

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.478 of 2019

In

Civil Writ Jurisdiction Case No.4613 of 2017

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1. Subhankar Mishra, Son of Late Satya Narayan Mishra, Resident of Village-Baijupatti, P.O. Mangalbar Charaiya, P.S.-Bhargama, District-Araria.
 2. Yogendra Mishra, Son of Devi Narayan Mishra, Resident of Village-Baijupatti, P.O. Mangalbar Charaiya, P.S.-Bhargama, District-Araria.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Collector, Araria.
3. The Additional Collector, Araria.
4. The Deputy Collector, Land Reforms, Farbisganj, District-Araria.
5. The Anchal Adhikari, Bhargama Anchal, P.S.-Bhargama, District-Araria.
6. The Collector, Madhepura.
7. The Deputy Collector, Land Reforms, Madhepura.
8. The Anumandaliya Lok Sikayat Niwaran Padadhikari, District-Madhepura.
9. The Anchal Adhikari, Kumarkhand Anchal, P.S.-Kumarkhand, District-Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. K.K. Thakur, Advocate
Mr.Navjot Yesu, Advocate
For the Respondent/s : Mrs. Nutan Sahay, A.C. to AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-08-2019

Heard learned counsel for the appellants and learned counsel for the State.

2. We have perused the pleadings on record, including two counter affidavits filed on behalf of the respondents in the present appeal.



3. This issue arises out of an application said to have been moved on behalf of the appellants for exercise of their option to retain certain holdings after the land was declared surplus in ceiling proceedings, the final draft statement whereof was prepared on 01.12.1983.

4. The writ petition that was filed challenging the said proceedings was finally disposed of on 08th of November, 1989. The concluding part of the order states as follows :

“It is submitted by the learned counsel for the petitioners that at least he should be allowed to exercise an option in regard to the land that has been taken away from them after being declared surplus. It has been stated in the petition that the land has till today not been distributed to anyone under the law. If that is so, then the authority may consider allowing them an option to choose either the land that has been given to them or the land that has been declared to be surplus and is in the possession of the Government and that has not been distributed.”

It is this part of the order which has given rise to the present controversy.

5. Learned counsel for the appellants submits that the Court had observed that if the land has not been distributed, then the authority may consider allowing the tenure-holder to exercise his option to choose the land.

6. It is the contention of the appellants that their application remained pending and no intimation was given to them



nor any opportunity to exercise such option on the basis of the said final order passed by the Court.

7. It appears that in the wake of the aforesaid facts, the appellants filed the writ petition giving rise to the present controversy for a mandamus that the ceiling authority should be directed to comply with the directions given by the High Court on 08th of November, 1989 and further to accordingly cancel the distribution slips in the event, they run counter to the choice to be exercised by the petitioners.

8. The writ petition was contested by the State and the learned single Judge recorded three major findings, namely, that the appellants had relied on an application stated to have been moved, which is Annexure 20 to the writ petition and which does not appear to be genuine, that the land had already been distributed and therefore there was no occasion for allowing the applicants to exercise any such option and thirdly, that there was no direction of the High Court to any statutory authority under the Act to consider the case of the petitioners as there was no evidence on record to show that the father of the petitioners had ever approached the Additional Collector in the light of the order dated 08.11.1989, except Annexure 20 which could not be given any credit.

9. Learned counsel for the appellants contends that all three findings run counter to the facts on record and therefore the



impugned judgment is vitiated. Learned counsel has further invited the attention of the Court to paragraph 8 of the counter affidavit filed on behalf of the respondents through Shri Anil Kumar Thakur, Additional Collector, Araria, dated 21st June, 1990 and to paragraph 7 of the counter affidavit filed by Md. Younus Ansari, the Deputy Collector of Land Reforms, Forbesganj dated 31st July, 2019. The said paragraphs are extracted herein under :

“8. That, in reply to this Ground Paragraph No.iv, it is humbly submitted that the surplus land of the applicant is still in possession of the State of Bihar and its distribution process was going on. After receipt of order of L.P.A. Case No.478/2019 dated 17.05.19 passed by the Hon’ble Court, this distribution process has been stayed.”

“7. That is reply of paragraph No.4 it is humbly submitted and stated that the fact is that the surplus land has not been distributed up till now because as per order passed by the Hon’ble Single Judge in CWJC No.4613/17, the distribution process is stayed.”

10. Apart from this, I.A. No. 2 of 2019 has been filed by the appellants questioning the correctness of the order dated 27th of December, 2017 said to have been passed by the Additional Collector, Araria rejecting the application said to have been moved in respect of the aforesaid claim of exercise of choice on the ground that the appellants had not submitted any option while moving the application in terms of the order dated 08.11.1989 and therefore the same was being rejected. The order, however,



proceeds that it is being rejected *ex parte* as no *Pairvi* was done on behalf of the appellants. Learned counsel has assailed the said order contending that there was no notice or opportunity nor any knowledge given to the appellants of any date being fixed for disposal of the said application and it is evident from perusal of the said order which has been ultimately disposed of *ex parte* contrary to the claim of the appellants which is on record.

11. The counter affidavit, however, filed on behalf of the respondent states that the appellants had rushed up to this Court by filing writ petition giving rise to this controversy, namely, C.W.J.C. No.4613 of 2017, that was registered on 25th March, 2017 and had also simultaneously moved the miscellaneous application which came to be rejected on 27th December, 2017.

12. The contention in the counter affidavit is that these facts ought to have been brought to the notice of this Court by the petitioners, which had virtually terminated the proceedings and therefore the appellants do not deserve any relief.

13. Having considered the submissions raised, what we find is that the learned single Judge has presumed certain facts to be correct. During the course of arguments today, learned counsel for the State submitted that fresh instructions have been received, indicating the distribution of land to 15 beneficiaries whose names have been mutated in the revenue records.



14. The learned single Judge while passing the impugned judgment has firstly, in our opinion, incorrectly interpreted the directions issued by the Court on 08.11.1989 inasmuch as the same categorically states that in the event the land has not been distributed, the claim of the appellants shall be considered for exercise of option. What had to be seen was as to whether the land had actually been distributed as on 08.11.1989 or not. In the event, the land had not been distributed in 1989, then the authorities were bound to take notice of the said direction and the applicants' claim ought to have been considered.

15. The second direction which we find is that the learned single Judge has assumed that the appellants' father had not moved any application and the application which was filed as Annexure 20 to the writ petition could not be given any credit. This stands contradicted by the fact that the application remained surviving and it is the said claim which appears to have been ultimately rejected on 27th of December, 2017. The assumption by the learned single Judge therefore that the moving of the application was doubtful does not appear to be correct as is evident from own record of the respondents.

16. It may be mentioned that the said application is already numbered as 133/89-90 in Ceiling Case No.27 of 1981-82 as is evident from a perusal of Annexure 20 to the writ petition.



We therefore find no good reason to disbelieve the filing of the application which has ultimately been rejected, as indicated above. Consequently, the learned single Judge has erroneously proceeded on such assumption.

17. The third ground taken is with regard to the actual distribution of land. We find from the affidavits that have been brought on record that the respondents themselves in the counter affidavits filed in this appeal have taken a stand that the surplus land had not been distributed, but today during the course of arguments, it has been informed that the land has been distributed to 15 beneficiaries. This contradiction in itself demonstrates that correct facts were not before the learned single Judge for him to have assumed that there was any actual distribution of the land by the ceiling authorities in respect whereof, the appellants were attempting to exercise their option.

18. We, therefore, do not find the impugned judgment dated 12th of March, 2019 to be sustainable for the reasons aforesaid. The costs imposed on the appellants was therefore unjustified and we, accordingly, set aside the judgment dated 12th March, 2019 as also the *ex parte* order passed by the Additional Collector, Araria dated 27th December, 2017. The said order admittedly does not record any evidence of the matter being fixed for 27th of December, 2017 for disposal and proceeds on the



assumption as if the petitioners were not interested in pursuing the same. This finding is based on conjectures and therefore the order cannot be sustained.

19. Accordingly, the appeal is allowed, subject to the above, with a direction to the Additional Collector, Araria to consider the application moved by the appellants and also upon verification of the fact with regard to the status of the distribution of the land, about which contradictory stands have been taken before us and then pass an appropriate order in accordance with law as expeditiously as possible.

20. Any mutation order or orders passed on *Jamabandi* would be finally dependent on the orders to be passed by the Additional Collector.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

