

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.666 of 2012

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Sheonath Sah, S/O Late Rekha Sah, R/O Village- Khajuria Bazar Tola P.S.-
Sidhwalia, District- Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar through the Deputy Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Divisional Commissioner, Saran Division, Chapra
3. The Collector, Gopalganj
4. The Additional Collector, Gopalganj
5. The D.C.L.R., Gopalganj
6. The Anchal Adhikari, Barauli, Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Md.Farooq Ahmad Khan, Adv.
Mr. Mohammad Sufiyan, Adv.
For the Respondent/s : Mr. Md.Obaidullah, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 29-10-2015 Heard learned counsel for the petitioner and learned
AC to SC-4 appearing on behalf of the respondents.

The petitioner has filed the present writ petition assailing the validity and correctness of the order dated 17.05.2011 passed in Restoration Case No.2 of 2011 by the respondent Divisional Commissioner, Saran at Chapra, as contained in Annexure-9, whereby the petition filed on behalf of the petitioner for restoration of Jamabandi Cancellation Appeal No.83 of 1996-97 has been rejected on the ground of being barred by limitation. He is also aggrieved by the order dated 28.07.2001 passed in Jamabandi Cancellation Appeal No.83 of 1996-97, as contained in Annexure-8, whereby the aforesaid Jamabandi Cancellation Appeal filed on behalf of the petitioner has been dismissed in default. He has further challenged the validity and correctness of the order dated 21.09.1996 passed in Misc. Jamabandi

Cancellation Case No.17 of 1995-96 by the respondent Additional Collector, Gopalganj, as contained in Annexure-4, whereby the Jamabandi No.222 standing in the name of the father of the petitioner with respect to the lands in question has been cancelled for the reasons recorded in that order.

Learned counsel appearing on behalf of the petitioner has raised various points while assailing the validity and correctness of the order dated 21.09.1996 passed in Misc. Jamabandi Cancellation Case No.17 of 1995-96 (Annexure-4), whereby the respondent Additional Collector, Gopalganj has cancelled the Jamabandi No.222 standing in the name of the father of the petitioner with respect to the lands in question. According to him, the order dated 21.09.1996 passed by the Additional Collector, Gopalganj was patently bad in law, as he has not taken into consideration all the aspects of the matter while passing the aforesaid impugned order. He further submitted that the petitioner, being aggrieved by the aforesaid order passed by the respondent Additional Collector, Gopalganj, preferred Jamabandi Cancellation Appeal No.83 of 1996-97 before the respondent Divisional Commissioner, Saran at Chapra, but the lawyer engaged on behalf of the petitioner died during the pendency of the aforesaid appeal; therefore, no pairvi could be made on his behalf on certain dates, as a result of which the aforesaid appeal was dismissed by the impugned order dated 28.07.2001 (Annexure-8) for want of prosecution and not on merit. By referring to the averments made in paragraph nos.17, 18, 19 and 20 of the writ petition, the learned counsel has next submitted that the petitioner had no knowledge/information about dismissal of the aforesaid appeal and for the first time he came to know about

dismissal of the appeal when he received notice dated 07.08.2010 from the C.O., Barauli, whereafter Restoration Case No.2 of 2011 was filed, but that has been dismissed by the impugned order dated 17.05.2011 (Annexure-9), being barred by limitation.

The present writ petition was filed on 09.01.2012 and since then almost four years have already elapsed, but the respondents have chosen not to file any counter affidavit till date controverting the averments made in paragraph nos.17 to 20 of the writ petition.

After having heard the parties, particularly in view of the fact that the averments made in paragraph nos.17 to 20 have not been controverted by the respondents by filing any counter affidavit, this Court is of the opinion that the averments made therein are to be accepted to be correct. From the materials available on the record, it is apparent that the appeal preferred on behalf of the petitioner against the impugned order passed by the respondent Additional Collector, Gopalganj has not been decided on merit, rather the petitioner has been non-suited on technical grounds.

In the considered opinion of this Court, the petitioner should be given one more opportunity to prosecute his aforesaid appeal preferred before the respondent Commissioner and get the matter decided on merits.

For the reasons recorded above, the impugned order dated 28.07.2001 passed in Jamabandi Cancellation Appeal No.83 of 1996-97 (Annexure-8) as also the impugned order dated 17.05.2011 passed in Restoration Case No.2 of 2011 (Annexure-9) both passed by the respondent Divisional Commissioner, Saran at Chapra are hereby set aside and quashed and the matter is remitted

back to the respondent Divisional Commissioner, Saran at Chapra with a direction to decide the aforesaid Jamabandi Cancellation Appeal No.83 of 1996-97 afresh on merits.

In order to expedite the matter, the petitioner is directed to appear before the respondent Divisional Commissioner, Saran at Chapra with a certified copy of the present order within a period of one month from today, whereafter the respondent Divisional Commissioner shall fix a firm date for hearing and deciding the aforesaid appeal afresh on merits and all endeavours shall be made to dispose of the same preferably within a period of six months after appearance of the petitioner.

It is clarified that after fixation of such date, if the petitioner fails to prosecute the aforesaid appeal and if the matter is decided afresh by the Divisional Commissioner, Saran at Chapra, then the petitioner shall not be permitted to challenge the said order on the ground of not having been given reasonable opportunity to prosecute that appeal.

It is further clarified that the petitioner as also the respondents shall be at liberty to raise all the issues of facts and law with respect to the lands under dispute before the respondent Divisional Commissioner, which may be available to them.

The writ petition stands allowed to the extent indicated above as also with the directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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