

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15428 of 2009

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Ganesh Yadav

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha

For the Respondent/s : Mr. Ajay (Sc(C)3)
Mr. Radha Mohan Pandey
Mr. Bala Jee Pathak
Mr. Sweta Kumari

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 22-03-2017 **1.** Heard the learned counsel, Mr. Shashi Nath Jha, for the petitioner, the learned counsel, Mr. Radha Mohan Pandey, for the respondent No.6 and the learned A.C. to G.A.5 for the State respondent.

2. The petitioner in this writ application under Article 226 of the Constitution of India has challenged the order dated 16.06.2009 / 21.06.2009 passed by respondent No.2 in Land Ceiling Revision Case No.35 of 2008-09 on the ground that the learned revisional Court without hearing the present petitioner has condoned the delay. Even no notice in limitation matter is issued to the petitioner.

3. Secondly, according to the learned counsel for the



petitioner, the revisional Court has without deciding the question of law has set aside the appellate order passed by the Collector only on the ground that the spot enquiry report was not called for. The learned counsel submitted that for passing an order under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling, Area and Acquisition of Surplus Land) Act, 1961 it is not a condition precedent that prior to passing an order, there must be spot enquiry. In the present case, several materials were there on the basis of which both the authorities under the land ceiling Act, i.e, DCLR and Addl. Collector came to the conclusion that the petitioner herein is also an adjoining raiyat. The learned counsel therefore, submitted that instead of remanding the matter the revisional authority should have decided the matter on merit.

4. On the other hand, the learned counsel, Mr. Radha Mohan Pandey submitted that the present petitioner became the adjoining raiyat subsequently. According to law the purchaser was adjoining raiyat or not can be considered on the date of purchase made by the purchaser and not the purchase after filing the pre-emption proceeding.

5. The learned counsel also submitted that although there is no provision for calling for the spot enquiry report but in



appropriate cases, the authorities can call for the report of spot enquiry.

6. It appears that the pre-emption application was filed by the respondent No.6 on the ground that he is adjoining raiyat of the property purchased by the present petitioner. The DCLR rejected the pre-emption application recording a finding that in fact the petitioner herein also is a adjoining raiyat. Appeal was filed by the respondent No.6 before the Addl. Collector. The Addl. Collector also recorded finding that the present petitioner is an adjoining raiyat, therefore, the Appeal was dismissed. Thereafter, the respondent No.6 filed the revision before the Commissioner, Darbhanga division. The commissioner, respondent No.2, passed the impugned order as contained in Annexure '4'. From perusal of the impugned order, it appears that the revisional authority has not all considered the merit of the case. It further appears that prior to condoning the delay in filing the revision application, no notice was even issued to the present petitioner. The revisional authority condoned the delay without hearing the petitioner. Further without recording any finding as to whether prior to considering the legality or otherwise of the order passed by the lower authorities under the Ceiling Act, it is condition precedent for calling for a spot enquiry report. If the



orders are legal and according to law then only on the ground that spot enquiry report is not there whether the order can be set aside if the order is supported by materials available on record. The revisional authority without considering all this aspect of the matter and without recording any finding as to whether on the basis of the materials available on record, one can record a finding as to whether the application filed by the respondent No.6 can be allowed or not set aside the order of the appellate Court, i.e., Annexure '3' only on the ground that there is no spot enquiry report. In my opinion, therefore, the order passed by the revisional authority under the Act is not sustainable in the eye of law.

7. In view of the above facts and circumstances of the case when order passed by the revisional authority is not according to law, the same is hereby set aside. The matter is remanded back to the revisional authority, respondent No.2 to pass a fresh order on merit according to law.

8. Accordingly, this writ application is allowed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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