

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7342 of 2011

With
Interlocutory Application No. 5828 of 2015

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Rajendra Poddar son of Late Jagdish Poddar, resident of Village-
Bihariganj, P.S. Biharigan, Anchal Bihariganj, Distt. Madhepura

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Madhepura
3. The Additional Collector, Madhepura
4. The Circle Officer, Bihariganj
5. Bibi Akhatari Khatoon wife of Gulami Aulia, resident of Azzehar
Colony, Azac Tola, Ward No. 9, P.S. and District Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sarvendra Kumar Verma, Advocate

For the Respondent Nos.1 to 4 : Mr.Nirbhay Kr.Singh, AC to GP 26

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 09-05-2016

Re: I.A.No. 5828 of 2015

The instant Interlocutory Application, supported by a supplementary affidavit, has been filed on behalf of the petitioner stating therein that respondent no.5 Bibi Akhatari Khatoon died on 01.01.2006 leaving behind her heirs and legal representatives, fully detailed in paragraph no.2 of the instant Interlocutory Application and certificate to that effect was issued on 14.01.2006.

From the materials available on the record it appears that final order was passed by the District Collector, Madhepura in Homestead Parcha Case No. 7 of 2004 on 28.12.2010, as contained in Annexure-4 to the writ petition. However, nowhere it has been stated that no step was taken before the District Collector, Madhepura for substituting the aforesaid Bibi Akhatari Khatoon on whose behalf the aforesaid case was filed before the District Collector, Madhepura under Section 21 of The Bihar Privileged Persons Homestead Tenancy Act, 1947.

The learned counsel appearing on behalf of the petitioner submits that despite the death of respondent no.5, cause of action survives and therefore, the interest of justice demands that her heirs and legal representatives may be substituted after expunging the name of the deceased respondent no.5.

The learned State counsel appearing on behalf of the respondent nos. 1 to 4 does not raise any objection to the prayer for substitution made on behalf of the petitioner in the instant Interlocutory Application.

In the aforesaid facts and circumstances, the prayer for substitution is allowed, subject to objection, if any, to be raised in future by the heirs and legal representatives of the deceased respondent no.5.

Let the name of deceased respondent no.5 Bibi Akhatari Khatoon be expunged from array of the parties of the main writ petition and she be substituted by her heirs and legal representatives, fully detailed in paragraph no.2 of the instant Interlocutory Application.

The present Interlocutory Application stands finally disposed of with the observations and directions made above.

CWJC No. 7342 of 2011

With the consent of the parties, the main writ petition has been taken up for consideration on merits.

After some argument, the learned counsel appearing on behalf of the petitioner, in presence of the learned counsel appearing on behalf of the respondent nos. 1 to 4, seeks permission to withdraw the present writ petition with a liberty to approach the learned Bihar Land Tribunal, Patna for grant of appropriate relief (s) with respect to the lands under dispute, as

also with respect to the order impugned in the present proceeding.

Permission is accorded.

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

The parties shall be at liberty to raise all the issues of facts and law before the learned Bihar Land Tribunal, Patna, which may be available to them.

If an appropriate petition is filed on behalf of the petitioner before the learned Bihar Land Tribunal, Patna within a period of two months from today with a certified copy of the present order and if it is found to have become barred by limitation and if any petition is filed on behalf of the petitioner for condonation of such delay, then the learned Bihar Land Tribunal, Patna shall take into consideration that on a bona fide legal advice, the present writ petition was filed before this Court on 25.04.2011 and that remained pending till date.

(Birendra Prasad Verma, J)

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