

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.189 of 2017**

In

Civil Writ Jurisdiction Case No. 17000 of 2016

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The State of Bihar through Collector, West Champaran, Bettiah & Anr

.... Appellant/s

Versus

Keshav Mishra

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Naresh Prasad

For the Respondent/s : Mr. Madan Mohan

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 10-02-2017 Heard learned counsel Mr. Nikesh Kumar, A.C. to

S.C. 2 for the petitioners and learned senior counsel Mr. Ganpati
Trivedi for the respondent.

2. The petitioners have filed this civil miscellaneous application for setting aside the order dated 05.09.2016 passed by Special Land Acquisition Judge, Bagaha, district West Champaran in Execution Case No.01 of 1996.

3. It appears that by the impugned order the executing court directed the petitioner-State of Bihar to pay Rs.8,10,314.00 towards balance compensation amount for the lands acquired by the State of Bihar.

4. The only grievance of the petitioners is that 9% interest and 15% interest were added in the decree for 17 years i.e. from the date of possession till the decree is passed i.e. dated



15.12.1995 but while calculation was made by the Chartered Accountant the said interest was again calculated from the year 1977, which is wrong. The interest can be calculated from the period after the decree but not from the year 1977. However, in the decree the court below in the second page clearly mentioned that the interest shall be calculated from the date of publication or taking possession which is wrong and, therefore, the calculation of the respondent is also wrong.

5. On the other hand, the learned senior counsel Mr. Trivedi submitted that the executing court cannot go behind the decree. The decree passed by the Land Acquisition Judge has already been confirmed by the High Court in the first appeal and, therefore, even if there is a mistake in the decree, the executing court cannot calculate the interest otherwise than the direction contained in the decree.

6. Perused the decree, which is annexed with this civil miscellaneous application. In the last portion of the decree there is specific direction that the land owner is entitled to receive Rs.15,4,764.86 with interest thereon at the rate of 9% from the date of publication/taking possession of the said property by the Collector at the rate of 15% till the payment. It is not denied by the petitioners that the calculation made by the respondent is



according to the decree but the calculation is based on that part of the decree whereby the mistake was committed in the decree itself.

7. According to the learned counsel for the petitioners when the court below itself has calculated the interest from the date of publication/possession i.e. from the year 1977 upto 1995 there should not have been any direction to re-calculate the interest from 1977 to 1995 on the interest already calculated.

8. On the other hand, the learned senior counsel for the respondent submitted that the calculation submitted by the respondent is according to the decree, therefore, it needs no interference.

9. Since the only objection of the petitioners is that the last portion of the decree there is wrong direction to re-calculate the interest from the year 1977 upto 1995, in my opinion, it relates to the mistake in the decree. Whether that mistake is intentional or whether it is according to law or it requires correction is a matter that can be dealt with under Sections 152 and 153 of the Code of Civil Procedure. However, till the decree is amended or corrected according to law by the court who passed the decree, the executing court cannot go behind the decree. Therefore, when the order passed by the court below is according to the decree, no interference can be made in exercise of supervisory jurisdiction. If



the petitioners feel that the last portion of the decree whereby the direction has been given to add the interest from 1977 to 1995 is a mistake then the petitioners are at liberty to file an application before the court below under appropriate provision and pray for the same but the same cannot be examined in exercise of supervisory jurisdiction nor this court can modify, alter or set aside that part of the decree as if this court is sitting either in revision or in appeal, particularly when the decree has been confirmed by the High Court in first appeal.

10. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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