

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10177 of 1997

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Most. Dayawati Mehrotra, wife of late Prithivinath Mehrotra, resident of Village Jandaha, P.S. Jandaha, District Vaishali

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The Collector, Vaishali
4. Upendra Sah, son of Ram Babu Sah, resident of Village Indrawara, P.S. Tajpur, District Samastipur
5. Most. Manorma Devi, wife of late Trilokinath Mehrotra, resident of Village Jandaha, P.S. Jandaha, District Vaishali.

.... Respondents

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Appearance :

For the Petitioner/s : Ms. Mallika Mazumdar
Ms. Shabda

For the Respondent/s : Mr. Raju Giri, GP 30
Mr. Nikhil Kumar Agrawal, AC to GP 30

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-07-2015

Heard Ms. Mallika Mazumdar, learned Counsel for the petitioner and the learned Counsel appearing for the State respondents.

2. Nobody has appeared on behalf of the private respondent no. 4 when the matter was called out for hearing. From the records also it transpires that no counter affidavit has been filed on behalf of respondent no. 4 in this writ application.

3. From the perusal of the records and considering the submission by the learned Counsel for the parties, it is evident that in the ceiling proceeding, the Collector as appellate authority under Section 30 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act') held that the petitioner did not possess surplus land and accordingly the



proceeding was dropped. This order has been passed by the Collector on 19.7.1996/12.8.1996 (Annexure 2). Thereafter Land Ceiling Appeal No. 135 of 1996-97 was filed under Section 30 of the Act before the respondent Commissioner by respondent no. 4. The memo of appeal has been brought on record as Annexure 3 from which it transpires that the appellant had filed the said appeal under Order 1 Rule 8 CPC and had claimed to have represented a section of the public residing in Village Indrawara, P.S. Tajpur and Village Jitwarpur, P.S. Tajpur, District Samastipur. From perusal of the averments made in the said memo of appeal, it is evident that the order passed by the Collector (Annexure 2) was assailed on merits raising the issues which were not clerical or arithmetical mistake as envisaged under Section 47 of the Act. There is also no averment to show that the appellant of the said appeal (respondent no. 4 in the present writ application) had ever approached the Collector for correction of any clerical or arithmetical mistake in the order as provided in Section 47 of the Act. However, by the impugned order dated 4.2.1997 the respondent Commissioner has found it desirable to remand back the matter to the Collector for arriving at proper conclusion after considering the contentions raised in the petition. It has also been stated in the order by the Commissioner that the appellant (referred to as petitioner in the impugned order) had raised his objection before the Collector under Section 47 of the Act, which was rejected.

3. From the anatomy of the provisions as contained in Section 30 of the Act relating to appeals, it is evident that the Commissioner has not been given appellate jurisdiction against the appellate order

passed by the Collector.

4. Learned Counsel for the State respondents has also fairly stated that there is no concept of second appeal in the provisions of the Act. The purported exercise of power by the Commissioner in entertaining the appeal and thereafter remanding the matter back to the Collector for fresh consideration therefore is not legally sustainable.

5. Moreover, it is also the case of the writ petitioner that no notice was issued to the petitioner by the Commissioner before passing the impugned order. There is no material on record to controvert the aforesaid stand. It also does not appear from the impugned order passed by the Commissioner that notice was issued to the writ petitioner and any opportunity of hearing was granted.

6. For the aforesaid reasons, this writ application is allowed and the impugned order passed by the respondent Commissioner on 4.2.1997 in Case No. 135 F.C./1996-97 (Annexure 4) is hereby quashed.

(V. Nath, J.)

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