

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No 982 of 2012**

**IN**

**Civil Writ Jurisdiction Case No 5060 of 2008**

- =====
1. The State Of Bihar through the Chief Secretary, Bihar, Patna
  2. District Magistrate, Gaya
  3. Assistant Director, Mines and Minerals, Gaya
  4. District Mining Officer, Gaya

.... .... Appellant/s

Versus

Krishna Murari Prasad Son Of Late Bishwanath Prasad Resident Of 29- Mohan  
Nagar, Koili Pokhar Gebal Bigha, P.S. Rampur, District- Gaya

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr D K Sinha, Sr Advocate with  
Mr Rajendra Pd, Advocate

For the Respondent/s : Mr Ashok Kr Singh, Sr Advocate with  
Mr Vijay Bharti, Advocate

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**CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH**

**&**

**HON'BLE JUSTICE SMT NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)**

**Date: 18-02-2016**

State of Bihar is aggrieved by the judgment of the learned Single Judge passed in CWJC No 5060 of 2010 being order dated 22.12.2011 by which the writ petition filed by the contesting respondent, the writ petitioner, was allowed with a direction to the State to grant quarry permit to the writ petitioner.

Having heard the parties, with their consent, this appeal is being disposed of at this stage itself.

We have gone through the records and the judgment of the learned Single Judge and we see no reason to take a different view of the matter. However, as the matter was argued at length, we would record our independent reasons as well.

It is not in dispute that the writ petitioner, being sole respondent in this appeal, has substantial lands being recorded as raiyat. He first sought permission to start a quarry and that was apparently refused because of the policy of the Government that no quarrying permit would be granted in Buddhist Circuit, or nearby, or near places of tourist importance. Writ petitioner's contention was that he was far away from Buddhist Circuit or from any place of importance for Buddhists. His lands were located in Sherghati, Sub-Division of Gaya, which is more than 60 Kms from Gaya. Then, he was told that it is Government policy that raiyati land would not be settled for quarry. The writ petitioner, who is respondent in this appeal, challenged both these. Before us, affidavits were filed showing that in this so-called Buddhist Circuit itself, large number of quarrying leases was granted by the Government after the so-called policy decision of the year 2006. In spite of several opportunities granted, State has not been able to controvert this fact. Thus, this plea of policy being there, and that, there being a blanket ban in the Buddhist Circuit, is not tenable. The conduct of the State

is not consistent with the said policy.

The second plea of the State is that no raiyat or no raiyati land is being settled for quarry. To this, our attention is drawn to the advertisement that was issued in the year 2008 by the State for settlement of mining leases for quarrying stone by public auction. Curiously, Serial No 45 of this contains that very land of the writ petitioner, clearly mentioning that it is raiyati land. That apart, there are several other properties mentioned in this advertisement which clearly state that they are raiyati land, and are being put up for auction for settlement for quarrying purposes.

Learned Senior Counsel appearing for the Mines Department, Government of Bihar draws attention of this Court to Clause 16 of the said advertisement which states that no quarrying permit will be granted in respect of land which is raiyati land except with the consent of the raiyat. In our view, this itself cuts the very argument of the State. This itself shows that there is no such embargo as is being professed that no raiyati land can be settled. All it says is that if the tenderer or the auction purchaser is a person other than the raiyat, he would require the permission or consent of the raiyat to be able to exploit the minerals. That is natural and legal implication because no third party can be permitted to enter upon the land of a raiyat by the State. This, in itself, presupposes that raiyati

land can be settled.

This advertisement of the year 2008 itself shows that writ petitioner/respondent's land was also one of the lands which was sought to be settled by the State for mining purposes. The writ petitioner himself wanted to exploit the said land. We fail to see how State could have deprived him of that right. If the State can permit a third party to mine on lands of a raiyat, on what basis can it stop the raiyat himself from doing the said act? The only justification that is sought is that in such an event, there would be no auction. In our view, that is of no consequence for the raiyat himself has a right to exploit the minerals on his land if law otherwise permits. If he does not give consent to any other, State cannot impose that third party on the raiyat. These are settled positions in law. Thus, even this ground taken by the State, is not sound and cannot be sustained. If a raiyat himself wants to exploit his own land subject to payment of royalty and taxes or any other policy decision of the Government in accordance with law, he has to be granted the necessary permission.

Though not necessary, we also take note of a recent decision of the Apex Court in the case of ***Thressiamma Jacob and Others – Versus- Geologist, Department of Mining and Geology and Others*** since reported in (2013) 9 Supreme Court Cases 725 wherein the Apex Court has held that the owner of surface rights of

land is also the owner of minerals thereunder and would, thus, have a right to exploit the minerals as well. We need not go into this issue at the moment.

Shri D K Sinha, learned Senior Counsel, as a last effort, made an argument that the settlement period, which was to start from 2009 for a period of five years, is over and, as such, the writ petitioner cannot get any relief from this Court. We can only reply to this in words of the Apex Court in the case of ***Mangalore Chemicals & Fertilizers Limited –Versus- Deputy Commissioner of Commercial Taxes & Others*** since reported in ***AIR 1992 Supreme Court 152:***

*“... ..What we have here is a pure technicality. Cl (3) of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he “will grant”. There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld – not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told “we are sorry. We should have given you the permission. But now that the period is over, nothing can be done”. The answer to this is in the words of Lord Denning : “Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality” (see Wells v Minister of Housing and Local Government, (1967) 1 WLR 1000 at p 1007).*

*Francis Bennion in his "Statutory Interpretation", 1984 edition, says at page 683:*

*"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."*

We may also, in this regard, refer to what Chief Justice **Chagla** in the case of **All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 :**

*"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."*

For the reasons aforesaid, we find no merit in this appeal. It is dismissed.

Before concluding, we would like to observe that the writ petitioner, being the raiyat of the land in question, would be seeking no lease from the Government for he is already a raiyat. He would only be seeking a quarrying permit subject to payment of

royalty and taxes, as the law may be. Unless there is a policy decision of the Government that no permit can at all be issued to anyone anywhere, we see no reason why the writ petitioner would be deprived of this right which the law has granted to him.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajiv/MEH/A.F.R.

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