

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1113 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 1710 of 2009
Along with
Interlocutory Application No. 5781 of 2014
And
Interlocutory Application No. 5782 of 2014
In
Letters Patent Appeal No. 1113 of 2014

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1. Vishwak Sen Pandey
 2. Vishnu Kant Pandey
 3. Krishna Kant Pandey
 4. Laxmi Kant Pandey.

All sons of Late Devi Dayal Pandey, resident of village-Dariyapur, P.S.-Bihta,
District-Patna.

.... Appellant/s

Versus

1. The State of Bihar
2. Collector-cum-District Magistrate, Patna.
3. Additional Collector, Sadar, Patna.
4. Deputy Collector Land Reforms, Danapur, Patna.
5. Sheo Narayan Pathak, son of Late Rangnath Pathak.
6. Bijendra Chamar resident of village Dariyapur, P.S.-Bihta, District-Patna.
7. Keshar Mochi resident of village-Dariyapur, P.S.-Bihta, District-Patna.
8. Yugal Singh son of Late Ram Lakshan Singh, resident of village-Dariyapur,
P.S.-Bihta, District-Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sandeep Sahu, Advocate.
For the respondent no. 5	:	Mr. Dhananjay Kumar, Advocate.
For the State	:	Mr. S.R. Yadav, GP-16
		Mr. Madhuresh Singh AC to GP-16

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 19-09-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 5782 of 2014

2. The Interlocutory Application has been filed



seeking condonation of 336 days delay in filing of the Letters Patent Appeal.

3. Upon hearing learned counsel for the parties and considering the averments made in the Interlocutory Application, we find that sufficient cause has been shown for delay in filing of the appeal. Consequently, the same is condoned.

4. Interlocutory Application No. 5782 of 2014 stands disposed off.

Re.: Letters Patent Appeal No. 1113 of 2014

5. The challenge in the present intra-Court appeal is to the order dated 19.07.2013 passed by the learned Single Bench by which C.W.J.C. No. 1710 of 2009 filed by the respondent no. 5 has been allowed.

6. The respondent no. 5 had filed petition for demarcation of land, to which the father of the appellants and the private respondents had objected, and finally by order dated 27.03.1993, the Deputy Collector Land Reforms, Danapur (DCLR) allowed the application and directed the Amin to measure the land. Demarcation Revision No. 41 of 1993 was filed by the objector (father of the appellants) before the Additional Collector, Patna. The respondent no. 5 challenged the maintainability of the revision, which was rejected by order dated 14.10.1993, whereafter he filed



Miscellaneous Application before the Collector, Patna which was allowed and Demarcation Revision No. 41 of 1993, upon transfer before the Collector, Patna was registered as Demarcation Appeal No. 12 of 1993-94. The appeal was later dismissed on 04.01.2008. Thereafter, the respondent no. 5 filed application before the DCLR for compliance of the order dated 27.03.1993 and the appellate order dated 04.01.2008. The father of the appellants filed objection praying that the respondent no. 5 be directed to file suit and for dismissing of the demarcation case. The DCLR, by order dated 19.08.2008, directed for issuance of notice to all the boundary raiyats but none filed any objection and still the DCLR by order dated 28.11.2008 allowed the application filed by the father of the appellants and dismissed the demarcation case observing that the respondent no. 5 may approach the competent Court for declaration of title. Being aggrieved by the same, the respondent no. 5 filed C.W.J.C. No. 1710 of 2009 which was allowed by the learned Single Bench by order dated 19.07.2013, which has been assailed by the appellants in the present Letters Patent Appeal.

7. Learned counsel for the appellants submitted that the original application for demarcation by the writ applicant (respondent no. 5) has not been finally disposed off and the initial order dated 27.03.1993 fixing 24.04.1993 as the date for



measurement of the land was only interim in nature and, thus, the final order by the DCLR dated 28.11.2008, rejecting the application and finally closing the case is sound in law. It was further submitted that the original owners of the land were the father and mother of the respondent no. 5 and they having not approached the Court, the writ petition was not maintainable at the instance of the respondent no. 5.

8. Learned counsel for the respondent no. 5 submitted that the power of the DCLR to order for measurement of the land is a statutory power vested in the DCLR. Thus, once having ordered for measurement, the same also having been upheld in appeal by the Collector, the case closed by the successor in office by order dated 28.11.2008, is patently illegal.

9. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The DCLR had ordered for measurement and the said order for measurement was challenged by the father of the appellants and the appeal was also dismissed. Thus, the issue relating to measurement having been affirmed by the appellate authority, the incumbent DCLR by order dated 28.11.2008 could not have gone behind the earlier order dated 27.03.1993 and closed the case, as the application before him was merely to implement the original order dated 27.03.1993, as affirmed by the Collector by order dated 04.01.2008. Thus, clearly,



the DCLR has exceeded his jurisdiction and has closed the case on erroneous grounds which cannot be sustained. The learned Single Bench has rightly interfered in the matter and set aside the order dated 28.11.2008.

10. For the reasons aforesaid, the present Letters Patent Appeal, being devoid of merit, stands dismissed.

11. Interlocutory Application No. 5781 of 2014, for stay of the order dated 19.07.2013, having become infructuous, stands disposed off.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar

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