

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16484 of 2014

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1. Ramchij Bhagat
 2. Inal Bhagat
 3. Ram Channar Bhagat
 4. Gaya Bhagat
 5. Gopal Bhagat, All are Sons of Indrasan Bhagat
 6. Mundrika Bhar
 7. Bandhan Bhar, Both are sons Sri Kishun Bhar null
 8. Chandra Bhan Bhar Son of Dukhi Bhar
 9. Ram Jatan Choudhari Son Ramdhari Choudhari
 10. Shiv Shankar Bhagat S/o Jnesa Shom Bhagat
 11. Ashok Bhagat S/o Jnesa Shom Bhagat
 12. Brajesh Bhagat S/o Ramchij Bhagat, All are resident of village - Samhuti Tola Charakhiya math, Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Gopalganj.
3. The Sub-Divisional Officer, Hathwa.
4. The Circle Officer, Bijaiur Anchal, District- Gopalganj.
5. Dwarika @ Daroga Musahar Son of Jaysaree Musahr
6. Gorakh Musahar Son of Ramdhari Musahar
7. Amawas Musahar Son of Harihar Musahar
8. Most. Dupati Devi W/o Fulena Musahar and mother of Daroga Musahar
9. Nathuni Musahar S/o Timal Musahar
10. Singhasan Mushar S/o Timal Musahar
11. Banka @ Bunka Mushahar Son of Lakhan Mushahar
12. Visoranjana Musahar S/o Ramchij Bhagat, all the Respondent Nos. 5 to 12 are Resident of village - Sarupati, P.S. - Bijaipur, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Dr. Krishna Nandan Singh, Sr. Adv.
Dr. Kamaldeo Sharma, Adv.
Mr. Sri Ram Kumar Sharma, Adv.

For the Respondent Nos. 1 to 4: Mr. Rajesh Kumar Sinha, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 23-09-2016

Heard the learned Senior counsel appearing on behalf of the petitioners and the learned AC to GP-23 appearing on behalf of the respondent Nos. 1 to 4.



2. The petitioners, who claim to be the under raiyats over the lands in question, have filed the present writ petition under Articles 226 and 227 of the Constitution of India assailing the validity and correctness of the order dated 9.11.1999 passed in Miscellaneous (Ceiling) Case No. 13 of 1995 by the respondent District Collector, Gopalganj, as contained in Annexure-4, whereby the aforesaid case filed on behalf of the petitioners and few others, in the light of the order dated 4.3.1997 (Annexure-2) passed in CWJC No. 3167 of 1994, under Section 22 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short 'the Act'), has been rejected.

3. It is not in dispute that the lands in question, besides other area of lands, claimed by the petitioners, was subject matter of Land Ceiling Case No. 231/7 of 1973-74 (State vs. Mahanth Ramkant Das Charakhiya Math), and finally altogether 60.33 acres of lands of the landholder including the lands claimed by these petitioners were declared surplus and by Gazette notification dated 22nd December, 1993, the same were acquired under Section 15(1) of the Act.

4. The learned Senior Counsel appearing on behalf of the petitioners submits that the petitioners filed their identical petitions under Sections 22 and 27 of the Act before the Circle Officer, Bijaipur and the S.D.O., Hathwa, but they refused to entertain the petition filed by them and instead the surplus lands were distributed under Section 27 of the Act to other landless persons. In above background, the petitioners, besides others, approached this Court in CWJC No. 3167 of 1994, which was finally disposed of by a Bench of this Court by order dated 4.3.1997, as contained in Annexure-12 to the writ petition.

5. It would be relevant to mention here that in aforesaid CWJC No. 3167 of 1994, a counter-affidavit was filed on behalf of



the official respondents, wherein the claims raised on behalf of the petitioners that they had filed their petitions under Section 22 of the Act was disputed. It was asserted on behalf of the official respondents in that case that no such petition was filed by the petitioners of that case. However, after taking into consideration the entire factual matrices and without going into the disputed question of facts, by the aforesaid order dated 4.3.1997 the petitioners were directed to file a fresh application under Section 22 of the Act before the respondent District Collector, Gopalganj within a period of one month. It was further observed that if such a petition is filed on behalf of the petitioners, then the same shall be examined either by the District Collector himself or by any other competent authority and final order shall be passed within a period of six months, after giving an opportunity of hearing to all the parties.

6. It is contended on behalf of the petitioners that in the light of the aforesaid order dated 4.3.1997 passed in CWJC No. 3167 of 1994, the petitioners, besides others, filed their petition under Section 22 of the Act, which gave rise to Miscellaneous (Ceiling) Case No. 13 of 1995. According to the learned Senior counsel, the claim raised on behalf of the petitioners with respect to the lands in question has been dismissed by the impugned order dated 9.11.1999 without considering the entire materials produced by them. According to him, the impugned order is not sustainable.

7. Per contra, the learned AC to G.P. 23 appearing on behalf of the respondent nos. 1 to 4 has opposed the prayer made on behalf of the petitioners and has submitted that the present writ petition is fit to be dismissed on the ground of delay and laches on the part of the petitioners as also on the ground of non-joint of necessary party. According to him, the impugned order was passed on 9.11.1999



(Annexure-4) and the present writ petition has been filed on 18.9.2014; therefore, there is a long delay of about 15 years. Secondly, he submitted that for deciding the batai claim of the petitioners over the lands in question under Section 22 of the Act, the landholder was necessary party, but he has not been impleaded as party respondent in the present writ petition. According to him, on these grounds alone, besides on merits, the writ petition is fit to be dismissed.

8. After having heard the parties and taking into consideration the materials available on the record, this Court finds that there is no dispute that in the light of the order and direction dated 4.3.1997 passed in CWJC No. 3167 of 1994, as contained in Annexure-12, the petitioners and others filed their fresh application under Section 22 of the Act claiming therein that they were the under raiyats over the lands in question prior to their declaration as surplus lands of the landholder. On the basis of the petition filed on behalf of the petitioners, Miscellaneous (Ceiling) Case No. 13 of 1995 was registered by the respondent District Collector, Gopalganj. The petitioners and other claimants were heard and finally by the impugned order dated 9.11.1999 their claims under Section 22 of the Act was rejected. This Court is of the opinion that for determining the claim of the petitioners that they were bataidars/ under raiyats over the lands in question prior to their declaration as surplus lands, the landholder would be necessary party, but in the present writ petition he has not been impleaded as party respondent. Furthermore, the impugned order was passed on 9.11.1999, but the present writ petition has been filed on 18.9.2014 i.e. after a delay of about 15 years. No valid explanation has been furnished by the petitioners for such a huge delay. Apparently, the writ petition suffers from delay and laches on

the part of the petitioners.

9. For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned order dated 9.11.1999 passed by the respondent District Collector, Gopalganj, as contained in Annexure-4 to the writ petition.

10. Accordingly, the writ petition is dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	27-09-2016
Transmission Date	