

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5766 of 2007

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1. Sahdeo Sharma
2. Rameshwar Sharma
3. Ramanand Sharma
Sons of late Mahabir Mistri
All residents of village-Kharik Bazar, P.S.-Naugachia, District-Bhagalpur.
..... Petitioner/s

Versus

1. The State of Bihar
2. Charge Officer Survey, Bhagalpur.
3. Revenue Office Survey Naugachia Bhagalpur.
4. Thakur Prasad Mistri
5. Bishundeo Sharma
6. Jank Nand Sharma
Sons of late Bhaelal Mistri
7. Kailash Sharma
8. Nakul Sarma
9. Kant Lal Sarma
10. Binod Sharma
Sons of late Sita Ram Mistri
All residents of village-Kharik Bazar, P.S.-Naugachhia, District-Bhagalpur.
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Narayan Singh, Adv.
For the Respondent nos.1to3 : Mr. Arun Kumar Sinha, AC to GP-24
For the Respondent nos.4to10 : Mr.Diwakar Prasad Karn, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 20-12-2016 Heard the learned counsel appearing on behalf of the petitioners and the learned AC to GP-24 appearing on behalf of the respondent nos.1 to 3 as also the learned counsel appearing on behalf of the private respondent nos.4 to 10.

The petitioners are aggrieved by the order dated 18.07.2003 passed by the respondent no.2 in R.C. Case No.20 of 2002, whereby the aforesaid revision case filed on behalf of the petitioners under Section 108 of The Bihar Tenancy Act, 1885 (in short 'Act') has been dismissed and the order dated 26.02.2002 passed by the respondent no.3 in Suit No.1945 of 1978, filed under Section 106 of the Act, has been affirmed.



Though, the learned counsel appearing on behalf of the petitioners has argued the matter at some length on merits, but the learned counsel appearing on behalf of the respondents have raised the question of maintainability of the present writ petition at this stage in view of availability of an alternative statutory remedy to the petitioners under Section 109A of the Act. According to them, the petitioners have not exhausted the alternative remedy available to them; therefore, the present writ petition, at this stage, is not maintainable and is fit to be dismissed.

In view of the aforesaid objections raised on behalf of the respondents, the learned counsel appearing on behalf of the petitioners seeks permission to withdraw the present writ petition with a liberty to approach the learned Special Judge, so appointed by the State Government, in terms of Section 109A of the Act for grant of an appropriate relief to the petitioners with respect to the lands in question as also the orders impugned.

Permission is accorded.

The writ petition stands disposed of as withdrawn with the liberty aforesaid.

It goes without saying that, if an appropriate appeal is filed on behalf of the petitioners before the learned Special Judge under Section 109A of the Act within a period of one month from today, after impleading all the necessary parties including the respondents herein and, if it is found to have become barred by limitation and, if any petition is filed on behalf of the petitioners for condonation of such delay, then the prescribed appellate authority shall take into consideration that on a bonafide legal advice the present writ petition was filed on 02.05.2007 and that remained pending before this Court till date.



It further goes without saying that, before the learned Special Judge, the parties shall be at liberty to raise all the issues of facts and law, which may be available to them, with respect to the lands in question as also the orders impugned.

(Birendra Prasad Verma, J)

Arvind/-

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