

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.314 of 2017

In
Civil Writ Jurisdiction Case No.10853 of 2002

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1. The State Of Bihar
 2. The Collector, West Champaran, Bettiah.
 3. The Deputy Collector, Land Reforms, Narkatiaganj, District West Champaran.
 4. The Circle Officer, Lauria, District West Champaran.

... .. **Respondents-Appellant/s**

Versus

1. Shrikrishna Bihari Mishra, son of Late Hari Shankar Mishra, resident of Village Matiararia Tola Birti, P.S. Lauria, District West Champaran.

Petitioner-Respondent 1st Set.

2. Bachia Devi wife of Anawat Ram
3. Kalbal Ram son of Ganesh Ram
4. Atwari Devi wife of Jagu Ram
5. Rabri Devi wife of Janak Ram
6. Sanjharo Devi wife of Bindeshwar Ram
7. Umrawati Devi wife of Shivbaran Ram
8. Rampati Devi wife of Saryug Ram
9. Buna Devi wife of Bhabhu Ram
10. Rambha Devi wife of Raman Paswan
11. Shiv Lal Paswan son of Badu Paswan
12. Shiv Nath Paswan son of Badu Paswan
13. Sushila Devi wife of Shiv Paswan
14. Most. Jago Kuwar wife of Chhote Paswan
15. Prabhawati Devi wife of Madari (since deceased) (Vide order dated 19.06.2018, her legal heirs have been brought on record.
 - 15.i. Ramesh Paswan, aged about 35 years
 - 15.ii. Rajesh Paswan, aged about 33 years
 - 15.iii. Brijesh Paswan, aged about 30 years
 - 15.iv. Sankar Paswan aged about 28 years**are residents of Village Matyariya, P.S. Lauriya, District West Champaran.**
16. Sunaina Devi, daughter of Gudar
17. Mahendra Ram, son of Anant Ram
Respondent nos. 2 to 17 are residents of Village Matyariya, P.S. Lauriya, District West Champaran.
18. Most. Paspoti Kuwar wife of Sukar Chaudhari



19. Binod Chaudhary son of Bagar Choudhary
20. Most. Sumitra wife of Suresh Choudhary
21. Bal Choudhary son of Tulsi Choudhary
Respondent Nos. 18 to 21 are residents of Village Baghlochana, Noniyatola, P.S. Lauriya, District West Champaran.
22. Bhulan Chamar son of Jaggu Chamar
23. Prabhu Ram son of Alagu Ram
24. Yogendra Ram son of Dhanpat Ram
25. Hikaibi Devi wife of Hari Ram
26. Bipatri Devi wife of Ghura Ram
27. Most. Gaudam Kuwar wife of Alagu Ram (since deceased) (Vide order dated 19.06.2018, her legal heirs have been brought on record.
- 27.i Prabhu Ram (son) aged about 45 years
- 27.ii Ghanesh Ram (son), aged about 42 years
- 27.iii Mohanmati (daughter, aged about 28 years
Residents of Village Matyariya, P.S. lauriya, District-West Champaran.
28. Sukar Paswan son of Mahanth Paswan
29. Munesh Paswan son of Mahanth Paswan
30. Bunela Dusadh son of Chhathu Dusad
31. Lal Chamar son of Ghura
32. Khaidaru Paswan son of Giriya
Respondent nos. 22 to 32 are residents of Village Matyariya, P.S. Lauriya, District West Champaran.

... .. Respondents-Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay, G.A.- V Mr. Pratik Kumar Sinha, AC to G.A.- V Mr. Saurav Kumar, Advocate
For the Respondents No.2 to 32	:	Mr. Umesh Chandra Verma, Advocate Mr. Hemant Ray, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-10-2023

The controversy arises under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for brevity, 'the Act of 1961'). The writ petitioner claimed



that the order of the Collector which entitled his family, consisting of his wife and three minor sons, to only one ceiling unit of 20.82 acres of different categories of lands was wrong since two of his sons had attained majority as on 09.09.1970. An appeal was filed from the order of the Collector which did not obviously raise this contention. No further challenge by way of revision, as permissible under the statute was taken. The appellate order dated 28.02.1997 was not even produced in the writ petition, but later produced as Annexure-A. Obviously, there was no challenge against the appellate order in the writ petition. The writ petition filed in the year 2002, after more than five years from the date of the appellate order, stood allowed.

2. The learned Single Judge considering the pleadings of the writ petitioner directed that a Medical Board be constituted who would conduct scientific test to determine the age of the major sons and if they are found to have attained majority as on 09.09.1970 the Collector would issue a fresh notification.

3. The State's contention in the appeal is that there was no cause for invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India and in any event, the lands taken over from the writ petitioner was distributed to the



landless people who have been impleaded as respondents 5 to 34. The State seeks to agitate the cause of the landless and also sustain the order passed under the Act of 1961.

4. Learned Government Advocate appearing for the State relied on two decisions of the Hon'ble Supreme Court. *State of Rajasthan v. D. R. Laxmi, (1996) 6 SCC 445*, found that when there is inordinate delay in filing a writ petition and steps taken in the acquisition proceedings have become final, the Court would be loath to interfere with the notification for acquisition. When an award was passed and possession was taken, it was held that the High Court though having power to quash a notification issued under Section 4(1) of the Land Acquisition Act, 1894, under Article 226, should not normally exercise its power if there are delay and laches. This declaration was despite the fact that no third-party rights were created in that case. In the present case obviously, third party rights were created.

5. *Durga Prashad v. Chief Controller of Imports and Exports, (1969) 1 SCC 185*, spoke on the discretion of the High Court under Article 226, on refusal to exercise which, normally, even the Supreme Court does not interfere with it, even if such cases are those in which fundamental rights are



violated. Reliance was placed on *Smt. Narayani Debi Khaitan v. State of Bihar, C.A. No.140 of 1964, the judgment dated 22.09.1964*, wherein it was held that exercise of discretion under Article 226 has to be left to the High Court which has to be exercised judiciously and reasonably even in cases where there is alleged breach of fundamental rights.

6. The 1st respondent who was the writ petitioner was issued with notice. However, none appeared for him consistently. We took up the matter today for hearing after having granted sufficient time for appearance, on the last posting date which was on 07.10.2023.

7. The original order dated 05.07.1995 was issued by the DCLR, Narkatiyaganj, the Collector as defined under the Act of 1961. The objections under Section 10(3) of the Act raised by the land holder-writ petitioner were considered; but he was found to be possessing 45.05 acres of lands of different classes. The land holder along with his family was allowed to retain 20.82 acres of different categories of lands, while 24.23 acres were declared surplus. The appeal preferred against the aforesaid original order was also dismissed by the appellate authority by order dated 28.02.1997. There was no further challenge made to the order.



8. The impugned judgment relied on *L. Hirday Narain v. Income-Tax Officer, Bareilly, AIR 1971 SC 33*, to find that when despite the availability of an alternate remedy, a writ petition was filed and the same was entertained, after keeping it pending for long years, it cannot be dismissed on that ground. We perfectly agree with the said observation, but we have to notice that here objection raised was regarding maintainability of the writ petition itself when it was filed. The writ petition was filed in 2002 when the appellate order was passed in 1997. There was a revisional remedy available to the 1st respondent which was not availed. Even a revision would not have been entertained after five years and hence there is no question of entertaining a writ petition. Further, it has also to be noticed that in the ensuing time, the surplus lands as determined in the original order and affirmed in appeal were distributed to the landless. There is no question of a resumption after five years. We find the writ petition itself to be not maintainable as on the date of its filing.

9. We have to notice that the contention raised could have been urged before the original authority and the appellate authority which was not done. Even at the revisional stage, a new contention could have been taken or a writ petition filed



immediately after the original order, to raise that contention. The writ petitioner-land owner had slept over his rights and there is no question of the writ petition being filed after five years of the appellate order; on a bland assertion of two children having attained majority without any substantiating documents. We do not reject the claim merely on the ground of available alternate remedy, but on the ground also of the writ petition itself not being maintainable as on the date of its filing.

10. We set aside the impugned judgment, allow the appeal and as a consequence reject the writ petition also.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2023
Transmission Date	

