**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.16781 of 2008**

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Om Prakash Singh

.... .... Petitioner/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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with

**Civil Writ Jurisdiction Case No.16801 of 2008**

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Om Prakash Singh

.... .... Petitioner/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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with

**Civil Writ Jurisdiction Case No.12077 of 2009**

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Nawal Kishor Singh

.... .... Petitioner/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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**Appearance :**

(In CWJC No.16781 of 2008)

For the Petitioner/s : Mr. Rajani Kant Singh
Mr. Surendra Kumar Mishra

For the Respondent/s : Mr. R.C.Thakur(Sc(C)4)

(In CWJC No.16801 of 2008)

For the Petitioner/s : Mr. Rajani Kant Singh
Mr. Surendra Kumar Mishra

For the Respondent/s : Mr. R.C.Thakur(Sc(C)4)

(In CWJC No.12077 of 2009)

For the Petitioner/s : Mr. Rajani Kant Singh
Mr. Surendra Kumar Mishra

For the Respondent/s : Mr. R.C.Thakur (Sc(C)4)
Mr. Anshay Bahadur Mathur

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

ORAL ORDER

13 25-04-2018 Although CWJC No. 16781 of 2008, CWJC No. 16801 of 2008 as well as CWJC No. 12077 of 2009 have been listed together but the fact of CWJC No. 12077 of 2009 is quite different to the facts of remaining above stated CWJCs and, therefore, in my view, it would not be proper to hear CWJC No. 12077 of 2009 along with above stated two CWJCs and, therefore, CWJC No. 12077 of 2009 be listed on next tied up day separately.

Heard the parties.

Since in CWJC No. 16781 of 2008 and CWJC No. 16801 of 2008 almost similar question of law and fact are involved and, therefore, both the above stated CWJCs are being disposed of by this common judgment.

Petitioner has challenged the order dated 28.07.2008 passed by the Additional Member, Board of Revenue, Bihar , Patna in case no. 314 of 2004 as well as in case no. 315 of 2004 by which and whereunder he allowed the claim of respondent no. 5 filed under section 16 (3) Bihar Land Reforms ( Fixation of Ceiling Area and Acquisition of Surplus Land) Act ( herein referred to as the Act ) in respect of the lands in question.

The fact of the case, in brief, is that respondent no. 6 namely, Ram Lakhan Singh executed registered sale deed in favour of petitioner on 05.04.2000 but respondent no. 5 filed preemption petition under section 16(3) of the Bihar Land Ceiling Act on 10.07.2000 before the DCLR, claiming himself as co-sharer as well as adjoining Raiyat. Respondent no. 5 also claimed that necessary challan had been deposited in treasury on 4.07.2000 but learned DCLR rejected the petition filed by the petitioner on the ground of limitation as well as on the ground of non compliance of Rule -19 of the Bihar Land Ceiling Rules. The appellate Court also dismissed the appeal filed on behalf of the respondent no. 5 but learned Additional Member, Board of Revenue allowed the claim of respondent no. 5 treating his petition within time.

Learned counsel appearing for the petitioner submits that learned Additional Member Board of Revenue committed illegality as the learned Additional Member Board of Revenue failed to take notice of this fact that the petition under section 16(3) of the Act was filed after 90 days whereas the relevant section provides limitation for filing the petition under section 16(3) of the Ceiling Act only 90 days.

On the other hand, learned counsel appearing for the respondent no. 5 refuted the above stated submission arguing that as a matter of fact, the challan was deposited in treasury on 04.07.2000 and after that petition under section 16(3) of the Act, was filed. He further submitted that no doubt, limitation for filing of the petition under section 16(3) of the Act is only 90 days but as a matter of fact, the aforesaid 90 days has already expired from the date of registration of the sale deed and according to sections 60-61 of the Registration Act, the registration is completed when it is copied in the relevant register and annexure-3 of the supplementary affidavit goes to show that the document was copied in relevant register on 29.06.2000 and, therefore, petition filed under section 16(3) of the Act was within time. Learned Counsel relied upon decision reported in 1974 PLJR page 360.

Having heard contentions of the both the parties, I went through the record.

Admittedly, the DCLR held that the petition under section 16(3) of the Act was filed on the 10.07.2000 and annexure 3 of the supplementary affidavit goes to show that the sale deed dated 05.04.2000 was copied in relevant register on 29.06.2000 and therefore, it is obvious that registration was completed on 29.06.2000 and, therefore, in my view, learned Additional Member Board of Revenue rightly held that petition filed under section 16(3) was in time but here, I would like to say that the learned Additional Member Board of Revenue had no jurisdiction to decide the matter on merit especially in the circumstance when the DCLR and first appellate Court had rejected the claim of respondent no. 5on the ground of limitation as well as maintainability of the petition due to non- compliance of mandatory provision of law and furthermore, learned Additional Member Board of Revenue committed error in deciding the matter on merit without giving any opportunity to the parties to adduce evidence in support of their claim. Therefore, in the aforesaid circumstance, I have no option except to set aside the impugned order dated 28.07.2008 passed by respondent no. 2 in case no. 314 of 2004 and case no. 315 of 2004 to the above stated extent and the matter is sent back to DCLR, Samastipur with direction to him to decide the dispute of the parties afresh after giving opportunity to them to adduce evidence in support of their claim and counter claim treating the petition under section 16(3) as maintainable.

In the aforesaid manner, both the above writ petitions stand dismissed.

**(Hemant Kumar Srivastava, J)**

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