

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.386 of 2016
IN
Civil Writ Jurisdiction Case No. 1028 of 2005**

- =====
1. Deshratna Dr. Rajendra Prasad Dugdh Utpadak Sahkari Sangh Ltd., Barauni Dairy P.S.- Barauni, District- Begusarai- through its Managing Director.
 2. Shri Bhim Shankar Manubansh, I.A.S. son of late Shri Radhe Bihari Lall, Managing Director, Deshratna Dr. Rajendra Prasad Dugdh Utpadak Sahkari Sangh Ltd., Barauni Dairy P.S.- Barauni, District- Begusarai- at present Sunil Ranjan Mishra, son of late Mahesh Mishra, Managing Director, Deshratna Dr. Rajendra Prasad Dugdh Utpadak Sahkari Sangh Ltd., Barauni Dairy, P.S. Barauni, District-Begusarai.

.... Petitioners-Appellants

Versus

1. The State of Bihar.
2. The Collector, Begusarai.
3. The Additional Collector, Begusarai.
4. Deputy Collector, Land Reforms, Teghra, P.S.Teghra, District Begusarai.
5. The Circle Officer, Teghra, P.S.Teghra, District Begusarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Ranjan Prasad, Advocate
Mr. Abhimanyu Vatsya, Advocate
Mr. Sudhanshu Trivedi, Advocate
Mr. Abhishek Singh, Advocate
Ms. Surabhi, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, SC-19
Mr. Avanindra Kumar Jha, AC to SC-19

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-03-2017

Seeking exception to an order dated 8th January, 2016
passed in CWJC No.1028 of 2005, this appeal has been filed under
clause X of the Letters Patent.

2. Section 23(4) of the Bihar Tenancy Act, 1885



(hereinafter referred to as the 'B.T. Act') imposed liability with regard to payment of commercial rent/tax. Constitutional validity of the aforesaid provision was challenged before this Court in CWJC No. 1669 of 1998 and a co-ordinate Division Bench of this Court decided the issue and declared Section 23(4) of the B.T. Act as *ultra vires*, as reported in the case of **Amar Singh and others versus The State of Bihar and others, 2007 (3) PLJR 225**. In paragraph 92 of the aforesaid judgment rendered by the learned Division Bench, the following principles were enumerated for the purpose of granting benefit in accordance to the law laid down in the case of **Amar Singh** (supra).

92. It is always open for the Constitutional Court under Article 226 of the Constitution to limit the relief in the light of the facts and circumstances and backdrop of the legal profile. It is in this context, the benefit of this judgment shall be available, only, in the pending cases. Thus, the relief shall be circumscribed. In other words, cases which have attained finality shall not be reopened due to the effect or operation of this judgment.

Shiva Kirti Singh, J.- I agree with the observation and direction that benefit of this judgment shall be available only in the pending cases.”

(Emphasis supplied)

3. When the aforesaid judgment was rendered by the Division Bench, the writ petition filed by the petitioner being CWJC



No.1028 of 2005 challenging an order dated 30th August, 2001 passed by the DCLR, Teghra, Begusarai was pending consideration before this Court. However, while interpreting the judgment in the case of **Amar Singh** (supra) and clause 92 thereof, the learned Writ Court in the present case restricted its implementation only to such cases which were pending before the statutory authorities and not before a Court like the High Court under Article 226 of the Constitution.

4. Learned counsel for the appellants invites our attention to the principles laid down in the case of **Amar Singh** (supra), particularly paragraph 92 thereof as reproduced hereinabove, and argues that the relief has to be granted in all cases that were pending on the date when the judgment in the case of **Amar Singh** (supra) was pronounced and by extending its benefit only to such cases which were pending before the statutory authorities, an apparent error on the face of record has been committed by the learned Writ Court and in support of his contention he invites our attention to the judgment rendered by a learned Single Bench of this Court in the case of **Raghubansh Singh vs. The State of Bihar & Ors., 2008 (1) PLJR 278**, wherein after considering the law laid down in the case of **Amar Singh** (supra) decided on 30.05.2007, the learned Bench has held that to



the cases pending under Article 226 of the Constitution of India also the law laid down in the case of **Amar Singh** (supra) shall be applicable.

5. We see no reason to take a different view. If we analyze the observation of the learned Division Bench in the case of **Amar Singh** (supra) as reproduced hereinabove in paragraph 92, we find that the learned Division Bench held that the judgment in the case of **Amar Singh** (supra) shall be available only in pending cases. The words, 'pending cases' would mean cases pending not only before the statutory authorities, but also a case pending before any higher forum which is nothing but continuation of the original proceeding that was initiated before the statutory authorities, may be before this Court under Article 226 of the Constitution or any other Court of competent jurisdiction. The meaning of the word 'pending cases' cannot be restricted to cases that are pending before the statutory authorities. A case pending before any higher forum which is continuation of the original proceeding that was initiated before the statutory authority would also come within the purview of the 'pending cases' and in the case of **Raghubansh Singh** (supra), the same principle has been reiterated by the learned Bench. We are in full agreement with the aforesaid interpretation and principle of law and see no reason to take a different view.



6. That apart, we find that when the case of **Amar Singh** (supra) was decided by a Division Bench of this Court on 30th of May, 2007, this writ petition, which was filed in the year 2005, was also pending. If the petitioner in a writ petition decided on 30th May, 2007 is granted benefit of Section 23(4) of the B.T. Act being declared as *ultra vires* by a co-ordinate Bench of this Court, there is no reason as to why similar benefits should not be granted to a petitioner, who had approached this Court in the year 2005 and whose case was also pending on 30th May, 2007 when the writ petition filed by **Amar Singh** (supra) was decided by this Court. If this is not done, it would amount to gross discrimination in dealing with two writ petitions on the same subject matter and question of law, both of which were pending on 30th May, 2007 on which date the statutory provision was declared *ultra vires*. This is an added reason which warrants the impugned order to be quashed and benefit conferred to the petitioner in accordance to the law laid down in the case of **Amar Singh** (supra).

7. Therefore, we allow this appeal and quash the order dated 08.01.2016 passed in CWJC No.1028 of 2005 by the learned Writ Court. The writ petition (CWJC No.1028 of 2005) is allowed and the impugned order dated 30th August, 2001 passed in Case No.66 of 2000-01/63 of 2001-02 by the respondent DCLR, Teghra,



Begusarai, as contained in Annexure-3 to the writ petition, is quashed and we hold that the appellants shall be also entitled to the benefit accruing to them in the matter of payment of commercial rent/tax in accordance to the law laid down by the Division Bench in the case of **Amar Singh** (supra) and followed in the case of **Raghubansh Singh** (supra) by the learned Single Bench as indicated hereinabove.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	A. F. R.
CAV DATE	N. A.
Uploading Date	23.03.2017
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