

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12639 of 1999

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1. Sudama Devi, wife of Late Chhatru Das
2. Anandi Das
3. Muneshwar Das
4. Pappu Das
5. Tuntun Das
All sons of Late Chhatru Das
All residents of village Bhairoganj, P.S. Chandan, District Banka
.... Petitioners

Versus

1. The State of Bihar
2. The Additional Collector, Banka
3. The Circle Officer, Chandan, P.S. Chandan, District Banka
4. The Commissioner, Bhagalpur
5. Pradhan Murmu, S/o Late Chhotka Murmu, resident of village
Mahiya, Simar, P.S. Chandan, P.O. Bhairoganj, District Banka
.... Respondents

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Appearance :

For the Petitioners : Mr. RANJEET KUMAR DAS 2, Advocate
For the State : Mr. Aminesh, AC to SC XI
For Respondent No. 5 : None

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 16-01-2015

I.A. No. 267 of 2015

Learned counsel for the petitioners files a slips showing service of copy of I.A. No. 267/2015 upon the learned counsel appearing for respondent no. 5. Let it be taken in record.

This application has been filed on behalf of the proposed heirs and legal representatives of the sole petitioner who is stated to have died on 19.2.2007 leaving behind his heirs and

legal representatives described in paragraph 2. It has further been stated that the heirs could know about the pendency of the writ application, only in the last week of December, 2014, thereafter, they took steps for their substitution.

None appears for the respondent no. 5.

Accordingly, this application is allowed. Let the name of the deceased sole petitioner, namely, Chhatru Das be expunged and in his place his heirs and legal representatives described in paragraph 2 be substituted. A Vakalatnama has also been filed executed by heirs and legal representatives. Let it be taken on record and be verified properly by the office.

C.W.J.C. No. 12639 of 1999

I have heard learned counsel for the petitioners and the State. None appears on behalf of the respondent no. 5.

Petitioner is aggrieved by the order dated 13.11.1997 by which Additional Collector, Banka has allowed the Jamin Wapsi Case No. 7 of 1995-96 filed by Pradhan Murmu along with about 7 other cases holding that the concerned lands have been obtained by the opposite parties, who were not Scheduled Tribes, from the persons belonging to Scheduled Tribes illegally and, therefore, after declaring sada Hukumnana to be invalid, he has directed for cancellation of Jamabandi and return of the lands to

the concerned Scheduled Tribe persons.

The issue involved in this case is no longer *res integra* inasmuch as Five Judges Bench of this Court, while considering the case of **Bhageran Thakur vrs. Kewal Singh & Ors. (1969 PLJR 30)**, has already declared the Section 49(C) of the Bihar Tenancy Act as void. Several cases were decided by the Additional Collector vide Annexure 3 against which writ petitions were filed being C.W.J.C. Nos. 2146 of 1998 and 2379 of 1998. Writ petitions were decided vide order dated 28th July 1998 by a Single Bench of this Court setting aside the impugned order in Jamin Wapsi Case Nos. 4 and 5 of 1995-96. The aforesaid order was challenged by filing Letters Patent Appeal No. 1097 of 1998 and Letters Patent Appeal No. 1098 of 1998. A Full Bench of this Court, after noticing that the decision of the Five Judges Bench of this Court in **Bhageran Thakur (supra)** holding that Section 49(c) of the Bihar Tenancy Act has to be held as ultra vires of the Constitution as it infringes the fundamental right enshrined in Article 19(1)(f) of the Constitution and, hence, declaring it void and striking off from the statute, the same would not automatically revive even after omission of Article 19(1)(f) of the Constitution under 44th Amendment of the Constitution. The appeals were rejected. Therefore, this writ application, on identical issues being



involved, has to succeed.

Accordingly, this writ application stands allowed and the order dated 13.11.1997 passed in Jamin Wapsi Case No. 7/1995-96 is set aside.

(Dr. Ravi Ranjan, J)

Spd/-N.A.F.R.

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