

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11016 of 2004

- =====
1. Bechni Devi wife of Prasadi Mandal
 2. Hira Sharma
 3. Babujan Sharma
 4. Bambam Sharma
 5. Anirudh Sharma
- Petitioner nos. 2 to 5 are sons of Jittan Sharma and petitioner nos. 1 to 5 are resident of village Singhpur Diara, Police Station Rupouli, District Purnia
6. Neelam Kumari wife of Sanjiv Ghosh, residing at Mohall Sipahi Tola, Madhubani, Police Station Khajanchi Hat, District Purnia

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Collector, Purnia
 3. Additional Collector, Purnia
 4. The Deputy Collector Land Reforms at Dhamdaha within the district of Purnia
 5. The Anchal Adhikari at Rupouli within the district of Purnia
 6. Shri Bashistha Sharma
 7. Shri Chandeshwari Sharma
- Both sons of Bhabikshan Sharma and are resident of Village Singhpur Diara, Police Station Rupouli, District Purnia
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kr.Choudhary, Advocate
For the Respondent Nos. 1 to 5: Mr. Mujtabaul Haque, GP 12

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 26-07-2016

Heard the learned counsel appearing on behalf of the petitioners as also the learned State counsel appearing on behalf of the respondent nos. 1 to 5. However, none appears on behalf of the private respondent nos. 6 and 7, though notices were issued to them way back by order dated 27.04.2005.

2. The petitioners are aggrieved by order dated 09.03.2004 passed in Revenue Appeal No. 06 of 2003 by the respondent District Collector, Purnia, as contained in Annexure-9 to the writ petition, whereby the aforesaid appeal preferred on behalf of the petitioners under Section 48 F of The Bihar Tenancy Act, 1885 (in short, "B.T.Act") has been dismissed on the ground of limitation.

3. The learned counsel appearing on behalf of the



petitioners submits that by an order dated 14.12.1998/15.12.1998 passed in Case No. 01 of 1997 by the respondent DCLR, Dhamdaha, Purnia, as contained in Annexure-6 to the writ petition, batai claims under Section 48 E of the B.T.Act raised on behalf of the private respondent nos. 6 and 7 was allowed with respect to the lands in question, fully detailed in paragraph 5 of the writ petition. He further submits that the petitioners, being the landholders and aggrieved by the aforesaid original order, preferred an appeal before the respondent Additional Collector, Purnia giving rise to Case No. 24 of 1998-1999, which was admitted for hearing, but finally by an order dated 17.12.2002 (Annexure-7) the aforesaid appeal preferred on behalf of the petitioners was held to be not maintainable before him, as according to the respondent Additional Collector, Purnia, the appeal lies before the District Collector, Purnia alone. It is next contended that in view of the aforesaid order passed by the Additional Collector, Purnia, the petitioners preferred fresh Revenue Appeal No. 06 of 2003 before the District Collector, Purnia, but that has been dismissed mechanically on the ground of limitation by the impugned order dated 09.03. 2004 (Annexure-9). According to learned counsel, since the petitioners were bona fidely prosecuting the appeal before the Additional Collector, Purnia; therefore the District Collector, Purnia ought to have allowed the petition filed on behalf of the petitioner under Section 5 of the Limitation Act and should have condoned the delay, and thereafter he ought to have decided the matter on merits, but that has not been done in the present case. Therefore, according to him, impugned order cannot be sustained in law.

4. This writ petition was filed way back on 13.09.2004 and since then almost 12 years have already elapsed, but till date no counter affidavit has been filed either on behalf of the official respondents or on behalf of the private respondents. The learned State counsel appearing on behalf of the respondent nos. 1 to 5 has not been

able to dispute the aforesaid factual position in absence of counter affidavit filed on their behalf.

5. In above view of the matter, this Court is of the opinion that the matter requires re-consideration and a fresh decision by the respondent District Collector, Purnia. Apparently, the petitioners were prosecuting their appeal before the Additional Collector, Purnia on the bona fide legal advice and that being the position, the District Collector, Purnia ought to have allowed the petition filed on behalf of the petitioners under Section 5 of the Limitation Act by extending the period of limitation. Admittedly, the matter has not been decided by the District Collector, Purnia on merits.

6. For the reasons recorded above, the impugned appellate order dated 09.03.2004 passed in Revenue Appeal No. 06 of 2003 by the District Collector, Purnia, as contained in Annexure-9 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the District Collector, Purnia with a direction to decide the aforesaid appeal afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioners and the private respondent nos. 6 and 7, besides others, if any.

7. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.07.2016
Transmission Date	