

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.876 of 2018
In
Civil Writ Jurisdiction Case No.5858 of 2014

1. Manoj Kumar Singh
2. Subodh Pd. Singh
3. Mukesh Pd. Singh @ Mukesh Kumar Singh.
4. Satya Prakash Singh. All Sons of Late Hari Prasad Singh, all Resident of Village and P.O. Harpur, Bochaha, P.S. Vidyapati Nagar, Sub-Division-Dalsinghsarai, District-Samastipur.

... .. Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Old Secretariat, Patna
2. The District Magistrate-Cum-Collector, Samastipur.
3. The Sub Divisional Officer, Dalsinghsarai, Samastipur.
4. The Additional Collector, samastipur.
5. The Circle officer, Vidyapatinar, Samastipur.
6. The Circle Inspector, Vidyapatinar, Samastipur.
7. The revenue Karamchari Halka No. 8, Vidyapatinar, Samastipur.
8. Rajiv Kumar Singh, S/o Sri Umeshwar Pd. Singh, Resident of Village and P.O. harpur Bochaha, P.S. Vidyapatinar, Sub Division-Dalsinghsarai, Dist. Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Anil Kumar Choudhary, Advocate
For the Respondent/s : Mr.Md.Khurshid Alam -AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 02-12-2019 I.A. No. 8056 of 2018:

The interlocutory application has been filed for
condoning the delay in filing the appeal.

Having considered the grounds taken in the limitation



petition, the delay is condoned.

I.A. No. 8056 of 2018 stands disposed of.

The impugned order is dated 06.07.2017. The operative part of the direction contained therein reads as under:-

“Having heard the rival submissions of learned counsels for the parties, this fact has not been disputed by the counsel for the official respondent that the land in question is a public land. The materials on record, particularly, the report of the Halka Karamchari, suggest that the land in question is a public land and the same has been encroached. For initiating a proceeding under Section 3 of the Act, the only precondition is that if it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land. In the present case, from the representations submitted by the petitioner in the year 2013, to respondent no. 2, the District Magistrate, Samastipur and respondent no. 5, the Circle Officer, Vidyapatnagar, this much is apparent that they had the information about the encroachment on a public land. This fact further gets verified from the report of the Halka Karamchari, but in spite of that, proceeding was not initiated.

In the circumstances, this Court directs the respondent No. 5, the Circle Officer,



Didyapatinagar to examine the matter and if it appears to him that the public land has been encroached upon, then initiate an appropriate proceeding under the Act, if the same has already not been initiated, within a period of two weeks from the date of receipt/production of a copy of this order and take the same to its logical conclusion within a period of four weeks, after giving due opportunity of hearing to all affected persons, in accordance with the provisions of the Act.”

In Ram Kishan Fauji v. State of Haryana & Ors., (2017) 5 SCC 533, the Supreme Court has culled out the following principles governing the power of the High Court in exercising jurisdiction under the Letters Patent.

“42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:-

42.1 An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2 The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3 A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article



227 of the Constitution and determination by the High Court under the said Article and, hence, no intra-court appeal is entertainable.

42.4 The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.

The Apex Court has reiterated the similar principles in **Life Insurance Corporation of India Vs. Nandini J. Shah and others., (2018) 15 SCC 356.**

Prior thereto, the Apex Court had culled out similar principles in **Jogendrasinhji Vijaysinghji Vs. State of Gujarat & Ors., (2015) 9 SCC 1.**

We do not find any error in the order impugned. This appeal is, accordingly, dismissed.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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