

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1509 of 2014

IN

Civil Writ Jurisdiction Case No. 10943 of 2005

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1. The Director, Inland Waterways Authority of India, having its present address, regional office at Gaighat, P.O-Guljarbagh, Patna-800007, the then address-Biscomaun Bhawan Gandhi Maidan, Patna

2. The Chairman, Inland Waterways Authority of India (IWAI), under Ministry of Shipping, Govt. Of India, New Delhi (correct is that IWAI is an Statutory Body having its own establishment by separate statute) having its head quarter at A-13, Sector-1, Noida, District - Gautam Buddha Nagar, Uttar Pradesh

.... Respondent nos.7 & 8...Appellants

Versus

1. S. Ali Asad Jaffery @ S. Ali Asad, aged about 68 years, Mutwali Imam Bandi Begum Wakf Estate, S/O Late Nawab Syed Ali Sajjad, resident of mohalla - Guljarbagh, P.S-Alamganj, District-Patna.....Petitioner...Respondent Ist Set

2. The State of Bihar.

3. The Secretary, Revenue, Govt. of Bihar, Patna

4. The Collector, Patna

5. The Additional Collector, Patna

6. The S.D.O., Patna City, Patna

7. The Circle Officer, PatnaRespondent Nos.1 to 7.....Respondent 2nd Set

8. The Secretary, Ministry of Shipping, Union of India, New Delhi

Respondent No.8.... Respondent 3rd Set

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Appearance :

For Union of India : Mr. Sanjay Kumar, Asst. Solicitor General

For IWAI : Dr. Anshuman, Standing Counsel

Mr. K.K. Tiwary, Advocate

For the State : Mr. Ajit Kumar, Standing Counsel

For Private Respondent: Mr. Alamdar Hussain, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-03-2015

I.A. No.8489 of 2014

This interlocutory application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of two years ten months and twenty three days in preferring this Letters Patent

Appeal.

2. In the application it is stated that the delay occurred on account of the fact that the appellants were not aware of the order passed in the writ petition and as soon as they came to know about it, they pursued the remedy. The first respondent filed a counter affidavit opposing the interlocutory application.

3. After hearing the parties, we find that there was no laxity on the part of the appellants in pursuing the remedies. It is not in dispute that the order in the writ petition was passed without hearing the appellants and as soon as they came to know about it, they filed this interlocutory application.

4. In view of the reasons assigned in the interlocutory application, we condone the delay. The interlocutory application is allowed.

LPA. No.1509 of 2014

5. The first respondent herein filed CWJC No.10943 of 2005 with a prayer to direct the respondents 2 to 8 herein to remove the encroachment from the Waqf land bearing Holding No.29, Plot Nos.1772, 1775 and 1776 situated in Mohalla Gaighat Patna and Holding No.95 plot no.1809 situated in Mohalla Kantahi Ghat, Patna said to have been made by the appellants. A direction was also sought, for payment of compensation for illegally using the land of the Waqf.

The first respondent pleaded that the land as referred to above, belongs to the Waqf and that the appellants herein had occupied the same without any authority.

6. The writ petition was disposed of on 15.11.2011 directing the District Magistrate, Patna to get the measurement of the lands in question done, in presence of the parties, after fixing a date and intimation to the concerned persons. It was also directed that if the District Magistrate finds that there is any encroachment on the private land belonging to the Waqf, the same shall be made encroachment free within one month. It was left open to the first respondent to approach the appropriate forum for compensation, if so advised.

7. Thereafter the first respondent filed MJC No.815 of 2013 alleging that the respondents in the writ petition did not comply with the directions issued by the Court. It is stated that the District Magistrate made survey of the land and pointed out that substantial extent of land is under the encroachment of the appellants and the appellants deserve to be evicted. At that stage, the appellants filed Civil Review No.185 of 2014 with a prayer to review the order dated 15.11.2011 passed in CWJC No.10943 of 2005.

8. The principal ground urged by the appellants was that they were not put on notice before the writ petition was disposed

of. The appellants have also filed CWJC No.10337 of 2014 feeling aggrieved by certain steps taken by the revenue department.

9. The learned Single Judge passed a common interlocutory order in MJC No.815 of 2013, CWJC No.10337 of 2014 and Civil Review No.185 of 2014 on 18.03.2015. It was directed, inter alia, that the appellants shall vacate the land of 59.349 acres and hand over the same, to the District Magistrate, Patna within two weeks from the date of the order and thereafter shall file an affidavit affirming that they handed over the possession of the land. It is in this background, that this present LPA is filed challenging the order passed in CWJC No.10337 of 2014 as well as the common order dated 15.03.2015.

10. Heard Sri Sanjay Kumar, learned Assistant Solicitor General for the Union of India, Dr. Anshuman, learned counsel for the appellants, Sri Ajit Kumar, learned Standing Counsel for the State and Mr. Alamdar Hussain, learned counsel for the private respondents.

11 With consent of the learned counsel for the parties, we dispose of the appeal.

12. The claim of the first respondent in the writ petition was two fold. The first was to get the land surveyed and the other was to get the compensation. The learned Single Judge granted the first relief by directing the District Magistrate to survey the land; and as

regards second relief, it was left open to the first respondent to pursue the remedy.

13. The writ petition was pending before this Court for almost five years, by the time it was disposed of in the year 2011. For one reason or the other, the appellants herein, that figured as respondent nos. 7 and 8 were not served with notice. Since the notice in the writ petition was not served upon the appellants, no specific direction could have been issued unless, they were heard. Further if the survey is to be undertaken, the affected party must be given notice. The appellants' plea that the land was acquired, needs to be taken into consideration. Though the appellants filed Review No.185 of 2014 it has since been withdrawn. We are of the view that the order dated 15.11.2011 passed in the writ petition deserves to be set aside on the ground that the affected party i.e. appellants were not heard.

14. As regards the common order dated 18.03.2015 passed in MJC No.185 of 2013, CWJC No.10337 of 2014 and Civil Review No.185 of 2014, we find that the sole basis for that, is the order passed in CWJC No.10943 of 2005, which we set aside in this appeal. The subsequent proceedings such as MJC or another writ petition, CWJC No.10337 of 2014 do not take the matter any further. The order dated 18.03.2015 did not result in disposal of MJC, or CWJC or Civil Review. Since it was dependent on the order passed in

CWJC No.10943 of 2005, we set aside the said order also.

15. Hence Letters Patent Appeal is allowed, and we set aside:-

(a) the order dated 15.11.2011 passed in CWJC No.10943 of 2005.

(b) the common order dated 18.03.2015 passed in MJC No.815 of 2013;

(c) Civil Review No.185 of 2014 is dismissed as withdrawn

(d) CWJC No.10337 of 2014 is dismissed as withdrawn.

(e) MJC No. 815 of 2013 is terminated in view of the order dated 15.11.2011 passed in CWJC 10943 OF 2005

(f) The appellants are granted two weeks' time to file counter affidavit in CWJC No.10943 of 2005.

16. Registry shall list CWJC No.10943 of 2005 before the concerned Court.

17. The writ petition shall be taken up for hearing at the earliest.

(L. Narasimha Reddy, CJ)

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(Gopal Prasad, J)