

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1454 of 1996
With
Interlocutory Application No.3651 of 2015

=====

Dina Nath Singh, son of late Shiv Balak Singh, resident of village-
Chamarhara, Police Station- Mahnar, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director of Consolidation, Bihar, Patna.
3. Joint Director of Consolidation, Muzaffarpur at Maripur, District-Muzaffarpur.
4. Sita Ram Singh.
5. Prabhansh Narain Singh, both sons of Bhag Narain Singh (deleted vide order dated 23.07.1997).
5. (a) Most. Jago Kuar
5. (b) Shashi Singh
6. Mosmat Banarsi Kuar wife of late Ram Vivek Singh, resident of village- Chamarhara, P.O. Mahnar Road, Police Station- Mahnar, District- Vaishali.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. A.K.Singh 'Tarun'
Mr. Jitendra Pd. Shaha

For the Respondent No.1 to 3: Mr. Rajiv Kumar Singh, GP 2.

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

16 14-08-2015

Re.: Interlocutory Application No. 3651 of 2015

The instant interlocutory application, supported by a supplementary affidavit, has been filed on behalf of the petitioner, disclosing therein that the sole writ petitioner died way back on 08.02.2010 and so his heirs and legal representatives may be substituted in place of original writ petitioner. In fact, no petition can be filed on behalf of a dead person.

It appears that the aforesaid interlocutory application has purportedly been filed on 29th April, 2015 on behalf of the heirs and legal representatives of the deceased petitioner Dinanath Singh, who is said to have died on 08.02.2010 leaving behind his heirs and legal representatives, detailed in paragraph-1 of the main interlocutory application.



Learned counsel appearing on behalf of the petitioner submits that the heirs and legal representatives may be substituted in place of original writ petitioner. Though, the instant interlocutory application has been filed after more than 5 years from the date of death of the deceased sole writ petitioner, but no valid explanation has been furnished for approaching this Court after such a long delay of more than 5 years. The only explanation furnished by way of supplementary affidavit to the aforesaid interlocutory application is that the deponent was ignorant of law, therefore, substitution petition could not be filed within a reasonable period of time. According to the learned counsel, there cannot be any limitation for filing substitution petition with respect to the writ petition filed under Article 226 of the Constitution of India. In support of his above contention he has placed reliance of on a Division Bench judgment of this Court in the case of **State of Bihar vs. Ramesh Prasad** [2015 (1) PLJR 645].

The matter has been contested by learned Government Pleader-2 appearing on behalf of the respondent No.1 to 3. He submitted that the writ petition arises out of an order passed in a consolidation proceeding and there has been undue and unexplained delay of more than 5 years in approaching this Court for substitution. In absence of sufficient reason furnished by the heirs of the deceased sole petitioner for approaching this Court for their substitution after delay of more than five years, their prayer for substitution may be rejected. According to him, the applicants are sons and daughter-in-law of deceased sole petitioner. Therefore, they were aware about the death of deceased petitioner. In the whole interlocutory application as also supplementary affidavit filed on their behalf, they have not stated that they were not aware about pendency of the main writ petition. It is contended that by virtue of death of deceased sole writ petitioner

on 08.02.2010 and on account of non-filing of substitution petition within a reasonable period of time, the writ petition stood abated. As a result of which, legal rights accrued to the private respondents cannot be taken away mechanically by allowing the substitution petition at this belated stage. In support of his above contention, he has placed reliance on a judgment of the Hon'ble Apex Court in the case of **Puran Singh vs. State of Punjab** [(1996)2 SCC 205] specifically paragraph-12.

After having heard the parties, this Court is of the opinion that in view of the principles enunciated by the Hon'ble Apex Court in the case of **Puran Singh vs. State of Punjab** (supra), there cannot be a fixed period for taking steps for substitution of the deceased party in a writ proceeding. However, if substitution petitioner is not filed within a reasonable period of time, then sufficient cause is required to be shown for not taking steps earlier for filing such substitution petition. The ratio laid down by a Division Bench of this Court in the case of **State of Bihar vs. Ramesh Prasad** is in consonance with the principles enunciated by the Hon'ble Apex Court in **Puran Singh's** case (Supra).

So far the present case is concerned, admittedly, there has been delay of more than 5 years in filing the instant substitution petition. No explanation at all has been furnished for approaching this Court after such a long delay. Only plea taken on their behalf that they were ignorant of law cannot be treated to be a sufficient ground in view of well known legal maxim- *ignorantia legis neminem excusat* i.e. ignorance of law excuses no one.

In above view of the matter and in view of the ratio laid down by the Hon'ble Apex Court in the case of **Puran Singh vs. State of Punjab** (Supra), this Court is not inclined to accede to the prayer made on behalf of the applicants for their substitution.

Consequently, I.A. No.3651 of 2015 stands dismissed.

Re.: C.W.J.C. No. 1454 of 1996

Since the sole writ petitioner has died way back on 08.02.2010 and the petition for substitution has been rejected for the reasons recorded in the preceding paragraphs, the main writ petition has abated, as it can not proceed on behalf of a dead person. It is, accordingly, dismissed.

(Birendra Prasad Verma, J)

BTiwary/-

U			
---	--	--	--