

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6020 of 2007

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1. Dilip Kumar Gupta son of Late Shiv Bachan Prasad Gupta @ Shiv Bachan Ram.
 2. Anil Kumar Gupta son of Late Shiv Bachan Prasad Gupta @ Shiv Bachan Ram.
Both residents of village and Police Station- Bankankhi, District- Purnia.
- Petitioner/s

Versus

1. The State of Bihar
 2. The Commissioner, Purnia Division, Purnia.
 3. The Collector, Purnia.
 4. The Sub Divisional Officer at Banmankhi within the district of Purnia.
 5. The Anchal Adhikari at Banmankhi within the district of Purnia.
 6. Shri Ganga Prasad Gupta son of Late Radhe Ram.
 7. Shri Baijnath Prasad Gupta son of Late Radhe Ram.
No. 6 and 7 residents of village and Police Station Banmankhi District- Purnia.
 8. Ashok Kumar Chand son of Late Pratap Narayan Chand.
 9. Sandeep Kumar Chand S/O Late Pratap Narayan Chand.
No.-8 and 9 residents of Village- Bishanpur, Police Station- Dhamdaha,
District- Purnia.
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha, Adv.
For the Respondent Nos. 1 to 5 : Mr. M. Kumar, AC to G.P. 10
For the Respondent Nos.6 to 9 : None.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 22-07-2016

Heard the learned counsel appearing on behalf of the petitioners as also the learned State counsel appearing on behalf of the respondent nos. 1 to 5. However, none appears on behalf of the private respondent nos. 6 to 9, though notices were issued to them by a Bench of this Court by order dated 27.01.2009.

The petitioners are aggrieved by the order dated 11.11.2006 passed in Ceiling Appeal No. 97 of 1990-91 by the respondent Commissioner, Purnia Division, Purnia, as contained in Annexure-11 to the writ petition, whereby the aforesaid appeal filed on behalf of the petitioners or/ and their ancestors has been dismissed for want of



prosecution. The petitioners are also aggrieved by the order dated 07.02.2007 passed in Miscellaneous Petition No. 15 of 2006-07 by the respondent Commissioner, as contained in Annexure-12 to the writ petition, whereby the aforesaid petition filed on behalf of the petitioners and/or their ancestors for restoration of Land Ceiling Appeal No. 97 of 1990-91 has been dismissed and thereby the prayer for restoration has been rejected.

The learned counsel appearing on behalf of the petitioners submits that the petition filed by the father and uncle of the petitioners under Section 37 read with Section 47 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short Land Ceiling Act) for excluding the lands in question, fully detailed in paragraph-5 of the writ petition from the Land Ceiling Case No. 68 of 1973-74 started against the original landholder was rejected by an order dated 18.09.1990 (Annexure-9) passed in Case No. 174 of 1990-91 and its analogous cases by the District Collector, Purnia; whereafter, they approached this Court in CWJC No. 7676 of 1990, which was permitted to be withdrawn by an order dated 06.02.1991 (Annexure-1) by a Division Bench of this Court with a liberty to the petitioners to file an appeal within one month before the appellate authority, who in turn, was directed to consider the matter on merits. It is further submitted that in the light of aforesaid observations made by this Court, the petitioners and/or their ancestors including their father and uncle filed Ceiling Appeal No. 97 of 1990-91 before the respondent Commissioner and thereafter, the appellants were making regular pairvi, but for quite a long time, the respondent Divisional Commissioner did not hold his Court, as a result of which the aforesaid appeal could not be finally disposed of. By referring to the order-sheet of the aforesaid appeal, as



contained in Annexure-10 to the writ petition, it is submitted that the respondent Commissioner has committed an error of record in the impugned orders that the appellants were not present on the dates fixed in the aforesaid appeal. According to the learned counsel, on several dates the appellants were present, but appeal was not taken up on account of absence of the Presiding Officer. Therefore, the order of adjournment was not passed by the respondent Commissioner, but by his Secretary. It is next submitted that for the ends of justice, the matter may be directed to be decided on its merits in the light of the observations of a Division Bench of this Court made in the order dated 06.02.1991 passed in CWJC No. 7676 of 1990, as contained in Annexure-1 to the writ petition.

The learned State counsel appearing on behalf of the respondent no. 1 to 5 has contested the matter and has supported the impugned orders by referring to the averments made in the counter-affidavit filed on behalf of the respondent no. 1 to 5. However, he has not been able to explain that if the respondent Commissioner was present in the court, then why the orders of adjournments were passed by his Secretary, which is evident from the order-sheet, vide Annexure-10.

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 reconsideration and fresh decision by the respondent Commissioner, as the matter has not been decided by him on merits in consonance with the observations made by a Division Bench of this Court by an order dated 06.02.1991 (Annexure-1). Though, it is true that on many dates fixed in the aforesaid appeal, the appellants were not present, but it appears to be equally true that on many dates the Presiding Officer was not available.

It is well settled that the justice should not be denied to a litigant merely on technical grounds, rather substantial justice should be done by giving an opportunity of hearing to all concerned.

For the reasons recorded above, the impugned order dated 11.11.2006 passed in Ceiling Appeal No. 97 of 1990-91 by the respondent Divisional Commissioner, Purnia, as contained in Annexure-11 as also the order dated 07.02.2007 passed in Miscellaneous Petition No. 15 of 2006-07 by the respondent Divisional Commissioner, Purnia, as contained in Annexure-12 to the writ petition, are hereby set aside and quashed and the matter is remitted back to the respondent Divisional Commissioner, Purnia with a direction to hear and decide the aforesaid Ceiling Appeal No. 97 of 1990-91 afresh on merits, but before passing any final order, opportunity of hearing must be given to the petitioners, the private respondent no. 6 to 9 and others including the parcha holders, if any, with respect to the lands in question.

It is clarified that 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 before the appellate authority.

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

(Birendra Prasad Verma, J)

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