

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.674 of 2015

With

Interlocutory Application No.8133 of 2016

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1. Bashir Ahmad @ Amazad, Son of Late Sahrum
2. Shamim Ahmad alias Jamshad, Son of Late Sahrum
Both R/o Mohalla Purani Qila, Siwan, P.S. Siwan, Town, District Siwan

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Land Revenue
Department Patna
2. The Additional Collector, Siwan
3. The Deputy Land Reforms Collector, Siwan
4. The Circle Officer, Siwan
5. Shamid Ali Siddique, Son of Late Saukat Ali, R/o Mohalla Purani Qila,
Siwan, P.O. Siwan, P.S. Siwan, Town, District Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Adv.

For the Respondent nos.1to4 : AC to GP-21

For the Respondent no.5 : Mr.Chandra Kant, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 18-10-2016

Re.:I.A.No.8133 of 2016

The instant Interlocutory Application has been filed purportedly on behalf of the surviving petitioner no.1 stating therein that, during the pendency of the present writ petition, petitioner no.2 Shamim Ahmed @ Jamshed has passed away on 16.07.2015 leaving behind his heirs and legal representatives, fully detailed in paragraph 2 of the instant Interlocutory Application.

The learned counsel appearing on behalf of the petitioner submits that all the proposed heirs are major and they all have entered appearance through their learned counsel by filing their duly executed vakalatnama.

The learned AC to GP-21 appearing on behalf of the respondent nos.1 to 4 does not raise any objection to the prayer for

substitution made in the instant Interlocutory Application.

In above view of the matter, the prayer for substitution is allowed. Let the name of the deceased petitioner no.2 be expunged from the array of the parties of the main writ petition and he be substituted by his heirs and legal representatives, fully detailed in paragraph 2 of the instant Interlocutory Application, who have already entered appearance through their counsel.

The instant Interlocutory Application stands finally disposed of with the observations and directions made above.

Re.: CWJC No.674 of 2015

On the request of the parties, the main writ petition has been taken up for consideration on merit.

The petitioners are aggrieved by the order dated 30.08.2014 passed in Case No.34 of 2013-14 by the respondent Additional Collector, Siwan, as contained in Annexure-5 to the writ petition, whereby the aforesaid case filed on behalf of the respondent no.5 was allowed and the order dated 21.12.2012 passed by the respondent D.C.L.R., Sadar Siwan, as contained in Annexure-3, fixing rent in favour of the petitioners with respect to the lands in question, has been set aside.

The learned counsel appearing on behalf of the petitioners submits that the impugned order has been passed under the provisions of The Bihar Tenancy Act, 1885 (in short 'B.T. Act') and against this order no appeal or revision does lie under the provisions of the B.T. Act. In support of his claim with respect to the lands in question, he has raised various issues of facts.

The learned State counsel appearing on behalf of the respondent nos.1 to 4, on the other hand, by referring to the



averments made in the counter affidavit filed on behalf of the respondent nos.2 to 4, has disputed the claim of the petitioners with respect to the lands in question. He further contended that the present writ petition, at this stage, is not maintainable, as the petitioners have not exhausted the alternative remedy available to them before the learned Bihar Land Tribunal, Patna, as, according to him, against the final order passed under the provisions of the B.T. Act, a petition shall be maintainable before the learned Bihar Land Tribunal, Patna in view of the provisions contained in Section 9 of The Bihar Land Tribunal Act, 2009.

The submissions made by the learned State counsel appear to be correct.

As per mandate of Section 9 of The Bihar Land Tribunal Act, 2009 against any final order passed by the appropriate authorities under the provisions of the Act and Manuals mentioned therein, against which no forum of appeal or revision is available, an application before the learned Bihar Land Tribunal, Patna shall be maintainable. The Bihar Tenancy Act, 1885 is included in the list of Acts/Manuals mentioned therein.

As per the submission of the learned counsel appearing on behalf of the petitioners against the order impugned, as contained in Annexure-5, no appeal or revision does lie under the provisions of the B.T. Act. In above view of the matter, the petitioners have an alternative remedy before the learned Bihar Land Tribunal, Patna, which they have not exhausted.

In the present matter, several disputed questions of facts have been raised by both the sides, which, in the considered opinion of this Court, must be resolved by the statutory authorities and finally by the learned tribunal.

In above view of the matter, the present writ petition is dismissed, but a liberty is granted to the petitioners to approach the learned Bihar Land Tribunal, Patna for grant of an appropriate relief to them with respect to the lands in question as also the order impugned.

(Birendra Prasad Verma, J)

Arvind/-

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