

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 308 of 2016

In

Civil Writ Jurisdiction Case No.6639 of 2004

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Ashok Kumar, Son of Late Chandra Maulishwar Prasad, retired District and Sessions Judge, E - 122 and 124, Peoples Cooperative Colony, Kankarbagh, Town/District - Patna.

... .. Appellant

Versus

1. The State Of Bihar through the Forest Secretary
2. The Secretary, Department of Forest, Government of Bihar, Secretariat, Patna.
3. Chief Conservator of Forest, Government of Bihar, Patna.
4. The Conservator of Forest, Munger Circle, Munger, Bihar.
5. Divisional Forest Officer, Munger Division, Munger, Bihar.
6. Divisional Forest Officer, Jamui Division, Jamui, Bihar.
7. The District Collector/Magistrate, Munger, Bihar.
8. The District Collector/Magistrate, Jamui District, Jamui, Bihar.

... .. Respondents

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Appearance :

For the Appellant	:	Ms. Surya Nilambari, Advocate
For the Respondents	:	Ms. Shilpa Singh, GA 12
		Mr. Ranjan Kumar, AC to GA 12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-12-2019

The present Letters Patent Appeal has been preferred by the writ petitioner/appellant against the oral judgment dated 14.07.2015 passed by the Hon'ble Single Judge in CWJC No. 6639 of 2004.

2. The factual matrix relevant for deciding the present LPA is set out hereinbelow:-



The writ petition/appellant herein filed CWJC no. 6639 of 2004 for the following reliefs:-

“For issuance of appropriate writ or writs to the concerned respondents to bring on record the entire proceedings/orders vide which the lands of the petitioner as referred to below were notified and delimited as forest lands, and upon its production quash the same, AND issuance of appropriate writ or writs to the concerned respondents to bring on record the orders vide which the pillars were erected on the lands of petitioner as referred to below, and upon its production quash the same, AND for issuance of the appropriate writ in the nature of the mandamus directing the concerned Respondents to release the lands of the petitioner which were not notified as forest lands but were taken over and pillar erected by the respondents or Alternatively, for the issuance of appropriate writ or writs to the respondents to pay appropriate compensations to the petitioner as per the applicable laws for notifying the lands of the petitioner as forest land, AND for issuance of such other writ(s), order(s), direction(s).

3. In the writ petition, the writ petitioner has pleaded the following foundational facts:-

“(i) That the land in question which has been alleged to have been acquired by the Respondent(s) originally belongs to the mother of the petitioner namely Sumitra Devi, now deceased, wife of Chandra Maulishwar Prasad, retired District and Sessions Judge.

(ii) That the lands in question measuring about 73.90 acres are situated in the village Gotajor (Anandpur), P.S. Laxmipur, now falling in the district of Jamui carved out of the erstwhile district of Munger, Bihar. The further details of the lands in question are as under :



Sl.	JAMABANDI	KHATA NO.	PLOT NO.	P.S.	AREA (ACRE)
1.	373	1	2261	174	06.26
2.	373	239	2262	174	01.22
3.	373	239	2263	174	01.24
4.	373	239	2264	174	18.67
5.	373	239	3727	174	14.50
6.	373	239	3728	174	10.00
7.	373	239	3726	174	12.00
8.	373	239	2498	174	09.51
9.	373	239	2499	174	00.50
	TOTAL				73.90

The said Sumitra Devi was in peaceful possession of the above said land enjoying the right, title and interest without the interference of anybody. Her name was accordingly mutated in Register II of the land records. The petitioner is bringing on record the rent receipts of the year 1939 (prior to the abolition of the zamindari system, rent receipts were issued by the agency of the concerned zamindar), 1959-60, 1984-85, 1992-93 and 2003-04 as well as the photocopy of the relevant page of the Register II, all showing the possession and title of the said Sumitra Devi. Through out the period referred to above till 2001 the petitioner and his father and grandfather has carried on cultivations and agricultural activities on the above said lands.

(iii) That the husband of the said Sumitra Devi and father of the petitioner namely Chandra Mouliswar Prasad, now deceased, had also planted and reared 63 Mahua trees in the above said lands out of his own labour, skill and expenses. Rents for the same was paid and rent receipts were issued in the name of said Chandra Mouliswar Prasad by the State who was the Karta of the HUF of which petitioner was one of the coparceners. Rents have been paid upto the year 2003-2004



for the said trees.

(iv) That in the year 1995 the said Sumitra Devi sold part of the land belonging to the above said plot no. 2264. 9.60 acres of land was sold to one Jehada Yadav s/o Yamuna Yadav of village Anandpur and another acres of land was sold to Yamuna Yadav s/o late Ramdhani Yadav of the village Anandpur. To the best of the knowledge of the petitioner both the vendees have got the said purchased lands registered as well as mutated in their names before the appropriate authority. It would be relevant to point out that registration of sale transaction is a notice to the world but the respondent remained silent and mute spectator and raised no objection over the same. In fact, the respondents have not raised any notice on the board accessible to general public that the above lands have been declared as protected/ reserved forest and the ownership vested with the State. The said Chandra Mulishwar Prasad and Sumitra Devi died in the month of April, 2001 and December, 2001 respectively and after their demise petitioner and his brother are the absolute owners of the family properties including the above lands and trees.

(v) That during the last part of year 2001 when the respondents started erecting pillars in the above said lands that the petitioner became suspicious of the actions of the respondents and tried to stop the illegal actions of the State. The petitioner ran from pillar to post to impress the concerned authorities as to the exact ownership of the above said plots i.e. the right, title and interest of the above said lands in which pillars were erected vested with him and due to some act of omission or commission of the respondents pillars were erected on them. Above said documents as to titles were also shown to the respondents. The respondents did not give any satisfactory reply or showed any documents on the basis of which the said erection of the pillars were done but only maintained that they



are within their means to do it.

(vi) That finally lawyer's notice was served to the respondent no. 5 dated 07.10.2002 to remove the above said lands from the forest area as well as remove the pillars. Copy of the said notice was also given to the ADM (Land Revenue), Munger and DM/Collector, Munger. The respondents didn't move. Therefore, reminder legal notice dated 17.01.2003 was again sent to above said authorities. Vide letter no. 310 dated 30.01.2003 respondent no. 5 informed the petitioner's lawyer that plot no. 2261, 2263, 2264, 3727 and 3728 (referred to above) have been notified and delimited as forest land vide notification no. 1466-R/dated 19.04.1955 i.e. a total of about 64.41 acres of lands have been notified and delimited by the said notification. Thereafter, petitioner gave a letter dated 11.03.2003 to the respondent no. 7 as to the release of the above said agricultural lands which were of late shown in the map of the forest department, alleged to have been acquired in the year 1955 by the State. It was further pleaded therein that the good office of the respondent should get the concerned file examined as to acquisition leading to said notification no. 1466-R/dated 19.04.1955 and whether the above lands have been acquired as per the procedure provided in the law as to acquisition of land by the forest department and compensation, if any, paid and to whom. Acting on the said letter of the petitioner respondent no. 7 wrote to DFO, Munger and DM, Jamui for necessary action and forwarded the same to the petitioner vide memo no. 98/R/dt/26.03.2003 and memo no. 97/R/dt/26.03.2003 respectively. The petitioner craves leave of the Hon'ble Court to refer the same at the time of the hearing of the case if and when required.

(vii) That on 13.03.2003 also wrote to the Respondent no.5, enclosing the above said letter to the DM as well and questioned the validity acquisition in absence of any documentary proofs to support the same. The



Respondent no. 5 reiterated it stand that the plot no. 2261, 2263, 2264, 3726, 3727 and 3728 have been notified and delimited as forest land. Petitioner wrote to Respondent no.5 on 11.07.2003 and finally Legal Notice dated 20.02.2004 to Respondent no. 5, 7 and 8.”

4. The mother of the petitioner, wife of late Chandra Mouliswar Prasad, retired District & Sessions Judge, acquired the the land measuring about 73.90 acres situated in the village Gotajor (Anandpur), P.S. Laxmipur now in the district of Jamui. The petitioner pleaded that the availability of rent receipts of the year 1939 to 1959-60, 1984-85, 1992-93 and 2003-04 and relevant part of Register II and rent receipts were enclosed as Annexure-1 series. It is asserted that the father of the petitioner had planted 63 Mahua trees on the said land and paid rent for which he received the rent receipts. In the year 1995, Sumitra Devi, mother of the petitioner sold 9.60 acres of land to one Jehada Yadav, son of Yamuna Yadav and and Yamuna Yadav, son of late Ramdhani Yadav and their names were mutated in the revenue record. In the year 2001 the petitioner became suspicious when the respondents started erecting pillars on the land subject matter of the writ petition. On 07.10.2002 notice was issued to the A.D.M. (Land Revenue), Munger and thereafter notice was issued on 17.01.2003 followed by another letter dated 30.01.2003. On



such notice, respondents informed the petitioner's lawyer that plot nos. 2261, 2263, 2264, 3727 and 3728 have been notified and declared as forest land vide notification no. 1466-R dated 19.04.1955 vide Annexure-4 series. The notice dated 07.10.2002 is relevant for the purpose of this case and as such it is quoted hereinbelow:-

*Rishi Raj Sinha,
Advocate*

To

*The D.F.O.
MUNGER,*

Dear Sir,

I on behalf of my client Sri Asok Kumar S/o Late Sri Chandra Mouleshwar Pd. (Retd. Judge) presently residing at E-122 & 124, P.C. Colony, Kanakar-bagh, Patna-800 020 (P.S. Kankarbagh, District Patna), have to give this legal notice for the following reasons:-

1. That my client's mother Late Sm. Sumitra Devi, Wife of Late Sri Chandra Mouleshwar Prasad of Village-Anandpur, P.S. Laxmipur, Dist. Munger (Now Jamui) had purchased from Kastkars the Agricultural land sometime in the year 1952-53. The description of the above land is furnished below:-

<i>S.No.</i>	<i>Jamabandi</i>	<i>Khata No.</i>	<i>Plot No.</i>	<i>Area</i>	<i>P.S. No.</i>
				<i>(In Acre)</i>	
<i>(I)</i>	<i>373</i>	<i>1</i>	<i>2261</i>	<i>6.26</i>	<i>174</i>
<i>(II)</i>	<i>373</i>	<i>239</i>	<i>2262</i>	<i>1.22</i>	
<i>(III)</i>	<i>373</i>	<i>239</i>	<i>2263</i>	<i>1.24</i>	
<i>(IV)</i>	<i>373</i>	<i>239</i>	<i>2264</i>	<i>18.67</i>	
<i>(V)</i>	<i>373</i>	<i>239</i>	<i>3727</i>	<i>14.50</i>	
<i>(VI)</i>	<i>373</i>	<i>239</i>	<i>3728</i>	<i>10.00</i>	
<i>(VII)</i>	<i>373</i>	<i>239</i>	<i>3726</i>	<i>12.00</i>	
<i>(VIII)</i>	<i>373</i>	<i>239</i>	<i>2498</i>	<i>9.51</i>	
<i>(IX)</i>	<i>373</i>	<i>239</i>	<i>2499</i>	<i><u>0.50</u></i>	



*(Nine Total:73.90 Acres
Plots)*

The above land is situated at GOTAJOR (Anandpur) P.S. Laxmipur, Jamui (Prev. Dist. Munger).

2. That after the death of father & mother (APR. '2001 & Dec. '2001 respectively) of my client, Sri Asok Kumar, being only surviving son of deceased, has become the sole owner of above lands by virtue of not only the Hindu Law of inheritance but also by virtue of deed of Special power of attorney executed respectively by both the deceased i.e. father and mother of the client.

3. That it is unfortunate and beyond legal framework that without giving any notice to the deceased in their life time or to my present client Sri Ashok Kumar, the forest department has taken steps for acquiring the entire 73.90 acres of land described above, the ownership of which now has been devolved upon to my above said client.

4. That the above described land is still under the possession of my client and that the land revenue is being paid regularly from the date of purchase (in the name of client's late mother). The land tax receipts of the above said area of land shown at Ann. 2 Sl. No.1 are also in possession of my client.

5. That it has been brought to my client's knowledge that lands in question have been wrongly measured and entire area of land has been brought under the control of the forest department either due to clerical error or wrong measurement.

6. That on account of legal claim/right of my client over the entire land/property mentioned above the forest deptt. is legally not entitled to acquire any portion of the above land without complying to the provision of law of land acquisition and then without paying the compensation to my client.

7. That under the provisions of law and natural justice, the steps taken by forest department of acquiring the land is unconstitutional and illegal. This act of forest deptt. is unconstitutional



and violative of my client's right to property which has been legally purchased and is in my client's possession for the last fifty years almost.

It is, therefore, requested that you will kindly order exclusion of my client's land mentioned above from your forest area and for removal of pillars fixed around these plots, failing which my client will have no option but to take legal recourse.

I, on behalf of my client request you to kindly respond to this notice within reasonable time.

*Yours faithfully
(Rishi Raj Sinha)*

7/10/02

CC: 1. A.D.M. (Land Revenue)

Munger

2. D.M. & Collector, Munger

To

The Hon'ble Distt. & Sessions Judge Munger

5. After another round of legal notice dated dated 20.02.2004, the petitioner has filed the present writ petition claiming the petitioner being the only surviving heir of Sumitra Devi has acquired right, title and interest over the land and challenged the actions of the respondents in notifying and delimiting the plot nos. 2261, 2263, 2264, 3727 and 3728 as forest land. The petitioner asserted that the land in question was never acquired as forest land by the respondents after payment of compensation.

6. On behalf of the respondent no. 5, counter affidavit has been filed in which following stand was taken in



paragraphs 4 to 15 :-

“4. That with regard to para 2 of the writ petition it is stated that the plot no. 2261, 2263, 2264, 3726, 3727 and 3728 of Thana no. 174 is a notified Forest land and having notification no. 1466-R/19.4.55. The petitioner can not be allowed to raise the point of non publication of notification in local vernacular after a gap of 50 years. The said land has been declared a part of Bhimbandh Wild Life sanctuary vide S.O. No. 965 dated 27.5.76 published in the official gazette.

5. That with regard to para 3 and 4 of the writ application it is stated that it needs no comment.

6. That with regard to para 5(i) of the writ application it is stated that it is matter of record.

7. That with regard to para 5(ii) of the writ application it is stated that the land of plot no. 2499, 2498 and 2262 of Khata no. 239, Thana no. 174 is not a forest land as it is not notified as Forest land. A total of 4.88 acre in plot no. 2261, 8 acre in plot no. 2263, 18.92 ace in plot no. 2264, 10.26 acre in plot no. 3727, and 15.44 acre land in plot no. 3728 is a notified and demarcated forest land. The mother of the petitioner namely Mrs. Sumita Devi is in peaceful possession of the land is denied. No forest land can be mutated in anybody's name and any receipts issued to the petitioner pertaining to any forest land is not tenable in the eye of law. The petitioner might have been carrying on the agricultural activities outside the forest boundary demarcation, but he can not be allowed the liberty of agricultural activities inside a notified demarcated forest land.

8. That with regard to para 5(ii) of the writ application it is stated that the statement made in the para is denied. There can be no receipt regarding a land notified as forest and if any such document does exist it has got no legal force.



9. That with regard to para 5(iv) of the writ petition it is stated that the department of forest owns 18.92 acres of land in plot no. 2264, Thana No. 174, Khata no. 239 which is notified and demarcated. No body is allowed to sell a forest land. As the petitioner has not annexed any map of the land which he has sold to Jahada Yadav, the respondent is not in a position to comment on the points raised by the petitioner.

10. That with regard to para 5(v) of the writ petition it is stated that the deponent is well within its right to fix/repair the pillars as shown in the demarcation map so that no forest land can be encroached upon. The pillars are there on the land which belong to the department as per notification no. 1466-B/dt. 19.4.55.

11. That with regard to para 5(vi) of the writ application it is stated that it is matter of record. The petitioner has been informed vide Divisional Forest Officer, Munger letter no. 3049 dt. 2.7.03 about the correct picture of the land. As far as the statement made in the para regarding the procedure having not been followed in acquiring the said land is concerned. It is pertinent to mention that even the Forest settlement officer, Munger has finalized the case no. 469/1961-62 under section 29(3) of Indian Forest Act and has found no ownership or any other right after hearing the objection raised by the villagers.

12. That with regard to para 5(vii) of the writ petition it is stated that it is matter of records. The notification no. 1466-R dt. 19.4.55 and the forest settlement officer, Munger order in case no. 469/1961-62 is the conclusive proof that the said land has been declared and demarcated as forest land. The petitioner has not filed the map of the land claiming as their own, as the said plots comprise of land other than the forest land also.

13. That with regard to para 6 of the writ petition it is stated that the statement made



in this para is denied. The land as referred is not an agricultural land and plantation has been done in the year 2003-04 on the land. After a lapse of 50 years the petitioner can not raise a point that he did not know about the notification issued declaring the land as forest land.

14. That with regard to para 7 of the writ application it is stated that the settlement made in this para is denied. The forest settlement officer order in case no. 469/1961-62 is a testimony of the fact that the rights and claims over the land has been enquired into. The said land has been declared a part of Bhimbhand wild life sanctuary vide S.O. No. 965 dated 27.5.96. After the notification of the entire forest area as a part of the sanctuary under section 18(1) of the wild life protection Act 1972, the department notified for inviting the objection from the interested persons. The whole process of inviting objection and recommendation done under sections 19 to 26 of the wild life Act, 1972 has been held valid by the Hon'ble High Court, Patna vide order passed on 4.3.04 in CWJC No. 10944/2000 (Surendra Singh V. State of Bihar).

15. That with regard to para 8 of the writ application it is stated that the said land is notified forest land. It has been notified as part of the Bhimbhandh Wild Life Sanctuary. All the procedure for notifying the sanctuary has been followed."

7. The petitioner filed rejoinder and contested the contentions of the respondents in the counter affidavit. Petitioner asserted that the petitioner is using land for the agricultural purpose and making use of it. In the second supplementary counter affidavit, the State has placed on record the notification no. 1466-R-/19.04.1955.



8. The writ petition was admitted vide order dated 20.10.2011 and finally heard and the oral judgment was delivered on 14.07.2015 which is impugned in the present appeal. The relevant part of the oral judgment is quoted hereinbelow:-

“4. Indisputably, the impugned notification as contained in Annexure-D was issued on 19th April, 1955 and the present writ petition was filed on 21.06.2004. Therefore, this writ petition suffers from delay and laches of about long 50 years.

5. Learned counsel appearing on behalf of the petitioner submits that the lands detailed and described in paragraph 5(ii) of the writ petition were belonging to one Sumitra Devi, who was mother of the petitioner. According to learned counsel, the impugned notification was issued without following any procedure prescribed under the law. It is contended that even compensation was not paid to the petitioner. Therefore, she pleaded that the direction may be issued to the respondents for payment of compensation. Learned counsel has also placed reliance upon Sections 11 and 84 of the Act and has pleaded that the requirement of Sections 11 and 84 of the Act was not complied with before issuance of the impugned notification dated 19th April, 1955.

6. Per contra, learned GA 5, appearing on behalf of the respondents, submits that the present writ petition is liable to be dismissed on the ground of delay and laches since the petitioner has approached this Court after about 50 years from the date of issuance of the impugned notification. According to him, several other developments have taken place during the interregnum period including the issuance of notification



27.05.2016, whereby the lands included in that notification including the lands in question as claimed by the petitioner were declared as a part of Bhimbhand wildlife Sanctuary, but the validity of the aforesaid notification is not the subject matter of challenge in the present proceeding. By referring to an order passed in F.S. Case No. 464 of 1961-62 (Annexure-B to the counter affidavit-filed on behalf of the respondent no.5), it is contended that the objections filed by the villagers were considered and were finally rejected way back in the year 1965 by the Forest Settlement Officer, Munger. Therefore, according to him, at this belated stage, all these issues which have attained their finality cannot be re-opened or permitted to be re-agitated in the present proceeding.

7. After having heard the parties and on consideration of the materials available on the records, this Court finds that by impugned notification dated 19th April, 1955, the lands in question have not been acquired by the State Government, rather those lands have simply been declared as a part of "protected forest". As per case of the petitioner himself, the lands detailed in graphs 5(ii) of the writ petition was originally belonging to the one Sumitra Devi, mother of the petitioner. In paragraph 5(iv) of the writ petition it has been stated that the aforesaid Sumitra Devi passed away in December, 2001. In the whole writ petition it has nowhere been stated that the said Sumitra Devi, mother of the petitioner, who was admittedly the owner of the lands, ever challenged the validity and correctness of the impugned notification. Admittedly, she was surviving for more than 45 years after issuance of the impugned notification, but for the reasons best known to her, she did not challenge the validity and correctness of the impugned notification declaring the land in question as "protected forest" under Section 29 of the Act. Only after



death of aforesaid Sumitra Devi in December, 2001, the present writ petition was filed on 21.06.2004 by the writ petitioner making all sorts of allegations/claims with respect to the lands in question, which cannot be permitted to be raised and agitated at this belated stage after such a long time.

8. For the reasons recorded above, this Court is of the considered opinion that the petitioner is not entitled to be granted any relief as claimed by him in the present proceeding. The writ petition suffers from delay and laches of about long 50 years. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.”

9. Aggrieved by the oral judgment of the Court, the appellant preferred this Letters Patent Appeal. The LPA was filed with I.A. No. 1156 of 2016 for condonation of delay. However, without condoning the delay, the Letters Patent Appeal was admitted vide order dated 06.12.2017. The matter was listed for hearing which was heard on 18.06.2018 notwithstanding the fact that no order was passed on the limitation petition. On 19.06.2018, a Division Bench noted that in view the aforesaid fact in I.A. No. 1156 of 2016, delay in filing the LPA was condoned. The LPA was heard on different dates and on 15.10.2019 recorded the following orders:-

“Counsel for the appellant and the State are present.

The appellant is claiming that the State Government has wrongly declared his raiyati land as a protected forest land and has



claimed relief as stated in the writ application.

It appears from the records that land in question has been mutated in the name of mother of the appellant. It does not show that in what manner the land has been acquired by the mother of the appellant. The records of case reflects conflicting situation, but the name of mother of appellant has been recorded in Register II at a very belated stage.

As the fact is not very clear to us, let the appellant bring on record the documents to show that in what manner the mother of the appellant has acquired the land.

The State is also directed to produce the original records of Mutation Case no. 34 of 2003-04 and 33 of 2003-04 and also produce the record of cadastral survey.

List this case on 03.12.2019 under the same heading at 02.15 P.M.”

10. After the order dated 15.10.2019, the petitioner/appellant was provided opportunity to place on record the documents to show manner of acquisition of land by the mother of the appellant.

11. Ms. Surya Nilmbari, learned counsel appearing on behalf of the appellant expressed her incapability in producing the record and submitted that the LPA may be decided on its own merits.

12. In the aforesaid background of facts, this Court is required to decide the following issues:-

(i) Whether the writ petitioner has acquired right, title and interest over the land which was declared as forest land



by the State of Bihar ?

(ii) Whether the petition filed after 50 years of the notification dated 19.04.1955 is maintainable ?

(iii) Whether the Register-II can be said to be the document of title ?

(iv) Whether the materials available with the writ record are clinching on the point that Sumitra Devi has acquired right, title and interest over the land in question ?

13. From the legal notice dated 07.10.2002, it is evident that the petitioner claimed that the mother of the petitioner has purchased land from Kastkars in the year 1952-53. There is no detail from which Kastkars or from which sale deed, she has purchased the land mention in the legal notice dated 07.10.2002. In the legal notice dated 13.03.2003 there is assertion that the petitioner has been cultivating land and taking paddy crops for the last two and half years.

14. From the rent receipts Annexure-1 series, it appears that such rent receipts were issued in favour of one Babu Chandra Maulishwar Prasad but even there is no explanation as to how the land stood transferred in favour of Sumitra Devi and the statement that the land was purchased by the petitioner from Kastkars as mentioned in the legal notice



dated 07.10.2002 contradicts the claim based on Annexure-1 series. In the backdrop of the aforesaid fact, the Court has no difficulty in coming to the conclusion that the land in question was not in possession of the petitioner as he claimed that he has been cultivating the land for the last two and half years vide notice 13.03.2003 whereas the land was notified as forest land on 19.04.1955. In absence of the sale deed as to the purchase of land from Kastkars in the year 1952-53, it is difficult for the Court to accept the claim of the petitioner as to acquisition of right, title and interest through succession over the land in question.

15. The writ court, on the basis of the pleadings and the materials available on record, came to definite finding that after 50 years of the notification dated 19.04.1955, the writ petition was filed. The Court cannot accept the contention of the petitioner as to lack of knowledge. The contention of Ms. Nilamberi as ignorance of acquisition of the land in 1955, the father (retired District Judge) and the mother of the petitioner died in the year 2001, the petitioner claims of knowledge of declaration of land as forest land after 46 years of declaration is unsustainable. Firstly, the petitioner, who claimed to have held the property, is the son of the then District & Sessions Judge



who was alive upto 2001 and not a layman. It is to be noted here that the father and the mother of the petitioner survives upto April, 2001 to December 2001 i.e. approximately 45 years after notification dated 19.04.1955 and on the aforesaid background, the plea of ignorance of the notification dated 19.04.1955 is totally misconceived and cannot be relied upon in relation thereto. Moreover, in the year 1962-62, Forest Settlement Case was constituted and the Forest Settlement Officer has passed a reasoned order. The decision of the Forest Settlement Officer in Forest Settlement Case no. 464 of 1962-62 belies the claim of the petitioner as to the lack of knowledge as settlement case in relation to the same village to which the petitioner belongs i.e. Anandpur in the district of Munger .

The relevant order of the Forest Settlement Officer is quoted hereinbelow for ready reference : -

*“Draft Forest Settlement Order
F.S. Case No. 464/1961-62 Under
Section 29(3)*

*By notification no. 1466 R dated 19th
April 1955 issued under section 29(3) of the
Indian Forest Act 1927, the Govt. of Bihar have
declared the provisions of chapter iv of the said
Act applicable from the date of the said
notification to the forest land and waste land
lying in village Anandpur Thana No. 174 P.S.
Laxmipur Subdivision Jamui District Monghyr.*

*By virtue of notification No. 2459 R
dated 5.11.63 I am to enquire into forest rights
of Govt. and private persons in and over the*



forest land and waste land in the aforesaid village and record their claims and rights, if any, in this forest settlement order.

The required proclamation was published in the prescribed manner and two month time was fixed from the date of proclamation calling on all persons claiming any rights of the nature mentioned in the said proclamation to resent their statement of claims or to appear before me and state the nature and extent of such claims and rights.

4. The area of the protected forest has been demarcated on the ground under the supervision of the Divisional Forest Officer concerned and demarcation line has been marked in green on the village map prepared during the last survey and settlement operation. The boundary pillars have been fixed on the ground and they have also been shown on the said village map. A copy of the said village map is in the office of the Divisional Forest Officer, Monghyr.

5. In course of my enquiry into forest rights of the tenants and other residents of the said village. I find that the villagers have got no survey recorded forest rights in and over the said forest village. The villagers however, preferred the following claims in the forest.

(a) Claims to take fire wood for their own bonafied requirement from the forest.

(b) Claim to take "Mahowa" fruits and flowers and other edible fruits for their own consumption.

(c) Claim to free passage through the forest footpaths.

(d) Claim to graze their cattle in the forest.

On considering the said claims laid before me by the villagers concerned, I find that their claims are not supported by any documents or record of rights. Further, the villagers did not pay any "Banker", Phalker to the ex-owner of the forest nor do they, at the present, pay "Banker" etc. to the Forest Officer concerned.



The villagers, thus could not establish their claims.

In view of the aforesaid findings, I am of opinion that the aforesaid claims over the forest should not be admitted to the villagers.

I, therefore, disallow their claims.

*Sd/-
Forest Settlement Officer
Monghyer*

16. Thus the order of Forest Settlement Officer is clinching on the point that the villagers of the same village to which the petitioner belongs were heard in a proceeding of 1961-62.

17. It is now well settled that the revenue records including Register II, are not the documents of title. In this Letters Patent Appeal the respondents have filed counter affidavit. In the counter affidavit, the statement was made that in terms of the provisions of the Wild Life (Protection) Act, 1972 the land in question was declared “Bhimbhand Sanctuary” and even at that stage the petitioner has not approached the appropriate forum/court raising his grievance and in that view of the aforesaid, the Court has no hesitation that the petitioner has not approached the appropriate Forum or Court and by his conduct he has acquiesced his valuable rights by his own conduct in not approaching the court for approximately after 50 years. He has thus acquiesced and waived his own rights.



18. In view of the discussions above and the documents annexed with the writ petition, no prudent man can arrive at a finding that Sumitra Devi has acquired right, title and interest of the land in question in 1939 as different documents and annexures annexed in the writ proceeding run contrary to each other as to the acquisition of right, title and interest over the land in question. In the absence of sale deed as to purchase from Kastkar as claimed vide legal notice, the Court is unable to accept the claim of the writ petitioner.

19. During course of hearing of the Letters Patent Appeal, the respondents have filed documents by way of supplementary counter affidavit. Annexure-F annexed to the counter affidavit is the notification dated 27.05.1976 which document again falsifies the claim of appellant-writ petitioner about the acquisition of the right, title and interest of the mother and inherited by the petitioner.

20. On careful consideration of the entire materials available on record, the Court does not find any infirmity in the order passed by the learned Single Judge. Additionally, the Court, in the attending facts and circumstances of the case, is of the considered view that the serious disputed questions of fact as involved in this case cannot be decided in writ proceeding. The



appeal is, accordingly, dismissed.

21. However, dismissal of the LPA will not cause any prejudice to the petitioner in seeking any alternative remedy as to the declaration of right, title an interest.

22. In the result, the appeal fails. There shall be no order as to costs.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

BT/-

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CAV DATE	N.A.
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