed Sub-Divisional Officer, Sone Canal Sub-Division, Bikram under Letter No. 355/ Revenue dated 21.09.2005, Annexure-26 that instructions for settlement of 0.48 acres of Chart Land in favour of petitioner for a period of one year has been received and in the light of the said instruction directed Sub-Divisional Officer, Sone Canal Sub-Division, Bikram to do the needful for settlement of the aforesaid chart land in favour of petitioner.

4. In the light of the aforesaid Government orders contained in Annexures, 21, 23, 26 lands in question were leased out to the petitioner for a period of one year vide lease document dated 22.09.2005 executed in the name of Governor, Bihar by Sri Ram Chandra Prasad, Executive Engineer, Sone Canal Division, Khagaul, Patna, Annexure-27 indicating petitioner to be the lessee of the land in presence of the Assistant Engineer and two other witnesses i.e. Amin and Clerk of the Division/ Sub-Division, who also put their signature over the document. Clause-10 of the document provides for renewal of



the lease and the manner in which it shall be considered. In the light of the Renewal Clause lease was extended from time to time by the competent authority. Principal Secretary of the Department in File No. 21/ भूमि -04-06/07-722 considered the allegation petition of Sri Raj Kumar Singh, Mukhiya, Bihta Gram Panchayat received through Chief Engineer, Water Resources Department, Patna under Letter No. 1936 dated 26.03.2007 that the settlement of the lands in question in favour of petitioner is without any Government order as also another proposal of the same Chief Engineer under Letter No. 1937 dated 26.03.2007 that the settlement of the lands in question in favour of petitioner be extended by 10 years but having found that no Government order for settlement of the aforesaid land in favour of petitioner has ever been issued, directed the Chief Engineer, Water Resources Department, Patna under Letter No. 509 dated 27.09.2011, Annexure 9 in the earlier writ case (C.W.J.C. No. 756 of 2012) to seek show cause from the petitioner as to why the said settlement be not cancelled.

5. Aforesaid departmental instruction contained in Letter No. 509 dated 27.09.2011 was forwarded by the Chief Engineer to the Superintending Engineer under Letter No. 3311 dated 27.06.2011, Annexure-9 in the earlier writ case, who in turn forwarded the same to his subordinate and ultimately Sub-Divisional Officer, Sone Canal Sub-Division, Bihta, Patna under Letter No. 296 dated



11.10.2011, Annexure-10 in the earlier writ case, Annexure-50 herein asked the petitioner to show cause. In response whereof petitioner submitted her show cause dated 15.10.2011, Annexure-11 in the earlier writ case, Annexure-51 herein. Perusal whereof, however, does not indicate that petitioner could refer to the Government orders, Annexures-21, 23, 26 for settlement of the lands in question in her favour, which was considered by the Superintending Engineer under Letter No. 1796 dated 03.12.2011, Annexure-12 in the earlier writ case, Annexure-52 herein and in compliance of the departmental instruction contained in Letter No. 509 dated 27.09.2011, Annexure-9 impugned and referred to in the earlier writ case as Letter No. 3311 dated 27.06.2011 Annexure-49 herein directed for cancellation of the settlement. In compliance of the instruction contained in Letter No. 1796 dated 03.12.2011 petitioner was informed by Sub-Divisional Officer, Sone Canal Sub-Division, Bikram under letter no. 357 dated 14.12.2011, Annexure-53 that settlement of the Chart Land in her favour has been cancelled.

6. In the cause shown before the Departmental Authorities as also in the earlier writ case petitioner could not refer to the Government orders issued for settlement of the aforesaid land in her favour as also to the lease-deed dated 22.09.2005, Annexure-27 and this Court dismissed the writ petition under Order No. 4 dated



25.06.2012, prior thereto under Order No. 2 dated 19.01.2012 State counsel was directed to obtain instruction and file counter affidavit within four weeks. The counter affidavit could not be filed within the aforesaid time and under Order No. 3 dated 23.02.2012 further three weeks' time was allowed to the State counsel to obtain instruction and file counter affidavit, but the extended time was also not availed to file counter affidavit, this Court dismissed the writ petition under Order No. 4 dated 25.06.2012 without the benefit of the counter affidavit. It would, thus, appear that in the earlier round of litigation this Court had no opportunity to examine the impugned order passed by the Principal Secretary of the Department in File No. 21/ भूमि -04-06/07-722, communicated to the Chief Engineer under Letter No. 509 dated 27.09.2011, forwarded by the Chief Engineer to the Superintending Engineer under Letter No. 3311 dated 27.06.2011, Annexure-9 in the earlier writ case and consequential order contained in Letter No. 296 dated 11.10.2011, Annexure-10 in the earlier writ case, Annexure-50 herein in the light of Government orders dated 20.04.2005, 09.06.2005, 21.09.2005, Annexures-21, 23, 26.

7. In the present writ petition a counter affidavit has been filed on behalf of Respondent Nos. 6, 7, 8 through Sri Sanjay Raman, Executive Engineer, Sone Canal Division, Khagaul, Patna. In Paragraph 4 of the counter affidavit deponent averred that the present



writ petition has been filed to recall the order dated 25.06.2012, passed by this Court in C.W.J.C. No. 756 of 2012 on the ground that the respondents have suppressed the material fact that there was no order of settlement in favour of petitioner passed by the Principal Secretary. In Paragraph 5 of the counter affidavit deponent sought leave of this Court to file a short and consolidated counter affidavit reserving his right to file a detailed supplementary counter affidavit giving parawise reply to the averments made in the writ petition later as and when required or directed by the Court. In Paragraph 6 of the counter affidavit deponent averred that C.W.J.C. No. 756 of 2012 was dismissed under order dated 25.06.2012 with cost. In the same paragraph deponent further averred that the aforesaid order has been affirmed by the Division Bench under order dated 20.03.2013, passed in L.P.A. No. 1353 of 2012, which was dismissed in limine. In the same paragraph deponent also averred that the petitioner moved the Supreme Court against the aforesaid orders in S.L.P. (Civil) No. 17648/ 2013, which was also dismissed under order dated 08.05.2013. In Paragraph 7 of the counter affidavit deponent Executive Engineer asserted that the State Government has issued policy guidelines for settlement of the Chart Land situate by the side of the canal titled as Bihar Canal Chart/ Land Settlement Rules, 2007 under Memo No. 426 dated 05.07.2007, Annexure-A to the counter affidavit. In Paragraph 8 of the counter affidavit deponent asserted that



the settlement of Chart Land bearing Plot No. 1139 situate in Village Bihta of Maner Rajbah Canal measuring an area of 0.48 acres for 10 years in favour of petitioner under departmental Letter No. 1657 dated 21.09.2007, extended under Letter No. 3249 dated 04.12.2007, communicated to the Department vide Memo No. 4119 dated 25.08.2008 by the Chief Engineer, Water Resources Department, Patna is contrary to the Bihar Canal Chart/ Land Settlement Rules, 2007. In the same paragraph of the counter affidavit deponent has also claimed that he is annexing the aforesaid orders with counter affidavit as Annexure-B series. Perusal of Annexure-B series, however, indicates that thereunder deponent annexed Letter No. 1657 dated 21.09.2007, Letter No. 796 dated 03.12.2011, which refers to Letter No. 3249 dated 04.12.2007, but copy of Letter No. 796 dated 03.12.2011 has not been annexed with the counter affidavit. Third letter annexed as Annexure-B series is Memo No. 4119 dated 25.08.2008 of Chief Engineer, Water Resources Department, Patna. In Paragraph 9 of the counter affidavit deponent Executive Engineer asserted that Clause-Gha of Letter No. 3249 dated 04.12.2007 clearly stipulates that settlement of Chart Land is liable to be cancelled at any point of time, if any adverse order is received from the higher authorities of the Department. In Paragraph 10 of the counter affidavit deponent Executive Engineer averred that extension of settlement in favour of petitioner for a period of 10 years



was made in complete violation of the provisions of Bihar Canal Chart/ Land Settlement Rules, 2007 contained in Memo No. 426 dated 05.07.2007 as settlement of Chart Land for a period of 10 years is not at all permissible in law, as such, extension of settlement for 10 years is not sustainable in the eye of law. In Paragraph 11 of the counter affidavit deponent Executive Engineer asserted that in the light of the direction of the Principal Secretary of the Department contained in letter no. 3311 dated 27.09.2011 petitioner was given opportunity to file show cause and after due consideration of cause shown by her settlement made in her favour has been rightly cancelled by the Superintending Engineer, Ganga Sone Canal Protection Circle, Patna under Letter No. 1796 dated 03.12.2011, Annexure-C to the counter affidavit. In Paragraphs 12, 13 of the counter affidavit deponent Executive Engineer stated and submitted that initial settlement of Chart Land in favour of petitioner was made as a stop gap arrangement but its extension for 10 years was without sanction of law and without observing due process of law. In the same paragraph deponent further stated that there is no provision for settlement of Chart Land in favour of sports person, hence, according to the deponent, impugned cancellation order is just, proper, in accordance with law, does not warrant any interference and the petition for recall of the order is fit to be rejected with heavy cost.



8. From the counter affidavit filed in the present writ petition, it does not appear that the Executive Engineer, deponent of the counter affidavit while affirming the counter affidavit also has taken note of the Government orders dated 20.04.2005, 09.06.2005, 21.09.2005, Annexures-21, 23, 26 whereunder settlement of the aforesaid Chart Land was made in favour of the petitioner.

9. In view of the aforesaid factual aspect of the matter, I proceed to consider the case law relied upon by the counsel for the parties. In Paragraphs 38, 39 of the judgment of the Supreme Court in the case of **A.V. Papayya Sastry & Ors. v. Government of A.P. & Ors. AIR 2007 Supreme Court 1546** Supreme Court observed as follows :

“38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/ plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/ authorities below, therefore, merge in the judgment of this Court and

after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the Court of first instance or by the final Court. And it has to be treated as non est by every Court, superior or inferior.

10. In the case of **Meghmala and others v. G.**

Narasimha Reddy and others (2010) 8 Supreme Court Cases 383

Supreme Court considered the earlier case law in Paragraphs 19 to 24 and held in Paragraph 25 that the law on the issue stands crystallised to the effect that in case a litigant files a review petition before filing the Special Leave Petition before the Supreme Court and it remains pending till the Special Leave Petition stands dismissed, the review petition deserves to be considered. In case review petition is filed subsequent to dismissal of the Special Leave Petition, the process of filing review petition amounts to abuse of process of the Court.

11. Next case relied upon by the counsel for the parties



is the judgment of the Supreme Court in the case of **Union of India and others v. Ramesh Gandhi (2012) 1 Supreme Court Cases 476** Paragraphs 26, 29, 38 in which Supreme Court considered the case of **A.V. Papayya Sastry** (supra) in Paragraph 26 and quoted Paragraph 6 of the judgment rendered by the Supreme Court in the case of **S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 Supreme Court Cases 1** that if any vital document is withheld in order to gain advantage on the other side then the party withholding the vital document is guilty of playing fraud on the Court as well as on the opposite party.

12. In view of the aforesaid factual position this Court is of the view that neither in the earlier round of litigation nor at the time of preparing the counter affidavit in the present case the validity of the Government orders dated 20.04.2005, 09.06.2005, 21.09.2005, Annexures-21, 23, 26 including the Renewal Clause 10 of the lease document dated 22.09.2005, Annexure-27 has been considered either by the Principal Secretary while passing order in File No. 21/ भूमि -04-06/07-722, communicated under Letter No. 509 dated 27.09.2011 to the Chief Engineer, Water Resources Department, Patna or in the subsequent orders passed by the authorities below or by this Court in its order dated 25.06.2012 or by the Division Bench under order dated 20.03.2013 or by the Supreme Court under order dated 08.05.2013. In the facts and circumstances of the present case, this Court is of the view



that the aforesaid Government orders dated 20.04.2005, 09.06.2005, 21.09.2005, Annexures-21, 23, 26 and the Renewal Clause ought to have been taken note by the Principal Secretary and also by this Court before passing the impugned order(s) dismissing the writ petition. In the facts and circumstances of this case, this Court is of the view that the aforesaid Government orders and Renewal Clause were relevant materials, have not been considered by the authorities below and decision making process by the authorities below appears to have been vitiated for the failure of the authorities below to place before the Principal Secretary as also before this Court the relevant Government orders dated 20.04.2005, 09.06.2005, 21.09.2005, Annexures-21, 23, 26 which tantamounts to suppression of relevant materials from the competent Principal Secretary as also from this Court and the impugned order dated 27.09.2011 passed by the Principal Secretary, duly affirmed by this Court under order dated 25.06.2012, passed in C.W.J.C. No. 756 of 2012 being ignoramus of the relevant Government orders, in the circumstances, order of this Court dated 25.06.2012, duly affirmed by the Division Bench under order dated 20.03.2013 as also by the Supreme Court under order dated 08.05.2013 is recalled and the order passed by the Principal Secretary, Water Resources Department, Bihar, Patna in File No. 21/ भूमि -04-06/07-722, communicated to the Chief Engineer under Letter No. 509 dated 27.09.2011 is quashed with

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further direction to the Principal Secretary to pass appropriate order in the matter taking into account the Government orders dated 20.04.2005, 09.06.2005, 21.09.2005, Annexures-21, 23, 26 as also Renewal Clause and the policy for settlement of Chart Land, which was holding the field at the time of initial settlement made in favour of petitioner. Appropriate order in the light of this order be passed by the Principal Secretary in accordance with law, as early as possible, in any case, within a period of four weeks from the date of receipt/ production of a copy of this order before the Principal Secretary.

13. This writ petition is, accordingly, allowed.

(V.N. Sinha, J.)

Rajesh/A.F.R.

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