

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.350 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 23533 of 2012

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1. Laxmi Devi Wife Of Late Nathun Singh
 2. Amar Nath Singh Son Of Late Nathun Singh
 3. Vijay Bahadur Singh @ Vijay Bhushan Son Of Late Nathun Singh
 4. Ajay Kumar Singh Son Of Late Nathun Singh
 5. Sanjay Kumar Singh @ Sanjay Singh Son Of Late Nathun Singh
 6. Deva Kumar Singh @ Devanand Singh Son Of Late Nathun Singh
 7. Kamal Singh @ Kuwar Singh Son Of Late Nathun Singh
 8. Sharda Kumari @ Sarda Devi Daughter Of Late Nathun Singh
 9. Urmila Kumari @ Urmila Devi Daughter Of Late Nathun Singh
- All Resident Of Village- Sakri Chauki, P.S.- Arwal, District- Arwal (Bihar)

.... Appellant/s

Versus

1. Tilakdhari Pandit Son Of Kailash Pandit
2. Yogendra Pandit Son Of Kailash Pandit
Both Resident Of Village- Barki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar)
3. The State Of Bihar through Commissioner, Magadh Division, Gaya, District- Gaya (Bihar)
4. The Commissioner, Magadh Division, Gaya, District- Gaya (Bihar)
5. The Collector, Arwal, District- Arwal (Bihar)
6. The Deputy Collector, Land Reforms, Arwal, District- Arwal (Bihar)
7. Jai Prakash Singh Son Of Late Ram Tawakiya Singh Resident Of Village- Chotki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar)

.... Respondent/s

with

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Letters Patent Appeal No. 358 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 22881 of 2012

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1. Laxmi Devi Wife Of Late Nathun Singh
2. Amar Nath Singh Son Of Late Nathun Singh
3. Vijay Bahadur Singh @ Vijay Bhushan Son Of Late Nathun Singh
4. Ajay Kumar Singh @ Ajay Singh Son Of Late Nathun Singh
5. Sanjay Kumar Singh @ Sanjay Singh Son Of Late Nathun Singh
6. Deva Kumar Singh @ Devanand Singh Son Of Late Nathun Singh
7. Kamal Singh @ Kuwar Singh Son Of Late Nathun Singh
8. Sharda Kumari @ Sarda Devi Daughter Of Late Nathun Singh
9. Urmila Kumari @ Urmila Devi Daughter Of Late Nathun Singh All Resident Of Village- Sakri Chauki, P.S.- Arwal, District- Arwal (Bihar)

.... Appellant/s

Versus

1. Lal Mati Devi Wife Of Jag Narayan Mistry
2. Surendra Mistry Son Of Late Sheo Govind Mistry
Both Resident Of Village- Barki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar)
3. The State Of Bihar through Commissioner, Magadh Division, Gaya, District- Gaya (Bihar)

4. The Commissioner, Magadh Division, Gaya, District- Gaya (Bihar)
5. The Collector, Arwal, District- Arwal (Bihar)
6. The Deputy Collector, Land Reforms, Arwal, District- Arwal (Bihar)
7. Jai Prakash Singh Son Of Late Ram Tawakiya Singh Resident Of Village-
Chotki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar)

.... Respondent/s

with

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Letters Patent Appeal No. 371 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 22675 of 2012

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1. Laxmi Devi Wife Of Late Nathun Singh
2. Amar Nath Singh Son Of Late Nathun Singh
3. Vijay Bahadur Singh @ Vijay Bhushan Son Of Late Nathun Singh
4. Ajay Kumar Singh @ Ajay Singh Son Of Late Nathun Singh
5. Sanjay Kumar Singh @ Sanjay Singh Son Of Late Nathun Singh
6. Deva Kumar Singh @ Devanand Singh Son Of Late Nathun Singh
7. Kamal Singh @ Kumar Singh Son Of Late Nathun Singh
8. Sharda Kumari @ Sharda Devi Daughter Of Late Nathun Singh
9. Urmila Devi @ Nrmila Devi Daughter Of Late Nathun Singh All Resident Of
Village - Sakri Chauki, P.S.- Arwal, District- Arwal (Bihar).

.... Appellant/s

Versus

1. Chandrama Pandit Son Of Late Jitwahan Pandit Resident Of Village - Bakki
Ahiyapur, P.S.- Arwal, District- Arwal (Bihar).
2. The State Of Bihar through Commissioner, Magadh Division, Gaya, District-
Gaya (Bihar).
3. The Commissioner, Magadh Division, Gaya, District - Gaya (Bihar).
4. The Collector, Arwal, District- Arwal (Bihar).
5. The Land Reforms Deputy Collector, Arwal, District- Arwal (Bihar).
6. Jai Prakash Singh Son Of Late Ram Tabakiya Singh Resident Of Village -
Chotki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar).

.... Respondent/s

with

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Letters Patent Appeal No. 273 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 22626 of 2012

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1. Laxmi Devi Wife Of Late Nathun Singh
2. Amar Nath Singh Son Of Late Nathun Singh
3. Vijay Bahadur Singh @ Vijay Bhushan Son Of Late Nathun Singh
4. Ajay Kumar Singh @ Ajay Singh Son Of Late Nathun Singh
5. Sanjay Kumar Singh @ Sanjay Singh Son Of Late Nathun Singh
6. Deva Kumar Singh @ Devanand Singh Son Of Late Nathun Singh
7. Kamal Singh @ Kuwar Singh Son Of Late Nathun Singh
8. Sharda Kumari @ Sharda Devi Daughter Of Late Nathun Singh
9. Urmila Kumari @ Urmila Devi Daughter Of Late Nathun Singh All Resident
Of Village- Sakri Chauki, P.S.- Arwal, District- Arwal (Bihar)

.... Appellant/s

Versus

1. Hira Lal Pandit Son Of Late Jagdeo Pandit
2. Monga Lal Pandit Son Of Late Jagdeo Pandit
Both Resident Of Village- Bakki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar)
3. The State Of Bihar through Commissioner, Magadh Division, Gaya, District- Gaya (Bihar)
4. The Commissioner, Magadh Division, Gaya, District- Gaya (Bihar)
5. The Collector, Arwal, District- Arwal (Bihar)
6. The Deputy Collector Land Reforms, Arwal, District- Arwal (Bihar)
7. Jai Prakash Singh Son Of Late Ram Tabakiya Singh Resident Of Village- Chotki Ahiyapur, P.S.- Arwal, District- Arwal (Bihar)

.... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abhishek, with Mr. Arvind Kumar Pandey, Advocates
For the State	:	Mr. A. Haider, SC 16
For the Respondent/s	:	Mr. Pramod Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 25-07-2016

This order shall dispose off the four Letters Patent Appeals arising out of four writ petitions decided by a common order by the learned Single Bench on 18.12.2013. The learned Single Bench held that the revision would lie to the Board of Revenue under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short the 'Act') and not to the Commissioner as per the amendment in the Act vide Bihar Act No. 10 of 2006.

The facts leading to the present Letters Patent Appeal are not in dispute. The powers of the Collector were conferred on the Land Reforms Deputy Collector in terms of S.O. No. 99 dated 30th May,

1967 issued by the State Government in exercise of the powers conferred under Section 2(b) of the Act. The relevant provisions of the Act and Notification read as under:

“2(b) “Collector” includes an Additional Collector or any other officer not below the rank of Sub-Deputy Collector, appointed by the State Government to discharge all or any of the functions of a Collector under this Act

(c) “Commissioner” means Commissioner of Division and includes any officer not below the rank of the Collector of a district appointed by the State Government to discharge all or any of the functions of a Commissioner under the Act.

16 (3) (i) When any transfer or land is made after the commencement of the Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor of any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document, of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be

evicted from the land and possession there of shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under clause (i).

(iii) if the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed.

30. Appeals.- (1) (a) An appeal shall lie from any final order passed by any officer vested with the power of the Collector under this Act other than the Collector of the district to the Collector of the district or any other officer specially authorized in this behalf by the State Government within thirty days, of such an order.

(b) An appeal shall lie from any final order passed by the Collector of the district to the Commissioner of the Division within thirty days of such an order:

Provided that no appeal shall lie against orders passed under Section 5 and Section 29 before the final publication of the draft statement under sub-section (1) of Section 11:

Provided further that appeal against orders passed under Section 5 and Section 29 shall be filed within thirty days from the date of final publication under sub-section (1) of Section 11.

[(2) An appeal under this section shall be heard and disposed of in the prescribed manner.

32. *Revision to the Board of Revenue.*-(1) A revision shall lie to the Board of Revenue from any appellate order passed by a collector [or a Commissioner] within thirty days of such order.

(2) When a reference is made to the Board or Revenue under Section 38 or a revision is filed under sub-section (1) of this section, the Board may, after hearing the parties, confirm, modify, or set aside the order.

(3) The Board of Revenue may of its own motion or on an application made to it, call for from the Collector any document or record in connection with any enquiry conducted by the Collector or may direct the Collector to institute, for the purposes of this section, an enquiry and to submit his findings to the Board.

(Bihar Act 10, 2006)

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2006.

An

Act

To Amend the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1961.

Be it enacted by the legislature of the State of Bihar in the Fifty Seventh year of the Republic of India as follows:

1. *Short title, extent and commencement-* (1) This Act may be called the Bihar land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 2006.

(1) *It shall extend to the whole of State of Bihar.*

(2) *It shall come into force at once.*

2. *Amendment of sub-section (3) of Section-16 of the said Act-* Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus

Land) Act, 1961 is hereby amended to the extent given below:-

The revision, against the order passed by the Collector or Additional Collector under Section- 16(3) of the Act will be before the Divisional Commissioner who after hearing the parties shall pass orders in the case filed before him.

S.O. 99, dated the 30th May 1967 (published in Bihar Gazette (ex-ord), dated 19.07.1967). – In exercise of the powers conferred by clause (b) of Section 2 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), the Governor of Bihar is pleased to appoint all Land Reforms Deputy Collectors to discharge the function of a Collector under sub-section (3) of Section 16 of the aforesaid Act, within the local limits of their respective jurisdictions.”

The Land Reforms Deputy Collector exercising powers of the Collector dismissed the petition under Section 16(3) of the Act filed by the appellants on 09.04.2007. An appeal against the said order was dismissed by the Collector of the District on 29.06.2007. The appellants herein filed revision before the Commissioner which was allowed on 04.10.2012. It is the said order which has been set aside by the learned Single Bench holding that the revision lies before the Board of Revenue and not the Commissioner.

We have heard learned counsel for the parties and find that the revision in the facts of the case shall lie to the Commissioner

and not to the Board of Revenue.

The Collector under Section 2(b) of the Act means any person not below the rank of Sub-Deputy Collector to be appointed by the State Government. The State Government in exercise of powers under Section 2(b) of the Act appointed Land Reforms Deputy Collector to discharge the function of the Collector. Therefore, the initial order is by the Collector appointed by the State Government.

The appeal under Section 30 of the Act, in case, the order is not passed by the Collector of the District lies to the Collector of the District in terms of Section 30 of the Act. An appeal against the final order passed by the Collector of the District lies to the Commissioner.

In terms of Section 32 of the Act, the revision lies to the Board of Revenue from any appellate order passed by a Collector of the District or a Commissioner within 30 days of such order. The expression Collector in Section 32(1) would include the Collector of a District. But such provision of Section 32 stands superseded in view of the provision inserted in sub section 3 to Section 16 of the Act which contemplates that the revision against an order passed by the Collector or the Additional Collector under Section 16(3) of the Act lies before the Divisional Commissioner. Such provision is in view of delegation made to the Land Reforms Deputy Collector who exercises the powers of the Collector.

Such amendment has to be read in view of the

delegation of power under Section 16 (3) of the Act made to the Land Reforms Deputy Collector as such order passed by an officer exercising the power of the Collector is appealable before the Collector of the District. Therefore, the revision in terms of the amendment in the year 2006 will lie to the Commissioner and not to the Board of Revenue.

In view of the above, we are of the opinion that the revision against the appellate order passed by the Collector of the District will lie before the Divisional Commissioner and not before the Board of Revenue.

In view of the said, all these appeals are allowed and the matter is remitted back to the learned Single Bench for decision on merits as no opinion on merits has been rendered by the learned Single Bench.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/a