

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10853 of 2002

Shri Krishna Bihari Mishra son of Late Hari Shankar Mishra, resident of Village Matiarua Tola Birti, P.S.Lauria, District West Champaran Petitioner/s
Versus

1. The State of Bihar
2. The Collector, West Champaran, Bettiah
3. Deputy Collector, Land Reforms, Narkatiaganj, District West Champaran
4. Circle Officer, Lauria, District West Champaran
5. Bachia Devi wife of Anawat Ram
6. Kalbal Ram son of Ganesh Ram
7. Atwari Devi wife of Jagu Ram
8. Rabri Devi wife of Janak Ram
9. Sanjharo Devi wife of Bindeshwar Ram
10. Umrawati Devi wife of Shivbaran Ram
11. Rampati Devi wife of Saryug Ram
12. Buna Devi wife of Bhabhu Ram
13. Rambha Devi wife of Raman Paswan
14. **Kalwati Devi wife of Jhuman Paswan (Expunged vide order dated 10.01.2007. She died issueless)**
15. **Badu Paswan son of Faudar (Expunged vide order dated 10.01.2007 and substituted by his following heirs and legal representatives)**
 - 15(A) Shiv Lal Paswan (son)
 - 15(B) Shiv Nath Paswan (son)
16. Sushila Devi wife of Shiv Paswan
17. Most. Jago Kuwar wife of Chhote Paswan
18. Prabhawati Devi wife of Madari
19. **Dhanpawo Devi wife of Gudar (Expunged vide order dated 10.01.2007 and substituted by her following heirs and legal representatives)**
 - 19(a) Sunaina Devi (daughter)
20. Mahendra Ram son of Anant Ram
Respondent nos. 5 to 20 are residents of Village Matyariya, P.S.Lauriya, District West Champaran
21. Most. Paspoti Kuwar wife of Sukar Chaudhari
22. Binod Chaudhary son of Bagar Choudhary
23. Most. Sumitra wife of Suresh Choudhary
24. Bal Choudhary son of Tulsi Choudhary
Respondent Nos. 21 to 24 are residents of Village Baghlochana, Noniyatola, P.S. Lauriya, District West Champaran
25. Bhulan Chamar son of Jaggu Chamar
26. Prabhu Ram son of Alagu Ram
27. Yogendra Ram son of Dhanpat Ram
28. Hikaibi Devi wife of Hari Ram
29. Bipatri Devi wife of Ghura Ram
30. Most. Gaudam Kuwar wife of Alagu Ram
31. **Most. Kalawati Devi wife of Mahanth Paswan (Expunged vide order dated 10.01.2007 and substituted by her following heirs and legal representatives)**
 - 31(A) Sukat Paswan (son)
 - 31(B) Munesh Paswan (son)

32. Bunela Dusadh son of Chhathu Dusad
33. Lal Chamar son of Ghura
34. Khaidaru Paswan son of Girija
Respondent nos. 25 to 34 are residents of Village Matyariya,
P.S.Lauriya, District West Champaran

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. K.N.Choubey, Sr. Advocate

For the Respondent Nos. 1 to 4 : Mr. Ajay, GA 5

Mr.Pratik Kr.Sinha, AC to GA 5

For the Respondent Nos.5 to 34: None.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 16-09-2016

Heard the learned senior counsel appearing on behalf of the petitioner and the learned GA 5, appearing on behalf of the respondent nos. 1 to 4. However, none appears on behalf of the private respondents Nos. 5 to 34, despite valid service of notice upon them.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 05.07.1995 passed by the respondent D.C.L.R., Narkatiaganj in Land Ceiling Case No. 1/2 of 1992-93, as contained in Annexure-1 to the writ petition as also the appellate order dated 28.02.1997 passed by the respondent District Collector, West Champaran in Land Ceiling Appeal No. 36 of 1996-97, a copy of which has not been annexed with the main writ petition. Though, in the main writ petition, the impugned appellate order dated 28.02.1997 passed by the respondent District Collector, West Champaran, Bettiah has not been brought on the record on a plea that certified copy of the aforesaid order was not supplied to him, but the respondent State has brought the aforesaid appellate order dated 28.02.1997 on the record in compliance of the order of this court along with the supplementary

counter affidavit filed on behalf of the respondent no. 2, which has been marked as Annexure-A to the aforesaid supplementary counter affidavit.

3. By the impugned original order dated 05.07.1995, the respondent D.C.L.R., Narkatiaganj, the Collector under the meaning of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short “the Act”), while disposing of all the objections under Section 10(3) of the Act, filed on behalf of the landholder-petitioner, has come to a conclusion that he is possessing altogether 45.05 acres of lands of different classes. By the aforesaid order, the petitioner was held to be entitled to be the allotted only one ceiling unit for himself, his wife and his three minor sons and accordingly he was allowed to retain 20.82 acres of different categories of lands. The remaining 24.23 acres of lands were declared surplus. Accordingly, final publication of draft statement under Section 11(1) of the Act was directed to be made. The appeal preferred against the aforesaid original order has been dismissed by the impugned appellate order dated 28.02.1997 (Annexure-A).

4. The learned senior counsel appearing on behalf of the petitioner has submitted that though, against the impugned appellate order dated 28.02.1997 (Annexure-A), the petitioner did not file any revision case in terms of Section 32 of the Act, but on the ground of availability of an alternative remedy to the petitioner, the present writ petition, at this stage, cannot be thrown out, as according to him, the present writ petition was filed on 25.09.2002 and it was entertained by this Court and an interim order was also passed. Therefore, it is pleaded that matter may be decided on merits. In support of his above contention, he has placed reliance upon a judgment of the Hon’ble Apex Court in the case of **L.Hirday Narain Vs.Income-Tax Officer,**



Bareilly [AIR 1971 SC 33] (paragraph 12). While assailing the validity and correctness of impugned original order dated 05.07.1995 (Annexure-1), it was contended that as per verification report submitted by the Anchal Adhikari, Lauria, two sons of the petitioner namely, Ajay Mishra and Sanjay Mishra were major on 09.09.1970, the appointed date and therefore, according to him, they were/are entitled to have separate ceiling units, but the respondent D.C.L.R., Narkatiaganj has allowed only one ceiling unit to the landholder i.e. the petitioner for himself, his wife and his three minor sons. It is pleaded on behalf of the petitioner that if the claim about the majority of the petitioner's aforesaid two sons is accepted, then there would be no surplus land to the petitioner, and all the consequential notifications/orders will have to be set aside. It is also contended that onus was lying on the State to prove that aforesaid two sons of the petitioner were minors and not major on 09.09.1970. In support of his above contention, he has placed reliance on a Division Bench judgment of this Court in the case of **Balmukund Mandal & others Vs. The State of Bihar & others [1997(2) PLJR 477] (paragraph 5)**. On these pleas, it is submitted that the orders impugned are not sustainable in law and are fit to be set aside by this Court.

5. Au-contraires, the matter has been contested by the learned GA 5, appearing on behalf of the respondent nos. 1 to 4. Learned GA 5 has submitted that the writ petitioner has not exhausted all the statutory remedies; therefore, on that ground alone, the writ petition is liable to be dismissed. According to him, against the impugned appellate order dated 28.02.1997, brought on the record as Annexure-A to the supplementary counter affidavit, the petitioner had an alternative and efficacious remedy before the Board of Revenue in terms of Section 32 of the Act, but admittedly, the petitioner has not



approached the Board of Revenue. It is contended by him that the Board of Revenue is final court of facts and issues of facts which are sought to be raised in the present writ petition could have been raised before the Board of Revenue, but as that having been not done, the petitioner cannot be permitted to raise all the disputed question of facts in the present writ petition. In support of his above contentions, he has placed reliance on a Division Bench judgment of this Court in the case of **Faguni Ram & Ors Vs.State of Bihar & Ors. [2000(2) PLJR 507] (paragraph 12).**

6. The learned GA 5 has questioned the maintainability of the present writ petition on yet another ground i.e. delay and laches on the part of the petitioner. According to him, the impugned appellate order was passed on 28.02.1997 and the present writ petition was filed on 25.09.2002. Therefore, there has been delay of more than five years. He further contended that after the impugned appellate order dated 28.02.1997, a Gazette Notification under Section 15(1) of the Act was issued on 12.08.2002 acquiring 24.23 acres of surplus lands, which vested in the State of Bihar free from all encumbrances. Out of aforesaid 24.23 acres of acquired lands, 21.83 acres of lands were distributed to 31 landless persons on 17.08.2002 and they were put to possession on 18.08.2002. According to him, though the present writ petition was filed on 25.09.2002, but the validity and correctness of the Gazette Notification issued under Section 15(1) of the Act has not been challenged and third party's right has been created in favour of the landless persons-the private respondents herein. In support of his aforesaid contentions, particularly, the delay and laches on the part of the petitioner, he has placed heavy reliance on the judgments of the Hon'ble Apex Court in the case of **State of Rajasthan and others Vs. D.R.Laxmi and others [(1996) 6**



Supreme Court Cases 445] (paragraph 10) as also in the case of **Municipal Council, Ahmednagar and another Vs. Shah Hyder Beig and others [(2000) 2 Supreme Court Cases 48]** (paragraph 14). By referring to a decision of this Court in the case of **Ramjee Mishra and another Vs. The State of Bihar and others [1992(2) PLJR 674]** (paragraph 27), he contended that, in fact, onus was lying on the petitioner to prove the age of his sons and to show that they were major on 09.09.1970. On these pleas, it is contended that the writ petition, as a whole, is fit to be dismissed.

7. As noticed above, none appears on behalf of the private respondent nos. 5 to 34, though notices were issued to them way back in the year 2006, which were validly served.

8. After having heard the learned counsel appearing on behalf of the parties and taking into consideration the materials available on the record, this Court finds that it is true that against the impugned appellate order dated 28.02.1997, the petitioner had an alternative remedy before the Board of Revenue in terms of Section 32 of the Act. It is also true that there has been a delay of about five years in approaching this Court against the impugned original order as also the impugned appellate order, but at the same time, it is equally true that by an order dated 01.11.2002, an interim order was passed by a Bench of this Court (Coram: Aftab Alam, J. as His Lordship then was) to the effect that till further orders, the lands declared surplus shall not be distributed to any third person. Thereafter, the matter remained pending before this Court for almost 14 years, but no steps were taken either by the respondent nos. 1 to 4 or on behalf of the private respondent nos. 5 to 34 for getting the aforesaid interim order either modified or vacated.

9. In above view of the matter, this Court is of the

opinion that it would be inequitable to dismiss the writ petition at this stage either on the ground of alternative remedy available to the petitioner or on the ground of delay and laches on his part.

10. From the pleadings of the writ petitioner, it is apparent that whole claim raised on his behalf hinges on the age of his two sons namely, Ajay Mishra and Sanjay Mishra. The learned senior counsel appearing on behalf of the petitioner has placed strong reliance on the report dated 18.09.1992 submitted by the Anchal Adhikari, Lauria, as contained in Annexure-4 to the writ petition. According to him, if the aforesaid report is accepted to be true, then the two sons of the petitioner were entitled to have separate two ceiling units and if they are allotted separate units, then there would be no surplus land to the petitioner. The learned GA 5, on the other hand, submitted that the aforesaid report dated 18.09.1992 submitted by the Anchal Adhikari, Lauria was apparently on the basis of assessment/guess and the Anchal Adhikari, Lauria has himself opined that the age of the sons of the petitioner may be verified on the basis of valid documents produced by the landlord. Therefore, according to him, the document at Annexure-4 cannot be taken to be a sacrosanct document for declaring the aforesaid Ajay Mishra and Sanjay Mishra as major on 09.09.1970. It is contended that the petitioner has not produced any other document in support of the age of his aforesaid two sons; neither the educational certificate has been produced nor any other valid document has been produced to substantiate his claim that his aforesaid two sons were major on 09.09.1970. Though, the report dated 18.09.1992 (Annexure-4) of the respondent Anchal Adhikari shows the age of the aforesaid Ajay Mishra and Sanjay Mishra, two sons of the writ petitioner, as 42 and 40 years respectively on 18.09.1992. and thereby they were major on

09.09.1970, but no other valid document has been produced even on behalf of the State of Bihar and its functionaries to prove that they were not major on 09.09.1970. However, the respondent D.C.L.R., Narkatiaganj by the impugned order dated 05.07.1995 has rejected the plea of majority of the aforesaid two sons of the writ petitioner.

11. Taking into consideration the entire factual matrices of the present case, as noticed above, this Court is of the opinion that, for the ends of justice, the age of the aforesaid two sons of the petitioner is required to be assessed afresh by the scientific measures, as admittedly neither the petitioner nor the State authority are in a position to show their actual age on 09.09.1970 on the basis of any valid or scientific document.

12. In above view of the matter, the respondent District Collector, West Champaran, Bettiah is directed to constitute a Medical Board at least of three reputed doctors to assess the present age of the aforesaid two sons of the petitioner by conducting ossification test, x-ray and other scientific tests, and it shall record its opinion about the present age of the aforesaid two sons of the petitioner. The petitioner is also directed to produce his aforesaid two sons before the Medical Board for their medical examination on the date fixed by the District Collector, West Champaran, Bettiah. On determination of age of aforesaid Ajay Mishra and Sanjay Mishra, the two sons of the petitioner, if they are found to be major on 09.09.1970, then the respondent District Collector shall get a fresh notification issued in terms of Section 11(1) as also Gazette notification under Section 15(1) of the Act. However, if after medical examination, they are not found to be major on 09.09.1970, then the District Collector, West Champaran, Bettiah shall not be required to issue any fresh notification and in that case, it would be treated that

the order dated 05.07.1995 (Annexure-1) passed by the original authority and the order dated 28.02.1997, as contained in Annexure-A to the supplementary counter affidavit passed by the appellate authority have been affirmed by this Court.

13. Let the entire exercise be completed by the District Collector, West Champaran, Bettiah within a period of three months from the date of receipt/production of a copy of the present order before him. The petitioner is directed to produce a certified copy of present order before the respondent District Collector, West Champaran, Bettiah within a period of one month from today.

14. So far the other issues including the issue regarding classification of lands are concerned, this Court does not feel persuaded to entertain such pleas because of passage of time. Other issues raised on behalf of the petitioner are relating to the pure question of facts and the same could have been raised before the Board of Revenue, but the petitioner failed to approach the Board of Revenue, Bihar, Patna raising such issues. Therefore, the District Collector, West Champaran, Bettiah will not entertain any other issues except the issue regarding the age of two sons of the petitioner.

15. The present writ petition stands finally disposed of with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.09.2016
Transmission Date	