IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5474 of 1996

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1. Daroga Rai son of Paltu Rai.
2. Hari Rai, son of late Jhagaru Rai.

Both residents of village Simarahia, P.O. Texha via Marhaurwah, P.S. Marhowarah, District Saran

.... Petitioners

Versus

1. The State of Bihar.
2. The Additional Member Board of Revenue, Bihar, Patna.
3. The Additional Collector, Saran, Chapra.
4. The Deputy Collector Land Reforms, Saran, Chapra.

…………..Respondents 1st. set.

5. Dip Narayan Singh son of Jhari Lal Singh, resident of village Simarahia P.O. Tedh a via Marhowrah, P.S. Marhowarah, District Saran.

…………..Pre-emptor/Respondent 2nd set.

6. Nag Narayan Singh son of late Thakur Singh, resident of village Simarahia P.O. Tedh a via Marhowrah P.S. Marhowarah District Saran

……………Vendor/Respondent 3rd set.

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Prabat, Sr. Adv.
Mr. Sanjay Kumar Jha, Adv.
Mr. Bhanu Prakash, Adv.0

For the Respondent/s : Mr. Ray Saurabh Nath, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-10-2018

Heard Mr. Mahesh Narayan Prabat, learned Senior Counsel for the petitioners and Mr. Ray Saurabh Nath, learned Counsel for the private respondents. There is no representation on behalf of the State.

By way of this writ petition, the petitioners question the order dated 21.03.1996 of the Additional Member, Board of Revenue in Revision Case No. 87 of 1995, whereby the revision filed by the petitioners has been dismissed on dismissal of the limitation petition as according to the Additional Member, Board of Revenue, delay had not been satisfactorily explained.

Mr. Mahesh Narayan Parbat, learned Senior Counsel appearing for the petitioners has drawn the attention of this Court to the order impugned to submit that on mistaken legal advice the petitioners filed an appeal against the order of the Additional Collector dated 18.03.1991 before the Divisional Commissioner and which revision remained pending before the Divisional Commissioner until it was allowed to be withdrawn by the Commissioner, inter alia, on grounds that he had no jurisdiction to entertain such revision, which withdrawal took place on 18.02.1995. He refers to the order passed by the Commissioner, Saran Division at Annexure-3 to the writ petition in support thereof. He submits that the copy of the order passed by the Commissioner was issued only on 24.04.1995 and immediately thereafter the revision in question was filed on 16.05.1995. According to Mr. Parbat, the revision was filed within 30 days of obtaining certified copy from the Court of the Commissioner, which was the explanation for the petitioners for the delay so caused in filing the revision application.

Since there is no contest by the State to such submission and the opposition by learned Counsel for the private respondents is that the reasons do not justify the delay, I have perused the records and do find that the revision filed by the petitioners against the appellate order dated 18.03.1991 remained pending before the Divisional Commissioner until it was allowed to be withdrawn on 18.02.1995 vide order passed at Annexure-3, the certified copy of which was issued only on 24.04.1995 as it transpires from Annexure-3. The order passed by the Additional Member, Board of Revenue impugned herein well accepts filing of the revision application on 16.05.1995 which is within 30 days of obtaining certified copy of the order passed by the Divisional Commissioner and this is the very explanation given by the petitioners before the Additional Member, Board of Revenue for condonation of delay which has not been found satisfactory by the Additional Member, Board of Revenue.

Having considered the submissions of Mr. Parbat, learned Senior Counsel appearing for the petitioners and Counsel for the private respondents, I am unable to sustain the order of rejection of the limitation petition passed by the Additional Member, Board of Revenue for it is not in contest that the petitioners were pursuing a wrong forum and no sooner the mistake was realized that they chose to withdraw the revision application filed before the Divisional Commissioner for its proper filing before the Additional Member, Board of Revenue.

In my opinion, the explanation is well taken and in case the Additional Member, Board of Revenue required the limitation petition to be supported by an affidavit, he should have allowed the petitioners to remove the lacuna but neither for the reasons assigned in the limitation petition nor on the procedural lacuna, the limitation petition was worthy of rejection.

For the reasons aforementioned, the order dated 21.03.1996 passed by the Additional Member, Board of Revenue in Revision Case No. 87 of 1995, whereby the limitation petition has been rejected and consequently the revision application has been rejected, cannot be upheld and is accordingly set aside. The delay having been suitably explained is worthy of condonation and is accordingly condoned. The matter is remitted back to the Additional Member, Board of Revenue for consideration of the revision application afresh and its disposal on merits in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

Archana/Surendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2018
Transmission Date	NA