

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1255 of 2015

with

I. A. No.5366 of 2015

In

Civil Writ Jurisdiction Case No.1875 of 1990

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Ganga Nand Pandey son of Late Prayag Nand Pandey, resident of village
Tiraskund, P.S.- Forbisganj, District- Purnea Now Araria

... .. Appellant/s

Versus

1. The State of Bihar
2. The D.C.L.R., Araria, District Purnea Now Araria
3. The Circle Officer, Forbisganj, Distt. Purnea Now Araria
4. The Circle Officer, Araria, Distt. Purnea Now Araria
5. Mahendra Das son of Late Fakir Das
6. Gujai Das son of late Fakir Das
7. Darilal Das son of Late Fakir Das
8. Fekani Devi daughter of late Fakir Das
9. Gujia Devi daughter of late Fakir Das
10. Dasia Dvi daughter of late Fakir Das
11. Majia Devi daughter of late Fakir Das All respondent No. 5 to 11 are residents
of Village- Taraskund, P.s.- Forbisganj, District- Purnea Now Araria

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar Jha, Advocate
For the State	:	Mr. Shankar Kumar Thakur, AC to GP 27
For Respondents 5 to 11	:	Mr Ashok Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

Date : 30-11-2017

Heard counsel for the parties.

2. I. A. No.5366 of 2015 has been filed for condonation of a
delay of 1 year and 231 days in filing of the present Letters Patent



Appeal. Delay is condoned for the reasons stated in the condonation application. I. A. is allowed.

3. Matter is now heard on merit.

4. The original writ petitioner being aggrieved by the order dated 05.07.2013 passed in CWJC No.1875 of 1990 has preferred the present Letters Patent Appeal. The learned Single Judge while dismissing the writ application has taken a view that because there is an alternative remedy by way of an appeal in terms of Section 48F of the Bihar Tenancy Act and the writ petitioner has moved this Court under Article 226 of the Constitution of India without exhausting the statutory alternative remedy of appeal, the writ application has to fail.

5. A bare perusal of the impugned order would show that this writ application was filed as back as in the year 1990 whereas it came to be disposed of after 23 years of pendency only on 05.07.2013. Learned counsel for the appellant has submitted before us that the learned single Judge has dismissed the writ application on the ground of there being an alternative remedy without appreciating that this petitioner had been waiting for the outcome of the writ application for last 23 years as it was an admitted matter. Hence, at this stage, the dismissal of the writ application on the ground of alternative remedy is not justified. It



is his submission that no doubt a writ court can refuse to exercise its extraordinary writ jurisdiction, if the Court is of the view that there is an alternative and efficacious remedy to the petitioner but such dismissal should not come after a period of 23 years.

6. Learned counsel further submits that the learned Single Judge has not gone through the impugned order dated 05.01.1989 (Annexure- 5) and has only by way of a cursory look took a view that there is no good ground to interfere with the final order.

7. He has further contended that the writ application was filed raising a jurisdictional issue in as much as not only vide Annexure- 3 to the writ application, the Anchal Adhikari overreached his jurisdiction and without finding a prima facie case recommended the DCLR to take a decision in favour of the respondent no.5, who was claiming himself as an under raiyat, rather, even when the matter went to the DCLR, the DCLR did not take any steps in terms of Section 48E (6) of the B.T.Act. His submission is that the procedure provided under Section 48E (6) of the B.T.Act has been held to be mandatory and this aspect of the matter has been considered on earlier occasion by a Full Bench of this Court in the case of *Dhanji Singh v. the State of Bihar & others, reported in AIR 1979 Patna 259* and in the case of *Rasik Lal Singh & others v. the State of Bihar & others, reported in*



AIR 1979 Patna 172. Submission is that since the provision of law, which has been held to be mandatory, has not been followed, the writ court could have gone into those issues and there was no need to dismiss the writ application after a period of 23 years.

8. One more submission has been made on behalf of the appellant stating that in fact, respondent no.5, Fakir Das, died on 07.01.2001 and, therefore, the under rayaiti right not being inheritable right, now there is no question of declaration of the said dead person a Bataidar or under raiyat.

9. On the other hand, learned counsel representing the respondents, who are the legal heirs of erstwhile respondent no.5, Fakir Das (since deceased), submits that the impugned order has been rightly passed by the DCLR and the recommendation of the Anchal Adhikari vide Annexure- 3 to the writ application cannot be found fault with.

10. We have considered the rival submissions at bar and have perused the record. At the very first place, we are inclined to accept the submission of learned counsel for the appellant that after 23 years of pendency of the writ application, the same was not required to be dismissed on the ground of an alternative statutory remedy of appeal. The principle of alternative remedy and relegating back the parties on that ground is not a rule of law.



It has always been held to be a rule of convenience. There is one more reason to take this view because upon entering into the merit of the case, we find that the writ application involved serious jurisdictional issues and if it was so, the writ application was well maintainable and entertainable under Article 226 of the Constitution of India notwithstanding a provision of appeal.

11. Now, coming to the merit of the impugned orders, it appears from Annexure-3, which is an order passed by the Anchal Adhikari, that he has while recommending the case of under raiyat- Fakir Das, clearly observed in his order that a decision in this regard be taken in favour of said Fakir Das and acting on that basis, Annexure-5, which is an order passed by the DCLR, Araria, declared said Fakir Das an under raiyat. It is not denied by learned counsel representing the respondents that prior to passing of the order as contained in Annexure- 5, the mandatory provision of law as contained in Section 48E (6) of the B.T.Act was not followed. This position cannot be shaken off in view of what is available on the record and placed before us.

12. From the impugned order, it is also clear that the DCLR, Araria has gone by what has been observed by the Anchal Adhikari without considering the Protest Petition of the appellant seriously disputing the report of the Anchal Adhikari and simply



by agreeing with the said report of the Anchal Adhikari, he has passed the impugned order as contained in Annexure- 5.

13. We would, therefore, come to a conclusion that the impugned order as contained in Annexure- 5 is bad in law as it had been passed in complete violation of the mandatory provision as contained in Section 48E (6) of the B.T. Act. The judgments relied upon on behalf of the appellant supports the contention. We, therefore, allow the writ application and the impugned orders in the writ application are hereby set aside. The order passed by the learned Single Judge dated 05.07.2013 in CWJC No.1875 of 1990 is also set aside in view of our findings recorded hereinabove.

Appeal is allowed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.12.2017
Transmission Date	NA

