

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10802 of 2007**

- =====
1. Jagrano Devi, wife of late Jalim Singh
  2. Birendra Singh, son of late Jalim Singh
  3. Parshuram Singh, son of late Amardayal Singh
  4. Lalita Devi, wife of Parshuram Singh
  5. Ambika Singh, son of late Amardayal Singh
  6. Pyaro Devi, wife of Ambika Singh
  7. Saryu Singh, son of late Saheb Singh
  8. Rajendra Singh, son of late Ram Briksh Singh
  9. Baban Singh, son of late Sudama Singh
- All residents of village-Bardihan, P.S.-Natwar, District-Rohtas.

.... .... Petitioner/s

Versus

1. The State of Bihar
  2. The District Magistrate, Rohtas at Sasaram
  3. The Deputy Collector, Land Reforms Bikramganj, District-Rohtas.
  4. Paltu Chaudhary
  5. Bhola Chaudhary
- Both sons of late Gobardhan Chaudhary
6. Vishwanath Chaudhary, son of late Ram Nandan Chaudhary.
- All residents of village-Bardihan, P.S.-Natwar, District-Rohtas.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sudama Singh, Adv.  
Mr. Rajani Kant Singh, Adv.

For the Respondent nos.1to3 : Mr. Dev Kumar Pandey, AC to GP-2

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA**  
**ORAL JUDGMENT**

6      20-12-2016                      Heard the learned counsel for the petitioners and the learned AC to GP-2 appearing on behalf of the respondent nos.1 to 3. However, none appears on behalf of the respondent nos.4 to 6, though notices were issued to them way back on 15.07.2013 both by ordinary process as also by registered post with A/D.

The petitioners are aggrieved by the order dated 11.05.2007 passed in Bataidari Appeal Case No.71 of 2006 by the respondent District Collector, Rohtas (Sasaram), as contained in Annexure-5, whereby the petition filed on behalf of the petitioners for restoration of aforesaid Bataidari Appeal, which stood dismissed for want of prosecution by an order dated 13.04.2007,



as contained in Annexure-4, has been rejected and thereby the prayer for restoration has been refused.

The learned counsel appearing on behalf of the petitioners submits that on the date fixed i.e. 13.04.2007, though attendance on behalf of the petitioners were filed, but when the matter was called out, the counsel appearing on their behalf could not appear, as he was engaged in some other case in the Civil Court, Sasaram. Therefore, for want of prosecution, the Bataidari Appeal Case No.71 of 2006 was dismissed by the order dated 13.04.2007 by the respondent District Collector, Rohtas (Sasaram), as contained in Annexure-4. He further submits that, in view of dismissal of the aforesaid Bataidari Appeal, the petitioners filed restoration petition, but that was mechanically dismissed by the impugned order dated 11.05.2007 (Annexure-5) by recording a patently wrong reason that the matter has already been decided. It is pleaded that the grounds given for rejection of the prayer for restoration of the aforesaid Bataidari Appeal are not sustainable in law and the impugned order dated 11.05.2007 (Annexure-5) is fit to be set aside.

The learned State counsel appearing on behalf of the respondent nos.1 to 3, though has opposed the prayer made on behalf of the petitioners, but has not been able to dispute the submissions made on behalf of the petitioners. As noticed above, despite issuance of notice long long ago, none is appearing on behalf of the private respondents.

After having heard the parties and taking into consideration the materials available on the record, this Court is of the opinion that the matter requires reconsideration and fresh decision by the respondent District Collector, Rohtas (Sasaram).



Indisputably, the respondent District Collector, Rohtas (Sasaram) had dismissed the aforesaid Bataidari Appeal Case No.71 of 2006 by the order dated 13.04.2007 (Annexure-4) for want of prosecution, as non-appeared on behalf of the appellants therein, though attendance were filed on their behalf. In view of dismissal of the aforesaid Bataidari Appeal, the petitioners filed restoration petition, which has been rejected by taking a completely wrong plea that the matter has already been decided. In fact, no final order was passed by the respondent District Collector, Rohtas (Sasaram) on merits by the order dated 13.04.2007, rather the appeal was dismissed on account of non-appearance of the counsel appearing on behalf of the appellants therein. As a matter of principle, while considering the prayer for restoration, the respondent District Collector, Rohtas (Sasaram) was required to examine the validity of the pleas raised on behalf of the appellants therein about non-appearance of their lawyer on that particular date and if he was satisfied about the reasons disclosed for non-appearance of their lawyer, when the matter was called out, then he could have restored the appeal and could have fixed the matter for hearing on merits, but that has not been done in the present case. In fact, that aspect of the matter has not at all been considered.

For the reasons recorded above, the impugned order dated 11.05.2007 passed in Bataidari Appeal Case No.71 of 2006 by the respondent District Collector, Rohtas (Sasaram), as contained in Annexure-5, is hereby set aside and quashed, and the matter is remitted back with a direction to the respondent District Collector, Rohtas (Sasaram) to decide the restoration case filed on behalf of the petitioners afresh after taking into consideration the



pleas raised on behalf of the petitioners' counsel for his non-appearance on the fixed date i.e. 13.04.2007, when the appeal was fixed for hearing. However, before passing any final order, reasonable opportunity of hearing must be given to the petitioners as also the private respondent nos. 4 to 6, besides others, if any.

In order to expedite the matter, the petitioners are directed to appear before the respondent District Collector, Rohtas (Sasaram) within a period of one month from today with a certified copy of the present order, whereafter he shall proceed to decide the restoration petition filed on behalf of the petitioners afresh in accordance with law.

In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, there shall be no order as to costs.

**(Birendra Prasad Verma, J)**

Arvind/-

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