

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4745 of 2005

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1. Mostt.Sajida Khatoon W/o Late Sarfuddin
 2. Anwarun
 3. Aqlima
 4. Md.Zahidur Rahman @ Zahidur Rahman
 5. Md.Sabir Alam
 6. Md.ZafirAlam @ Md.Zafir
 7. Md.Talib Hussain
 8. Md.Shakir Alam

Petitioner nos. 2 & 3 are daughters and petitioner nos. 4 to 8 are sons of Late Sarfuddin and all the petitioners are residents of Village Jalmilik, P.S.Thakurganj, District Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Anchaladhikari, Thakurganj, District Kishanganj
3. Md.Mansoor Alam
4. Md.Zubair Alam

Respondent nos. 3 and 4 are sons of Late Haji Md.Hussain

5. Raisan Ara Begum
6. Afsana Begun
7. Maimuna Khatoon
8. Nilam

Respondent nos. 5 to 8 are daughters of Late Haji Md.Hussain

9. Islamuddin
10. Jamaluddin

Respondent nos. 9 & 10 are sons of Late Masiruddin

11. Abdul Razzaque
12. Fazlur Rahman

Respondent nos. 11 & 12 are sons of Late Alimuddin

13. Majibur Rahman
14. Mangul

Respondent nos. 13 & 14 are sons of Late Moinuddin

Respondent nos. 3 to 14 are residents of Village Jal Milick, Police Station Thakurganj, District Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Firoz Ahmad, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 15-11-2016

Heard the learned counsel appearing on behalf of the petitioners. However, none appears on behalf of the respondents.

The present writ petition arises out of a proceeding



under Section 48D of The Bihar Tenancy Act, 1885 (in short “the B.T.Act”). By the impugned order dated 31.07.2002 passed in Case No. 41 of 2002-03 by the respondent Anchal Adhikari, Thakurganj, the claim raised on behalf of the private respondent nos. 3 to 14 under Section 48D of the B.T.Act with respect to the lands in question has been allowed.

By office note dated 22.06.2006 and again by office note dated 29.02.2008, it was pointed out that the contesting respondent no.10 has passed away during the pendency of the present writ petition. In above view of the matter, a Bench of this Court (Coram: Mihir Kumar Jha, J., since superannuated) by order dated 03.03.2008 granted one week’s time to the petitioners for filing substitution petition vice deceased respondent no.10. The aforesaid order dated 03.03.2008 was peremptory in nature. Despite passage of more than eight years, aforesaid order dated 03.03.2008 has not been carried out till date, as result of which, the present writ petition stood dismissed as against the deceased respondent no.10 and his heirs and legal representatives which has been pointed out by the office notes dated 16.09.2016 as also 19.09.2016.

The learned counsel appearing on behalf of the petitioners submits that, despite all communications made by him, the petitioners are not coming forth and therefore, aforesaid order dated 03.03.2008 could not be complied with.

In above view of the matter, this Court is of the opinion that the present writ petition has become incompetent and cannot be decided appropriately in absence of the deceased respondent no.10 and his heirs and legal representatives, in whose favour the impugned order has become final and has attained its

finality.

In above view of the matter, this Court is left with no option, but to dismiss the writ petition as a whole, which is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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