

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1043 of 2015

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1. Ram Kumar Singh
2. Naresh Singh
3. Tapeswar Singh All are sons of Late Laldhari Mahto residents of village -
Sarbarpur, P.S. Mehandia, District - Arwal

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Deputy Collector, Land Reforms, Arwal
3. The Divisional Commissioner, Magadh Division, Gaya
4. Devnandan Singh
5. Sudarshin Singh, both sons of Late Khetan Mahto, Village- Sarvarpur, Tola-
Bandhu Bigha, P.O. Sarvarpur, P.S. Mehendiya, District- Arwal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. P. N. Sharma

For the Respondent No. 1 to 3: Mr. Prabhat Kumar, AC to GA-2

For the Respondent No. 4 & 5 : Mr. Umesh Kumar

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 02-06-2016

Heard the learned Senior Counsel appearing on behalf of the petitioners and the learned AC to GA-2, appearing on behalf of the respondent no. 1 to 3 as also the learned counsel appearing on behalf of the respondent no. 4 & 5.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 13.11.2014 passed in Land Dispute Resolution Appeal No. 145 of 2012, by the respondent Divisional Commissioner, Gaya (Respondent No.3), as contained in Annexure-7 to the writ petition, whereby the petition filed on behalf of the petitioners for permitting them to deposit the costs awarded against them by order dated 13.02.2014 has been rejected.

3. The learned Senior Counsel, appearing on behalf of the



petitioners, submits that the petitioners had filed an application under Section 4 of The Bihar Land Disputes Resolution Act, 2009 (In short 'Act, 2009') before the respondent D.C.L.R., Arwal for grant of appropriate reliefs with respect to the lands in question, which gave rise to Case No. 15 of 2012. The aforesaid case was finally allowed, after hearing the parties, by an order dated 12.06.2012 vide Annexure-3. It is contended that the private respondents No. 4 and 5, being aggrieved by the aforesaid order, preferred an appeal before the respondent Division Commissioner, Gaya, under Section 14 of the Act, 2009, giving rise to Land Dispute Resolution Appeal No. 145 of 2012. It is next contended that in response to the notice issued by the appellate authority, the petitioners appeared in that appeal and filed their show cause resisting the prayer made in the aforesaid appeal by the appellants therein, who have been impleaded as respondents no. 4 and 5 herein. It is further contended that on 13.02.2014, a petition for time was filed on behalf of the petitioners before the appellate authority. By order dated 13.02.2014, though time was granted, but with costs of Rs.3000/- awarded against both the petitioners as also the respondents therein. According to him, for some valid justification, the costs awarded against the petitioners, could not be deposited on or before the next date fixed i.e. on 12.06.2014, as a result of which the case of the petitioners was closed by order dated 12.6.2014 and the same was adjourned for 13.11.2014. On the next date fixed, the petitioners filed a petition for permitting them to comply the order dated 13.02.2014 and thereby permit them to deposit the costs awarded against them, with a further prayer that the aforesaid appeal may be decided on merits, after hearing both sides, but by the impugned order dated 13.11.2014, the aforesaid petition filed on behalf of the petitioners has been rejected.

4. It is pleaded by the learned Senior Counsel appearing on behalf of the petitioners that if the impugned order is allowed to stand, then the petitioners shall suffer an irreparable loss and injury and the aforesaid appeal shall be decided ex parte, though the petitioners have very good case and have every chance of success, if the matter is decided on merits.

5. Per contra, the learned State Counsel appearing on behalf of the respondent no. 1 to 3 and the learned counsel appearing on behalf of the respondent no. 4 and 5, have submitted that the petitioners did not comply the order dated 13.02.2014 within the time fixed by the appellate authority. Therefore, according to them, the impugned order cannot be legally faulted. However, they have fairly further submitted that, if this Court allows the prayer made on behalf of the petitioners and allow them to deposit the costs, awarded by order dated 13.02.2014, then they may not have any objection.

6. After having heard the parties and on consideration of the materials available on record, this Court finds that there were certain laches and negligence on the part of the petitioners in complying the order dated 13.02.2014. In all fairness, the petitioners ought to have complied the aforesaid order dated 13.02.2014 within time, since that order was not reversed or modified by any higher authority or forum. However, this Court further finds that the petitioners, thereafter, filed a petition on 13.11.2014 seeking permission of the court to comply with the order dated 13.02.2014, but that petition has been rejected by the impugned order dated 13.11.2014 (Annexure-7).

7. Normally any lis before any authority/ court/ tribunal is required to be decided on merits, unless and until there is any legal bar. If the impugned order passed by the respondent Divisional

Commissioner, Gaya is allowed to stand, then certainly the petitioners shall suffer an irreparable loss and injury, as they shall not be permitted to contest the appeal on merits in view of order dated 12.06.2014, though they had succeeded before the competent authority i.e. the respondent D.C.L.R., Arwal.

8. Taking into consideration the entire factual matrices of the case as also equity involved therein, this Court is of the opinion that the petitioners should be given one more opportunity to contest the aforesaid appeal, filed on behalf of the respondent no. 4 and 5, on merits, but only after complying the order dated 13.02.2014.

9. For the reasons recorded above, the impugned order dated 13.11.2014 passed in Land Dispute Resolution Appeal No. 145 of 2012 (Annexure-7) is hereby set aside and quashed and the petition dated 13.11.2014 (Annexure-6) filed on behalf of the petitioners is allowed. Now, the petitioners shall be permitted to deposit the costs of Rs. 3000/- awarded against them by order dated 13.02.2014, in the court of the learned Divisional Commissioner, Gaya on or before 13th June, 2016. If the costs is deposited by the petitioners, as directed above, within the time prescribed, then the aforesaid Land Dispute Resolution Appeal No. 145 of 2012 shall be decided on merits, after giving an opportunity of hearing to the petitioners as also the respondent no. 4 and 5. The order dated 12.06.2014 passed in the aforesaid appeal by the respondent no.3 is also modified, accordingly, to that extent.

10. However, it is clarified that if the present order is not carried out by the petitioners and the costs is not deposited by them within the time prescribed above, then the respondent Divisional Commissioner shall be at liberty to proceed further in the matter and shall decide the aforesaid appeal in accordance with law.

II. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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