IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2228 of 2016

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1. Mahanth Ram Shankar Das, Chela Late Mahant Baliram Das Asthaldhari, Mauja - Ram Chandrapur Ekshila @ Raipur, P.S. Ujiarpur, District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar the Collector, Samastipur
2. Bihar Land Tribunal, Patna
3. The Member Board of Revenue
4. Divisional Commissioner, Darbhanga
5. The Collector, Samastipur

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Mukesh Prasad Singh
For the Respondent/s : Mr. AJAY- GA12

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 19-04-2018

1. The petitioner in this writ petition seeks quashing of the order dated 15.06.2015 read with order dated 08.07.2015 passed by Bihar Land Tribunal in B.L.T. Case No.102 of 2013(Annexure 10) and order dated 10.12.2005 passed by Member, Board of Revenue in Land Ceiling Revision Case No.42 of 2004(Annexure 8) and the order passed by the Divisional Commissioner in Ceiling Appeal No.3 of 2002-03 on 17.09.2004(Annexure-7) and the order dated 11.05.2002 passed by the Collector, Samastipur in Land Ceiling Case No.8 of 1996-97(Annexure-6) by which the prayer of the petitioner for grant of three units has been rejected and only two units was granted to the

petitioner by the Member, Board of Revenue in Revision Case No.42 of 2004 passed on 10.12.2005 but the prayer of the petitioner with regard to the land donated by the petitioner for establishment of college and schools and the lands taken over by the State of Bihar has already been included in the share of the petitioner.

2. The brief facts essential for the disposal of this writ petition is that Mahanth Ram Shankar Das @ Dhanushdhari Das @ Vaidehi Baba was Sidhpurush and has established the Raipur Math. Many persons had donated their land. On 28.03.1950, unregistered deed of Samarpannama was created by Mahanth Narayan Das of Thakur Math in favour of seven separate deities. The aforesaid Samarpannama deed was registered in the year 1963 much before the initiation of the ceiling proceeding. On 03.01.1974, a ceiling proceeding was initiated against Mahanth Narayan Das vide Ceiling Case No.12 of 1973-74 by issuance of a draft publication under Section 10 of The Bihar Land Reforms Fixation of Ceiling Area and Acquisition of Surplus Land Act, 1961(hereinafter referred to as the Act). On 13.09.1979, Ceiling Case No.12 of 1973-74 was finally decided by then Additional Collector, Samastipur. Mahanth Narayan Das was shown to possess 334.41 acres of land out of which 170.43 acres of class III land were declared surplus and only one unit was given to the land holder. The petitioner filed Land Ceiling Appeal

No.44 of 1979-1980 but during the pendency of the aforesaid appeal Land Ceiling Ordinance No.66 dated 09.04.1981 came into effect and in view of the provisions contained therein in Section 32A and 32B, the appeal abated and the matter was remitted to the Collector under the Act for initiation of a proceeding from the stage of publication of draft notification under Section 10(1) of the Act, upon such the Additional Collector having considered the documents and objections and the report of Anchladhikari in Land Ceiling Case No.12 of 1973-74 held unregistered Samarpannama deed of 1950(Annexure 1 and 1/1) as valid and found 334.41 acres of land in possession of all the deities. The Additional Collector allowed four units, one for the Mahanth and three units for three deities situated at Bhawanipur, Chandauli and Raipur. The total land retained was 120 acres and different exemptions were also granted vide order dated 28.04.1982(Annexure 2). Against the order of Additional Collector, State preferred Land Ceiling Appeal before the Collector although the appeal was hopelessly barred by limitation against the order of the Collector. The land holder filed Land Ceiling No.3260 of 1985 in Patna High Court. On 29.07.1985, Division Bench of this Court directed the Collector to dispose of the appeal without being influenced in any manner by the observation made by Member, Board of Revenue. Subsequently, the Collector dismissed the Land Ceiling

Appeal filed by the State and refused to condone the delay in filing appeal but State has not filed appeal or revision against the order of dismissal of Ceiling Appeal but the Collector reopened the Ceiling Case on 29.01.1990. Against the aforesaid order, the land holder filed CWJC No.8237 of 1992. Patna High Court vide order dated 15.12.1992 passed in CWJC No.8237 of 1992 quashed the order of the Collector dated 21.09.1990 for reopening the appeal. The State Govt. filed S.L.P. against the order dated 15.12.1992 and the Apex Court vide order dated 22.04.1996 allowed the Civil Appeal No.7786 of 1986 and directed the Collector to take action afresh under Section 4 of the Act. Pursuant to the order of the Apex Court, Collector initiated Land Ceiling Case No.8 of 1996-97. The Collector decided Land Ceiling Case No.8 of 1996-97 on 11.05.2002(Annexure 6) and granted one unit after disbelieving the deed of Samarpannama dated 28.03.1950 holding that the unregistered trust deed was created to take advantage of the provisions of Land Ceiling Act. The Collector also disbelieved the registered deed dated 01.01.1983 and 08.02.1983 executed in favour of Governor of Bihar for establishing the college and school and included the same lands in share of the land holder on the ground that the school and college are in the name of Mahanth. The petitioner filed Land Ceiling Appeal No.3 of 2002-03 against the order dated 11.05.2002 before the Divisional Commissioner, Darbhanga but the Divisional Commissioner, Darbhanga dismissed the appeal by a non-speaking order. Thereafter, the land holder filed Land Ceiling Case No.42 of 2004 before the Member, Board of Revenue and the Member, Board of Revenue partly allowed the Revision Case No.42 of 2004 on 10.12.2005 and the final notification dated 28.06.2002 under Section 11(1) and final publication under Section 15(1) dated 24.07.2004 and gazette publication dated 25.09.2012 were cancelled. The Member, Board of Revenue allowed two units instead of three units as earlier allowed by the Additional Collector vide order dated 27.04.1982(Annexure 2). The petitioner filed CWJC No.5834 of 2006 on 09.03.2007 against the order passed by the Member, Board of Revenue in Land Ceiling Case no.42 of 2004. The writ petition remain pending for more than six years and this Court vide order dated 04.02.2013, referred the case to the B.L.T. for adjudication and on such, B.L.T. Case No.102 of 2013 was registered but the B.L.T. dismissed the writ petition of the petitioner without taking into consideration the facts that the draft notification issued under Section 10(1) of the Act was issued without holding the proceeding under Section 5(1)(iii) of the Act for nullifying the Samarpannama and the deed executed in favour of Governor of Bihar for establishment of schools and colleges. Even the counter-affidavit was not served on the learned counsel for the petitioner although several adjournments were granted to the State to file counter-affidavit. Later on, the counter-affidavit was also taken into consideration by the B.L.T. without taking into consideration of the fact that the copy of the counter-affidavit was never served on the learned counsel for the petitioner. State-answering respondent No.4 filed counter affidavit and stated that in pursuance of the order passed in Civil Appeal No.7786 of 1996 on 22.04.1996, the Collector passed detailed and speaking order rejecting the claim of the petitioner for the grant of four units on the ground that Samarpannama deed was manufactured. Later on in fact there was one deity and at different places deities were installed and managed by the Mahanth, therefore, one unit was granted to the deity. The member, Board of Revenue granted two units and the order does not require any interference.

3. Mr. S.S.Dvivedi, learned senior counsel for the petitioners submits that the deed of Samarpannama was executed on 28.03.1950. Mahanth Narayan Das of Raipur created seven deities and the same deed of Samarpannama was registered on 18.04.1963. In the earlier L.C. case No.12 of 1973-74, the Additional Collector vide order dated 27.04.1982 granted four units, three to deities at Bhawanipur, Chandauli and Raipur and one to land holder Mahanth and that order was affirmed by the appellate authority but the appellate authority reopened the appeal. It is further submitted that before nullifying the Samarpannama and other objections by different land holders to purchase the lands or got the land of Mahanth by way of settlement, no procedure under Section 5(1) (iii) was adopted. It is submitted that this Court in the case of **Lakshmi Narayan and others v. State of Bihar and others** reported in **AIR 1978 Patna 330** held that under Section 2(g) and 2(ee), it has been defined that all the four deities shall be entitled to get separate unit. The same view has been reiterated by Division Bench of this Court in the case of **Mahabir Prasad and others v. The State of Bihar and others, AIR 1976 Patna 256.**

4. Mr. Dvivedi, learned senior counsel for the petitioners further contends that some lands mentioned in Schedule 13 were acquired by the Govt. for construction of the Canal and even those lands were included in the unit of the petitioner. It is further submitted that lands mentioned in Schedule 5 and 5A were donated by the land holders for setting of a college and Sanskrit Mahavidyalaya in favour of Governor of Bihar by two registered deeds dated 01.01.1983 and 08.02.1983. The Collector included those two lands in the share of the land holder merely on the ground that the college and Sanskrit schools were opened in the name of Mahanth Narayan Das and such person should not be allowed to record his names at cost of public money. I find that this reasoning of the Collector is not good

one. Admittedly, the petitioner donated the lands to the Govt. of Bihar for opening of college and school in the name of Mahanth Narayan Das. The petitioner has not used the usufruct of the school and college rather the same is established and opened for the benefit of the public. Therefore, those lands should not and cannot be included in the unit of the land holder. It is submitted that admittedly the lands were donated to the Governor, the State of Bihar and the State of Bihar came in possession over the land. Therefore, those lands should be excluded from the unit of the petitioner.

5. Contending the contention of the learned counsel for the petitioner, learned counsel for the State submitted that reopening of the Ceiling Appeal vide order dated 21.09.1990 became final by the order of the Apex Court passed in Civil Appeal No.7786 of 1996 on 22.04.1996 and the Apex Court directed the Collector to take action afresh from the stage of Section 10. Thereafter, fresh proceeding of Land Ceiling Case No.96 of 1997 was initiated and the Collector vide order dated 11.05.2002 contained in Annexure 6 elaborately discussed all the objections and heard the objectors and having considered the entire facts passed the order granting one unit to the land lord. The Commissioner also dismissed the appeal but the Member, Board of Revenue granted two units one to the deity and another to the Mahanth land holder. There is concurrent finding of

facts by all the revenue courts and, therefore, this writ court should not reappraise the concurrent finding of facts.

6. It is further submitted that the Collector after taking into consideration all the facts about the deed of Samarpannama came to a finding that there is one deity and by antedating this deed of Samarpannama, separate deities were established by different places but one Mahanth is managing the entire deities and this finding has been affirmed and concluded by all the revenue courts. Such concurrent findings of facts cannot be interfered with in the writ jurisdiction. Learned counsel placed reliance on the Full Bench judgment of this Court **Mahanth Dhansukh Giri and others v. State of Bihar and others, AIR 1985 Patna 129**.

7. From the facts of the case, it appears that vide order dated 29.01.1990, Collector reopened the L.C. Appeal but the matter went upto Supreme Court and the Supreme Court vide order dated 22.04.1996 set aside the order of the High Court passed in CWJC No.8237 of 1992 by which the order of the Collector reopening the L.C. Appeal was quashed and the matter was remitted to the Collector to initiate a fresh proceeding from the stage of preparation of draft under Section 10 of the Ceiling Act. The order of the Collector(Annexure 5) passed in L.C. Case No.8 of 1976-

77(Annexure 6) shows that the Collector heard the petitioner and all other objectors in detail and held that the Samarpannama deed was manufactured only with a view to defeat the object of the Ceiling Act. The deed was not registered. No return was filed in accordance with the Samarpannama deed after vesting of the State. The Collector concluded the finding that the deity is only one and on that ground one unit was granted to the deity. The Commissioner also dismissed the appeal and confirmed the findings of fact but the Member, Board of Revenue on the same findings of facts partly allowed the revision and granted two units one to the deity and another the land holder. There is a concurrent finding of fact that there is only one deity and only one unit should be given to the deity, therefore, I find that this Court in writ jurisdiction should not interfere with the concurrent finding of facts as has also been held by Full Bench in the case of Mahabir Prasad(supra).

8. So far as the second contention of the petitioner is concerned, that the lands mentioned in Schedule 13 was acquired by the Govt. of Bihar for construction of Canal and the same has also been included in the lands of the petitioner only on the ground that the petitioner must have received the compensation amount. There are no facts to show that the acquisition was made in order to defeat the object of the Act. The Govt. compulsorily acquired the land for public

utility i.e. for construction of the Canal, therefore, I find that the lands acquired for construction of Canal should be excluded from the units of the land holder. I further find that the petitioner donated the lands mentioned in Schedule 5 and 5A to the Govt. of Bihar for establishment of college and schools merely because the college and school were established in the name of Mahanth Narayan Das, the same cannot be and should not be included in the unit of land holder. The land was donated for the public purpose and the Govt. came in possession over the land on the basis of gift deed executed by Mahanth. Therefore, the land mentioned in Schedule 5 and 5A be also excluded from the unit of the land holder.

9. In the result, the writ petition is allowed in part. The petitioner shall be entitled to two units and the petitioner shall be allowed to exercise auction of lands in terms of Section 9 of the Act besides that the land compulsorily acquired for irrigation purpose and donated for establishment of school and college (mentioned in Schedule 5 & 5A) be excluded from the unit of the petitioner.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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