

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1201 of 1996  
IN  
Civil Writ Jurisdiction Case No. 612 of 86**

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Mahanth Ram Kishore Das

.... .... Appellant/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. SUNIL KUMAR SINGH  
Mr. Manoj Kumar Ambastha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 28-04-2015**

I.A. No. 7697 of 2015.

The respondent no. 10 died in the year 2003,during the pendency of this appeal I.A. No. 7697 of 2015 is filed with a prayer to bring the legal representative of the deceased respondent No. 10 on record. This court issued notice the heirs of respondent no.10 on 09.03.2015, under registered post with A/D. It is submitted that the notice has been served and acknowledgement has been received. It is deemed that there is no opposition to the I.A and the same is ordered.

This L.P.A. is preferred against the order dated 20<sup>th</sup> September 1996 passed by the learned Single Judge in C.W.J.C. No. 612 of 1986. The writ petition was filed by one Sri Raghunath Das.



The dispute was in relation to land situated in the village Birrakh in the district of Sitamarhi. The land was dedicated or donated by one Gokhul Das in favour of temple Thakur Laxmi Narain Ji at Janakpur Nepal, though a deed executed in the year 1952. Shri Nathuni Singh was mentioned as sebaith of the temple. After the death of Nathuni Singh, the respondent no.10 herein filed a petition before the Anchaladhikari for entering his name as sebaith in the revenue record as Sebaith. The said application was rejected on 20.12.1979. Feeling aggrieved by the same the respondent preferred appeal before the D.C.L.R. and it was dismissed on 10.06.1982. Thereafter the respondent no.10 filed further appeal before the Collector Sitamarhi. The same was allowed on 30.09.1983.

Aggrieved by the order passed by the collector on 30.09.1983, the respondent filed revision before the Commissioner Tirhut Division and it was allowed on 29.10.1985. Challenging the same the 10<sup>th</sup> respondent filed the writ petition. The learned Single Judge allowed the writ petition only on the ground that the power of the second respondent is very limited under section 17 of the Act.

The said order is challenged in the appeal.

Heard learned counsel for the appellant. There is no representation for the respondent.

The Act provides for resolution of dispute even in

respect of mutation of the entries in the records. The power of commissioner with section 17 of the Act is very limited. The Collector passed an order without jurisdiction which has been intervened by the Commissioner.

In the instant case the respondent himself admitted that he is not in possession of the land in question for a long time. He has also taken note of the fact that the mutation can be made only in favour of persons who are in possession of the land. It means it is a clear case of illegal or without jurisdiction. We fail to understand how the order was passed by the second respondent. The order suffers from the error on the face of it. The respondent no.10 were not party in the writ which was filed by the shebaith of the temple at Jankpur. The concerned shebaith is a person claiming to be so or just placing obligation to make the property for the benefit of temple. The respondent cannot claim his right of owner. We, therefore, allow this appeal and set aside the order passed by the learned Single Judge in C.W.J.C. No. 612 of 1986 dated 20.09.1996.

**(L. Narasimha Reddy,CJ)**

**(Sudhir Singh, J)**

M.Rahman/-

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