

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1224 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 9266 of 1992
Along with
Interlocutory Application No.6544 of 2014

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Bibi Hanufa @ Satani, wife of Nasruddin, resident of village Malgani, P.O. and P.S. Thakurganj, District Kishanganj.

.... Respondent No.5-Appellant/s

Versus

1. Khalilur Rehman @ Tetna, son of Maghu.
2. Bibi Mariam, wife of Khalilur Rahman.
3. Bibi Majun Nissa (deceased) wife of Saharuddin.

All residents of village Dumarmani, P.S.- Paharkatta, P.O. Rajpur, District-Kishanganj

Substituted heirs and legal representatives of deceased respondent no.3

- (i) Saharuddin H/o Bibi Majun Nissa.
- (ii) Najrul, s/o Bibi Majun Nissa.
- (iii) Najir s/o Bibi Majun Nissa.
- (iv) Anzar s/o Bibi Majun Nissa.

All residents of village Haropokhar (Gogbasti), P.O.- Palasi, P.S. Paharkatta, District- Kishanganj.

- (v) Lailum Nissa, D/o Bibi Majun Nissa, w/o Ayub, resident of village-Chagalia, P.O. Singhia, P.s. Parkatta, District-Kishanganj.
- (vi) Aruna D/o Bibi Majun Nissa, w/o Yusuf, resident of village-Saharadighi, P.O.-Palasi, P.S.-Paharkatta, District-Kishanganj.
- (vii) Rukshana D/o Bibi Majun Nissa
- (viii) Farhana D/o Bibi Majun Nissa
- (ix) Sabana D/o Bibi Majun Nissa

All are resident of village-Haropokhar (Gogbasti) P.O. Palasi, P.S. Paharkatta, District-Kishanganj.

... ... Petitioners-Respondents 1st Party.

4. The State of Bihar
5. The Collector, Kishanganj
6. The Additional Collector, Kishanganj
7. The Deputy Collector Land Reforms, Kishanganj.

.... Respondents-Respondents 2nd Party.

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Appearance :

For the Appellant	:	Mr. Amal Kumar Sinha, Advocate
		Mr. Samir Kumar Sinha, Advocate
For the Respondent nos.1 & 2	:	Mr. Najmul Hoda, Advocate
	:	Mr. Arjun Prasad, Advocate
For the respondents-State	:	Mr. Kameshwar Kumar, G.P.-17
		Mr. S.K. Ranjan, A.C. to G.P.-17

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 19-10-2016

Re.: Interlocutory Application No.6544 of 2014

The application is for condonation of delay of 88 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.1224 of 2014

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench on 20th of September, 2013, whereby, the order dated 1st February, 1993 passed by the Collector was set aside, *inter alia*, for the reason that the Additional Collector exercising the power of the Collector has decided the appeal against the appellant on 30th March, 1991, therefore, the Collector could not entertain the second appeal bearing Appeal No.109 of 1991.

2. Learned counsel for the appellant contends that the Collector in the order dated 1st February, 1993 has found that Sri

Amarendra Kumar Singh was acting as Additional Collector VSG not as the Additional Collector; therefore, the order passed by him is not legal.

3. We do not find any merit in the said argument. Section 2(b) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 defines the Collector. The expression, 'Collector' includes an Additional Collector or any other officer not below the rank of Sub- Deputy Collector, appointed by the State Government to discharge all or any of the functions of a Collector under this Act. Relevant definition reads as under:-

“2 (b) “Collector” includes an Additional Collector or any other officer not below the rank of Sub-Deputy Collector, appointed by the State Government to discharge all or any of the functions of a Collector under this Act.”

4. The officer, who has decided the appeal on 30th March, 1991 was acting as an Additional Collector VSG. It is pointed out by the respondents that VSG is the suffix to define the administrative function of the Additional Collector, but nevertheless he continues to be the Additional Collector and is a Collector within the meaning of Section 2(b) of the Act. Therefore, the Collector vide order dated 1st February, 1993 could not return a finding that Additional Collector VSG is not an Additional Collector competent to decide an appeal preferred by the present appellant.

5. The appellant has filed an appeal which was decided by the Additional Collector VSG. If the officer was not competent to decide the appeal, the appellant should have raised an objection at that stage. Once he allowed the officer to proceed under the assumption of jurisdiction vested in him, then subsequently after the decision, the appellant cannot turn around to say that the officer did not have the power to decide the appeal. It is in addition to the fact that the Additional Collector VSG was an Additional Collector competent to decide an appeal in terms of Section 2(b) of the Act.

6. Consequently, the learned Single Judge has rightly set aside the order passed by the Collector on 1st of February, 1993 remanding the case for fresh hearing to the Additional Collector.

7. The Letters Patent Appeal is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	A. F. R.
CAV DATE	N. A.
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