

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2070 of 2014

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1. Santosh Kumar son of Late Narain Singh, resident of Village: Paharpur, P.O. Dariyapur, P.S. and Anchal: Barahia, District: Lakhisarai
 2. Rakesh Kumar son o Late Narain Singh, resident of Village: Paharpur, P.O. Dariyapur, P.S. and Anchal: Barahia, District: Lakhisarai
 3. Manoj Kumar Singh son of Late Chandrika Singh, resident of Village: Paharpur, P.O. Dariyapur, P.S. and Anchal: Barahia, District: Lakhisarai
 4. Sunil Kumar son of Late Chandrika Singh, resident of Village: Paharpur, P.O. Dariyapur, P.S. and Anchal: Barahia, District: Lakhisarai
 5. Sudhir Kumar son of Late Chandrika Singh, resident of Village: Paharpur, P.O. Dariyapur, P.S. and Anchal: Barahia, District: Lakhisarai
 6. Banti Devi wife of Gopal Singh, D/O Late Narain Singh, resident of Village: Rehua, P.O. Rahua, P.S. and District: Lakhisarai
 7. Rekha Devi wife of Raju Singh, D/O Late Narain Singh, resident of Purani Bazar, North Of Block, Lakhisarai
 8. Ranju Devi w/o Chandramoleshwar Sharma, D/O Late Narain Singh, resident of Village: Lakhanpura, P.O. and P.S. Bakhtiyarpur, District: Patna
 9. Punam Devi wife of Abhimanu Singh, D/O Late Narain Singh, resident of Village: Wadpur, P.S. Maranchi, District: Patna
 10. Rani Devi wife of Randhir Kumar Singh, D/O Late Narain Singh, resident of Village: Sarsu, P.S. Antri, District: Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Nalanda
3. The Additional Collector, Nalanda at Bihar Sharif
4. The Circle Officer, Barahia
5. Mahanth Diviya Nand, Chela of Akhali Nand, resident of Village: Lodipur Math, P.O. Lodipur, Anchal and P.S. Ekangersarai, District: Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Rekha Prasad, Advocate
Mr. Shivendra Shankar, Advocate
Ms. Poonam Kumari Jha, Advocate

For the Respondent Nos. 1 to 4 : Mr. Pandey Sanjay Sahay, SC 31
Mr. Rajesh Ranjan, AC to SC 31

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 16-05-2016

Heard the parties.

2. The petitioners are aggrieved by order dated 19.11.2013 passed in Land Ceiling Appeal Case No. 04 of 2009 by the respondent District Collector, Nalanda, as contained in Annexure-

1 to the writ petition, whereby the aforesaid appeal filed on behalf of one Chandrika Singh, father of petitioner nos. 3 to 5 and others was dismissed on the ground of limitation.

3. The learned counsel appearing on behalf of the petitioners submits that the petitioners or their ancestors purchased 6.23 acres of lands through two registered sale deeds dated 15.04.1966 (Annexure-4 and 5) from one Mahanth Akhlanand, whereafter they came in possession over the lands in question. 5.17 acres of lands, out of aforesaid 6.23 acres of lands, were treated to be the lands of the landholder in Land Ceiling Case No. 58 of 1996, and was, accordingly, declared surplus under the provisions of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "the Land Ceiling Act"). Therefore, aforesaid Chandrika Singh and others filed CWJC No. 9513 of 2000, which was finally disposed of by order dated 22.08.2008 (Annexure-2) by a Bench of this Court (Coram: V.N.Sinha,J., since superannuated). By the aforesaid order dated 22.08.2008, the petitioners of that writ petition were granted liberty to file an appeal before the appellate authority within a period of 30 days against the orders passed in the aforesaid land ceiling case with respect to the lands in question claimed by the petitioners. The appellate authority was also directed to condone the delay in filing such appeal.

4. It is contended by the learned counsel for the petitioners that the conducting lawyer of the aforesaid writ petition did not inform the petitioners or aforesaid Chandrika Singh about the disposal of the aforesaid writ petition. However, when aforesaid Chandrika Singh came to Patna, then he was told that his writ petition has been disposed of with a liberty to file an appeal before the appellate authority. It has been asserted in paragraph 32 of the writ



petition that the Ceiling Appeal Case No. 04 of 2009 was filed by aforesaid Chandrika Singh and others before the respondent District Collector, Nalanda with a limitation petition for condonation of delay in filing such appeal. It is further highlighted that aforesaid Chandrika Singh, appellant no.1 in the said appeal, died on 17.11.2011 and a substitution petition was filed before the respondent District Collector, Nalanda, Bihar Sharif, which has been brought on the record as Annexure-3, but without considering the prayer for condonation of delay and without passing any order regarding substitution, the impugned order dated 19.11.2013 has been passed by the respondent District Collector, Nalanda dismissing the appeal filed by the appellants therein on the ground of limitation.

5. The learned counsel appearing on behalf of the petitioners submits that the impugned order, having been passed against a dead person, is a nullity; therefore, the matter requires reconsideration and a fresh decision.

6. The learned AC to SC 31, appearing on behalf of the respondents, on the other hand, contested the matter by referring to the averments made in the counter affidavit filed on behalf of the respondent nos. 2 to 4. According to him, Land Ceiling Case No. 30 of 1974-75 was started against Mahanth Akhlanand and after enquiry it was found that the landholder is the owner of 117.88 acres of lands, which includes the lands in question and finally this 5.17 acres of lands were declared surplus. The learned State counsel further highlights that while disposing of the writ petition by order dated 22.08.2008 (Annexure-2) the petitioners of that case was granted 30 days of time for filing an appeal, but the appeal was filed after undue delay of about 10 months. Therefore, the District Collector, Nalanda has rightly dismissed the appeal. However, factum of filing of

limitation petition and substitution petition is not being disputed by the learned State counsel, but according to him, it was not properly verified, affidavited and signed; therefore, it could not have been considered by the respondent District Collector, Nalanda.

7. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the matter requires re-consideration and a fresh decision by the District Collector, Nalanda, Bihar Sharif. Admittedly, with respect to their claims over 5.17 acres of lands, by an order dated 22.08.2008 passed by this Court in CWJC No. 9513 of 2000 (Annexure-2), the petitioners were granted liberty to file an appeal before the appellate authority and it was further observed that if the lands purchased by them were found to be genuine, then that may be included in the ceiling unit of the landholder in terms of Section 9(2) of the Land Ceiling Act. Indisputably, Ceiling Appeal No. 04 of 2009 was filed by aforesaid Chandrika Singh, father of petitioner nos. 3 to 5 and others. Admittedly, aforesaid Chandrika Singh died during the pendency of the aforesaid appeal. It is not in dispute that the limitation petition was filed on behalf of the appellants for condonation of delay in filing the aforesaid appeal, but the respondent District Collector did not pass any order on the limitation petition filed on behalf of the petitioners. He had not rejected the aforesaid limitation petition for any valid reason. Once appellant no.1 Chandrika Singh was found to have died, then he could have been substituted under Section 45C of the Land Ceiling Act, but that has not been done. Apparently, the impugned order dated 19.11.2013 has been passed against a dead person. Hence, it cannot be sustained in law.

8. For the reasons recorded above, the impugned order dated 19.11.2013 passed in Land Ceiling Appeal Case No. 04 of 2009

by the respondent District Collector, Nalanda, as contained in Annexure-1, is hereby set aside and quashed and the matter is remitted back to the respondent District Collector, Nalanda with a direction to him to decide the aforesaid Ceiling Appeal Case No. 04 of 2009 afresh on its own merits, after condoning the delay and passing an order on the substitution petition, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioners, landholder-respondent no.5 and parcha holders, if any.

9. It is clarified that the parties shall be at liberty to raise all the issues of facts and law before the respondent District Collector, Nalanda with respect to the lands in question, which may be available to them.

10. In order to expedite the matter, the petitioners are hereby directed to appear before the respondent District Collector, Nalanada, Biharsharif with a certified copy of the present order within a period of one month from today, whereafter the matter shall be decided afresh strictly in accordance with law, preferably within a period of three months, in the manner indicated above.

11. 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	NAFR
CAV DATE	No
Uploading Date	20.05.2016
Transmission Date	