IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10541 of 2008

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Sarjeel Ahmad, son of Sri Shabbir Ahmad, resident of Motipur, P.S. Motipur, District Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. Joint Director of Consolidation, Muzaffarpur
3. Deputy Director of Consolidation, Muzaffarpur
4. Assistant Consolidation Officer, Motipur, Muzaffarpur
5. Collector, Muzaffarpur
6. The Bihar State Sugar Corporation Unit Motipur Sugar Factory, through its General Manager, At, P.S. & P.O. Motipur, District Muzaffarpur

.... Respondents

with

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Civil Writ Jurisdiction Case No. 10204 of 2008

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Mehrunnisa, wife of Ghulam Sharfuddin and daughter of Md. Yusuf, resident of Motipur, P.S. Motipur, District Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. Joint Director of Consolidation, Muzaffarpur
3. Deputy Director of Consolidation, Muzaffarpur
4. Assistant Consolidation Officer, Motipur, Muzaffarpur
5. Collector, Muzaffarpur
6. The Bihar State Sugar Corporation Unit Motipur Sugar Factory, through its General Manager, At, P.S. & P.O. Motipur, District Muzaffarpur

.... Respondents

with

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Civil Writ Jurisdiction Case No. 10550 of 2008

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Noor Mohammed Ellias, son of Late Hajee Ellias, resident of Motipur, P.S. Motipur, District Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar

2. Joint Director of Consolidation, Muzaffarpur
3. Deputy Director of Consolidation, Muzaffarpur
4. Assistant Consolidation Officer, Motipur, Muzaffarpur
5. Collector, Muzaffarpur
6. The Bihar State Sugar Corporation Unit Motipur Sugar Factory, through its General Manager, At, P.S. & P.O. Motipur, District Muzaffarpur

.... Respondents

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Appearance :

For the Petitioners : Mr. Raghib Ahsan, Sr. Adv.
Mr. Abdul Aziz, Adv.
Shaba Ashfaque, Adv.

For Resp. No. 5 Mr. Gyan Shankar, Adv.

For the State Mr. Amresh Kr. Sinha, AC to G.A. 1
(In CWJC No. 10541 of 2008)
Mr. G.P. 20
(In CWJC No. 10204 of 2008)
Mr. Gyan Prakash Ojha, G.A. 7
Mr. Ajeet Kr. AC to G.A. 7
(In CWJC No. 10550 of 2008)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 04-07-2017

1. A common orders dated 05.10.2007 passed by the Joint Director, Consolidation in Revision Case Nos. 390 of 1988, 471 of 1988 and 472 of 1988 are under challenge in all the above stated three writ petitions and accordingly, all the above stated petitions are taken together for hearing and are being disposed of by this common order.

2. All the petitioners filed objections under Section 10(2) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as “the Act”) before Consolidation Officer, Motipur (Muzaffarpur) in respect of the disputed lands. The Consolidation Officer, Motipur allowed the objections filed by the

petitioners vide order dated 3/2-9-76 passed in Consolidation Case No. 45/75 and directed that the disputed plots be recorded in the name of petitioners. Near about after ten years the aforesaid order of Consolidation Officer, Motipur was challenged by the Bihar State Sugar Corporation Limited by filing separate appeals which were disposed of by the Deputy Director, Consolidation, Muzaffarpur vide order dated 10.07.1987 and 20.07.1987 respectively setting aside the order dated 3/2-9-76 passed by the Consolidation Officer and directed that disputed plots be recorded in the name of Motipur Sugar Factory Bihar Sugar Corporation and accordingly, revenue records be prepared. The aforesaid orders of Deputy Director, Consolidation, Muzaffarpur were challenged before the Joint Director, Consolidation, Muzaffarpur in Revision Case No. 472/88 which was, too, dismissed by the Joint Director, Consolidation, Muzaffarpur vide order dated 05.10.2007 and accordingly, the impugned order dated 05.10.2007 passed by the Joint Director, Consolidation, Muzaffarpur as well as order dated 10.07.1987 and 20.07.1987 passed by Deputy Director, Consolidation, Muzaffarpur are impugned before this court by the petitioners.

3. Briefly stated facts of the present matters are that the disputed lands originally belong to M/s Motipur Sugar Factory Private Limited (hereinafter referred to as" the Factory") and petitioners claim that disputed plots were transferred by the Factory to Rukaiya Bai by

executing registered sale deed dated 31.08.1970 and subsequently, the aforesaid Rukaiya Bai transferred the lands in question in favour of the petitioners by executing separate registered sale deeds dated 06.07.1972 but when the draft publication was made during consolidation proceeding, the aforesaid lands were shown recorded in the name of the Factory and thereafter, petitioners filed separate objections under Section 10(2) of the Act. The objections of petitioners were allowed and accordingly, the entries made in draft were corrected by the Consolidation Officer passing order dated 3/2-9-76 but the Deputy Director, Consolidation entertained the appeal against the order of Consolidation Officer after ten years without condoning the delay and subsequently, set aside the order passed by the consolidation officer and similarly, the Joint Director, Consolidation also refused to set aside the orders of Deputy Director, Consolidation, Muzaffarpur.

4. The dispute of the parties has chequered history. It is an admitted position that originally, the disputed land belonged to the Factory and a ceiling case bearing Ceiling Case No. 01/1965 was initiated against the Factory but subsequently, the aforesaid proceeding was dropped at initial stage on the basis of some reports of concerned revenue authorities. However, again a proceeding as Ceiling Case No. 25/73-74 was initiated in respect of surplus lands of the Factory. In the aforesaid ceiling proceeding, the Factory was

shown in possession of approximately 4000 acres of land and the draft statement published in the aforesaid proceeding included the disputed plots of the present case also. The Factory filed objection in the aforesaid ceiling proceeding claiming that the disputed lands had already been transferred in favour of the petitioners and the disputed plots were wrongly included in draft statement. The petitioners also filed objections in the said proceeding raising similar points and prayed for exclusion of their lands from the aforesaid ceiling proceeding but vide order dated 13.11.76 the then Additional Collector rejected the prayer of the petitioners as well as the Factory. The Additional Collector perhaps passed the order under Section 5(i)(ii) of the Ceiling Act. The Additional Collector rejected the claim of the petitioners and the Factory on the ground that the sale deeds were executed after cut-off-date i.e. 09.09.1970. The Factory as well as the petitioners preferred appeal against the order of Additional Collector vide Appeal No. 10/1976-77 but the aforesaid appeals were dismissed vide order dated 30.03.1981 against which the Factory and petitioners filed revision petitions before the Board of Revenue where the application of the petitioners was registered as Case No. 163/1981.

5. It is pertinent to note here that during pendency of the aforesaid revision case, Ordinance No. 66 of 81 came into force and in the light of Ordinance No. 66 of 81, the learned Member, Board of Revenue disposed of the aforesaid revision case vide order dated

07.12.1981 directing the concerned Collector to make fresh enquiry regarding the transactions made by transfer of land after 02.10.1959 in accordance with the new provisions of the Act but no fresh enquiry was conducted by the concerned Collector despite of specific order of learned Member Board of Revenue. However, on 05.07.1985 a new draft statement under Section 10(2) of the Act was prepared in the name of the Factory which were published in official gazette dated 22.07.1985 and again the lands sold to petitioners were shown as the lands of the Factory. The petitioners again filed objections against the above stated draft statement on the grounds which had been taken by them in the previous objections but during pendency of the aforesaid objection, the Bihar Sugar Undertakings (Acquisition) Ordinance, 1985 (which was later on replaced by Bihar Sugar Undertakings (Acquisition) Act, 1985) was promulgated on 21.10.1985 and according to aforesaid ordinance, the entire property of the Factory vested in the State. However, relying upon Section 16 of the Act, 1985, petitioners filed petitions before the Additional Collector praying therein to hold that the lands ceiling proceeding against the Factory had abated. The learned Additional Collector rejected the aforesaid petition vide order dated 29.01.1986 holding that the acquisition by the State Government will have no effect on the ceiling proceeding or the enquiry regarding transfer of the land. The aforesaid order of Additional Collector was challenged before a co-ordinate

Bench of this court in C.W.J.C. No. 3578 of 1994. The aforesaid writ petition was disposed of by a co-ordinate Bench of this court vide order dated 28.01.1997 directing the Additional Collector to identify the land which were vested in Bihar State after commencement of Acquisition Act, 1985 and also to decide as to against whom the aforesaid ceiling proceeding should continue and furthermore, the Additional Collector was directed by this court by the above stated order to hold an enquiry under Section 5(i)(iii) of the Ceiling Act regarding the validity of the transfers as directed by the Revenue Board observing that the transfers made in favour of the petitioners could not be held to be null and void on the ground that the registration of the sale deeds was completed after 09.09.1970. It is pertinent to note here that in course of hearing of C.W.JC. No. 3578 of 1994, it was brought to the notice of the court that out of 4000 acres land, only 1297.40 acres land were acquired by the State Government and remaining 2227.77 acres land were remained with the Factory. It is also pertinent to note here that in view of the direction issued by the Board of Revenue as well as a Bench of this court, enquiry in Ceiling Case no. 25/73-74 was made and the Additional Collector, Muzaffarpur came to conclusion that the lands of the petitioner were never acquired and the Factory had validly transferred the disputed lands in favour of the petitioners.

6. Learned counsel appearing for the petitioners submitted

that the learned Deputy Director, Consolidation failed to take note of Section 3 of Limitation Act as he failed to notice that appeals were filed after ten years and the appeals were highly time barred. He further submitted that admittedly, no petition under Section 5 of Limitation Act was filed in the above stated appeals by the appellants nor any prayer for condonation of delay was made but in spite of that the Deputy Director, Consolidation, Muzaffarpur entertained the appeals and passed the impugned order. Learned counsel for the petitioners relied upon the decision of **Pramila Saha and Ors. vs. State of Bihar and Ors. reported in 2006(4) PLJR 568** in which it has been held that "***under Section 3 of the Limitation Act enjoins upon the court/tribunal while considering the memo of appeal filed before it to see whether it is beyond the period of limitation or not and if it is so and at the same time is not accompanied by an application for condonation of delay under Section 5 of the Limitation Act, then the court has no jurisdiction at all to hear the matter or admit the appeal but its only option is to dismiss the same.***"

7. Learned counsel for the petitioners further submitted that it is admitted position that the Factory transferred the lands in question in favour of Rukaiya Bai by executing registered sale deeds dated 31.08.1970 and after that petitioners purchased the disputed lands through the registered sale deeds dated 06.07.1972 and the lands of petitioners were never vested in the State due to coming of Acquisition Act, 1985 and moreover, after fresh enquiry the

Additional Collector vide order dated 12.04.2005 passed in Land Ceiling Case No. 25/73-74, specifically, held that the sale deeds are valid and the disputed lands were not the subject matter of aforesaid ceiling proceedings.

8. On the other hand, learned counsel appearing for the Factory refuted the above stated submissions arguing that after coming into force of Acquisition Act, 1985 all the properties belonging to the Factory vested in the State from all encumbrances together with all the right etc. and, therefore, the sale deeds executed by the Factory had no affect. He further submitted that so far as question of limitation is concerned, the learned Deputy Director, Consolidation, Muzaffarpur in his order passed in Appeal No. 180/86, specifically, mentioned that at the time of admission of the above stated appeals, the question of limitation was not raised and thereafter, the aforesaid appeals were admitted for hearing.

9. Having heard the contentions of both the parties, I went through the record. It is an admitted position that appeals filed before the Deputy Director, Consolidation were highly time barred and all the appeals were filed near about after ten years of passing order by the Consolidation Officer, Motipur. It is also an admitted position that no petition under Section 5 of the Limitation Act was filed before the appellate court for condonation of the delay nor any prayer for condonation of delay was made on behalf of the appellant before the

appellate court. No doubt, the Deputy Director, Consolidation in the order passed in Appeal No. 180/86 has specifically mentioned that at the time of admission of the aforesaid appeal no objection regarding delay in filing the appeal was raised by the respondents of the aforesaid appeal and that was the reason the Deputy Director, Consolidation condoned the delay in filing the aforesaid appeals but in my view, the above stated approach of Deputy Director, Consolidation was not in accordance with law because it is the bounded duty of the appellate court to see as to whether the appeal has been filed within time or not and if any appeal has been filed beyond period of limitation, it is bounded duty of the concerned appellant to make prayer for condonation of delay in filing the aforesaid appeal. It is also a settled principle of law that if any prayer for condonation of delay is not made under Section 5 of the Limitation Act, the court has got no power to condone the delay suo motu. Therefore, even if the question of limitation was not raised by the respondents of above stated appeals, then also, it was bounded duty of the learned Deputy Director, Consolidation to see the point of limitation and since there was no prayer for condonation of delay on behalf of the appellants, the Deputy Director, Consolidation had no power to condone the delay in filing the aforesaid appeals and, therefore, in my view, the Deputy Director, Consolidation Muzaffarpur committed error in entertaining the appeals which were highly time barred.

10. It is also an admitted position that all the sale deeds of the present dispute were executed prior to 09.09.1970 as held by the Co-ordinate Bench of this court in C.W.JC. No. 3578 of 1994. Moreover, Section 4(ii)(e) of Bihar Sugar Undertakings (Acquisition) Act, 1985 makes the transfer invalid, if the transfer has been made after 29.10.1978. Admittedly, in the present case, the lands were transferred by executing registered sale deed much prior to 29.10.1978 and, therefore, the aforesaid transfer deeds cannot be made invalid due to commencement of aforesaid Act, 1985. It is obvious from the order passed in C.W.JC. No. 3578 of 1994 that the State admitted before the co-ordinate bench of this court that only 1297.40 acre lands were vested in the State Government due to coming into force of Acquisition Act, 1985 and the remaining area remained in possession of the Factory. Furthermore, it is also an admitted position that after thorough enquiry in Land Ceiling Case No. 25/73-74, the Additional Collector came to conclusion vide his order dated 12-4-2005 that the lands transferred to petitioners were not covered by land proceeding case No. 25/73-74 and furthermore, the Additional Collector came to conclusion that the sale deeds executed in favour of the petitioners were legal and valid documents.

11. Therefore, in the aforesaid circumstance, I have no option except to allow all the above stated writ applications and accordingly, all the above stated writ applications are allowed and the

impugned orders dated 05.10.2007 passed by the Joint Director, Consolidation, Muzaffarpur in Revision Case Nos. 390 of 1988, 471 of 1988 and 472 of 1988 (Annexure-1) and order dated 10.07.87/20.07.87 passed by the Deputy Director, Consolidation, Muzaffarpur in Appeal Nos. 178/1986, 172/1986 and 180/1986 (Annexure-2) are hereby set aside and the order of Consolidation Officer passed in Consolidation Case No. 45/75 is restored.

12. In the aforesaid manner, all the three writ petitions are disposed of.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	11.07.2017
Transmission Date	N.A.