

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.485 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 6389 of 2010

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1. Prakash Dubey, Son of Late Basudev Dubey Resident of Village-Salampur, P.O.:- Salempur, P.S.:- Ara, Mufassil, District:- Bhojpur

2. Uma Shankar Singho Son of Late Shiv Narayan Singh, Resident of Village- Salempur, P.O.:- Salempur, P.S.:- Ara, Mufassil, District:- Bhojpur

.... Petitioners-Appellants

Versus

1. The Union of India through the Home, Secretary, Delhi.

2. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna

3. The State of Uttar Pradesh through the Chief Secretary, Government of Uttar Pradesh Secretariat, Lucknow U.P.

4. The Surveyor General of India Deharadun (Uttarakhand)

5. The District Magistrate, Cum-Collector, Bhojpur, Ara

6. The District Magistrate, Cum-Collector, Balia, Uttarpradesh

7. The Bal Panchat Biaj Mar Bemision Department-Cum-Survey Department, Bhojpur, Ara, Collectariate, Bhojpur, Ara

.... Petitioners-Respondents

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Appearance :

For the Appellants : Mr. Gopal Govind Mishra, Adv.

For the Union of India : Mr. Awadhesh Kumar Pandey, Sr. CGC with Mr. Ravindra Kumar Sharma, A.C. to CGC

For the State of UP : Mr. K.P. Gupta, Adv.

For the State of Bihar : Mr. M.N.H. Khan, S.C. I with Mr. Md. Ishad, A.C. to S.C. I

For respondents 3 to 6 : Mr. Binod Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

4 19-08-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned single Bench of this Court on 11th of December 2013, whereby the writ application filed by the appellants was dismissed finding the same to be not maintainable as the appellants have filed a writ petition in Public Interest which was withdrawn.

The learned single Bench has recorded the following findings :

“7 : Considering the fact that the pleadings in the two writ petitions are practically the same as alleged by learned counsel for the respondents and not denied by learned counsel for the petitioners, it is evident that even in the earlier writ petition

the petitioners had specifically put forth their claims on the basis of their cultivator rights over the land in question which, according to them, is coming in cultivating possession of their ancestors since 1963 and 1964 and that by the action of the respondents, the petitioners were directly affected

8 : In the said circumstances, it cannot be said that earlier the petitioners were agitating the matter only in the interest of public, whereas now they have come forward to agitate the matter for their private rights. This is not a matter where the petitioners did have any personal interest in the earlier litigation, rather it is a case where the petitioners have been pursuing their rights by filing a writ petition in the form of Public Interest Litigation with exactly the same relief in which they also would be beneficiaries.”

The learned counsel for the appellants admits that the relief claimed in both the cases is the same, but, since earlier writ petition was in Public Interest, therefore, the withdrawal of such petition does not affect writ petition filed to claim private interest. It is submitted that the judgment of the Supreme Court reported as A.I.R. 1987 S.C. 88 (Sarguja Transport Service Vrs. State Transport Appellate Tribunal Gwalior & Ors.) is not applicable to the facts of the present case.

It is argued that in the said case, a writ petition filed under Article 226 of the Constitution of India in public interest was withdrawn and another petition under Article 226 of the Constitution of India was again filed in public interest. Therefore, principle of law laid in the aforesaid judgment cannot be extended in the present case.

We do not find any merit in the arguments raised. The finding of the learned Single Judge, which is not disputed, is that the basis of the claim of the appellants in both the cases is the same that is the cultivating position of the ancestors of the appellants since 1963 and 1964.

We thus find that by merely titling that earlier writ petition as a petition in Public Interest does not change the nature

of the claim and the relief claimed. The entire basis of the claim of the appellants was in private interest but having been withdrawn such writ petition unconditionally, the appellants have debarred themselves from filing further writ petition in the private interest. In both cases, not only the relief claimed is identical, but, the basis of the relief is also the same.

Therefore, we are of the view that the writ petition said to be in Public Interest was in fact a petition for the redressal of individual rights. Such petition will not change the substantive nature of the relief claimed in the writ petition.

The learned counsel for the appellants refers to another judgment of the Supreme Court, reported as A.I.R.2006 S.C., 1846 (State of Karnataka & Anr. Vrs. All India Manufacturers Organization & Ors.) wherein the doctrine of *resjudicata* was extended to the Public Interest Litigation petition as well.

The said judgment does not support the argument raised by the appellants. In fact, it has been held that the matter directly and substantively raised and decided in previous litigation would act as *rejudicata*. In the present case, there is no decision on merits in the present case, but, in view of public policy, the issues raised in one petition cannot be raised in a subsequent petition.

Consequently, we do not find any error in the order passed by the learned single Bench.

The Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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