

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9066 of 2008

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Md. Hasnat son of Md. Jamil, resident of Village- Naharkhap, P.S. & Anchal-
Rafigang, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Land Reforms Department, Bihar.
3. Commissioner, Magadh Division, Gaya.
4. District Magistrate, Aurangabad, Bihar.
5. Additional Collector, Aurangabad, Bihar.
6. Land Reforms Deputy Collector, Aurangabad, Bihar.
7. Ram Swaroop Singh, son of Late Sudama Singh, resident of village Ladipur,
P.S. & Anchal- Rafigang, District Aurangabad.
8. Bibi Quraissa Khatoon wife of Late Sk. Siddique, residence of village-
Naharkhap, P.S. and Anchal- Rafigang, District- Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Singh, Adv.
Mr. Gaysuddin Khan, Adv.

For the Respondent Nos. 1 to 6 : Mr. Prabhakar Jha, G.P. 27

For the Respondent No. 7 : Mr. Bhanu Pratap Singh, Adv.

For the Respondent No. 8 : None.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 26-08-2016

Heard the learned counsel appearing on behalf of the petitioner, learned G.P. 27 appearing on behalf of the respondent nos. 1 to 6 as also the learned counsel appearing on behalf of the respondent no.7. However, none appears on behalf of the respondent no.8 or her heirs and legal representatives, despite issuance of notice to them.

2. The matters at issue are the orders passed by the statutory

authorities under the provisions of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short 'Act') with respect to the claim of pre-emption raised on behalf of the respondent No. 7 regarding the lands in question, fully detailed in paragraph-4 of the writ petition.

3. The learned counsel appearing on behalf of the parties are unanimous in their submissions that the claim of pre-emption raised on behalf of the respondent no.7 was rejected by order dated 22.3.2005 by the respondent D.C.L.R., Aurangabad in Pre-emption Case No. 41 of 2003, but on appeal preferred by the respondent no.7, the aforesaid order was reversed and set aside by the appellate authority by order dated 15.04.2007 passed in Pre-emption Appeal Case No.174 of 2005-06, as contained in Annexure-2 to the writ petition.

4. The grievance of the petitioner is that against the aforesaid appellate order, the petitioner filed Revision Case No. 56 of 2007 before the respondent Divisional Commissioner, Gaya, with a petition under Section 5 of the Limitation Act, explaining the delay in filing the aforesaid revision case, but that revision application has been dismissed by the impugned order dated 3.1.2008 (Annexure-1) on the ground of limitation.

5. The learned counsel, appearing on behalf of the petitioner, submits that the respondent Divisional Commissioner has not considered the petition for limitation filed on behalf of the petitioner in its proper perspective as satisfactory explanation was furnished by him for filing the aforesaid revision case after delay of 65 days. Therefore, it is pleaded that the impugned order cannot be sustained in law.

6. The learned counsel appearing on behalf of the

respondent no.7 though has opposed the prayer of the writ petitioner, but has not been able to dispute the submissions made by the learned counsel appearing on behalf of the petitioner that the limitation petition was filed, yet it was not properly considered.

7. The learned G.P. 27, appearing on behalf of the respondent nos. 1 to 6, has fairly submitted that the matter may be remitted back to the respondent Divisional Commissioner, Gaya for deciding the case of the parties on merits.

8. In view of the aforesaid submissions made by the learned counsel appearing on behalf of the parties, this Court is of the opinion that the matter requires reconsideration and fresh decision on merits by the respondent Divisional Commissioner, Gaya. Accordingly, the impugned order dated 3.1.2008 passed in Revision case No. 56 of 2007 by the respondent Commissioner, Magadh Division, Gaya, as contained in Annexure-1 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the respondent Divisional Commissioner, Gaya with a direction to decide the aforesaid case on merits. The limitation occurred in filing the aforesaid revision application, shall be deemed to have been condoned by this Court.

9. It is clarified that this Court has not gone into the merits of the claim of pre-emption contested by the parties under Section 16(3) of the Act with respect to the lands in question, and this is left to be decided by the revisional authority strictly in accordance with law.

10. In order to expedite the matter, the parties are directed to appear before the respondent Divisional Commissioner, Gaya within a period of one month from today with a certified copy of the present order, whereafter the aforesaid revision case filed on behalf of the petitioner shall be decided afresh on merits expeditiously, but before passing any final order, opportunity of hearing must be given

to all concerned including the petitioner, respondent no. 7 as also the heirs and legal representatives of the deceased respondent no.8.

11. In the result, the writ petition is allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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