

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7311 of 2016

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Mithilesh Prasad Yadav son of Late Jageshwar Yadav, resident of Village - Paika Charai, P.S. - Kusheshwar Asthan, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The Collector and District Magistrate, Darbhanga.
4. The D.C.L.R., Biraul, District - Darbhanga.
5. The Circle Officer, Kusheshwar Asthan, District - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No 13, Adv.
Mr. Rohit Kumar, Adv.

For the Respondent/s : Mr. Santosh Kumar Jha, G.P. 3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 12-07-2016

Heard.

The petitioner is aggrieved by the order dated 10.02.2016 passed in Jamabandi Cancellation Revision Case No. 6 of 2014 by the respondent Divisional Commissioner, Darbhanga, as contained in Annexure-7 to the writ petition, whereby the petition filed by the petitioner for restoration of aforesaid revision case has been dismissed.

The learned counsel, appearing on behalf of the petitioner, submits that the petitioner had filed the aforesaid Jamabandi Cancellation Revision Case No. 6 of 2014 against the order dated 26.06.2014 passed by the District Collector, Darbhanga, and the case was admitted for hearing on 03.02.2015 and the notice was issued to the other side. He further submits that by order dated 09.12.2015 fresh notice was ordered to be issued to the opposite parties on requisites being filed within a period of seven working days. According to him,



the requisites in compliance of the aforesaid order dated 09.12.2015 could be filed only on 21.12.2015, after a delay of five days. He next submitted that in view of dismissal of the aforesaid revision application on account of non-compliance of the court's peremptory order dated 09.12.2015, the petitioner filed restoration petition on 03.02.2016, but that has been dismissed mechanically by the impugned order dated 10.02.2016. It is pleaded by the learned counsel that the delay occurred in complying with the order dated 09.12.2015 was not intentional, but it occurred on account of some unavoidable circumstances. Therefore, the court ought to have restored the aforesaid revision application and ought to have decided the matter on merits.

The learned State Counsel, appearing on behalf of the respondents, though has opposed the prayer, but has not been able to dispute the aforesaid submissions.

In the considered opinion of this Court, substantial justice should be done to the parties by giving a reasonable opportunity of hearing, but justice should not be denied merely on flimsy and technical ground. In the present case, there does not appear to be abnormal delay in compliance of the peremptory order of the court passed on 09.12.2015. In the given facts of the case, delay of five days occurred in complying the order dated 09.12.2015 ought to have been condoned.

For the reasons recorded above, the impugned order dated 10.02.2016 passed in Jamabandi Cancellation Revision Case No. 6 of 2014 by the respondent Divisional Commissioner, Darbhanga, as contained in Annexure-7 to the writ petition, is hereby quashed and set aside. The aforesaid Jamabandi cancellation Revision case is directed to be restored to its original file. Delay of five days occurred

in filing the requisites in compliance of the order dated 09.12.2015 is hereby condoned. The respondent Divisional Commissioner, Darbhanga is directed to decide the aforesaid Jamabandi Cancellation Revision Case No. 6 of 2014 on merits, but before passing any final order, opportunity of hearing must be given to all concerned. However, this order is subject to deposit of costs of Rs. 1000/- (Rs. One thousand) by the petitioner with the Patna High Court Legal Services Committee within a period of two weeks from today.

The petitioner is directed to appear before the respondent Divisional Commissioner, Darbhanga with a certified copy of the present order as also with a document showing deposit of Rs. 1000/- with the Patna High Court Legal Services Committee, within a period of one month from today, whereafter the respondent Divisional Commissioner, Darbhanga shall proceed to decide the aforesaid Jamabandi Cancellation Revision Case No. 6 of 2014 afresh on merits in accordance with law.

In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above.

(Birendra Prasad Verma, J)

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