

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1855 of 2016

In

Civil Writ Jurisdiction Case No.17700 of 2011

Nakul Singh @ Nakul Prasad Singh, son of Late Ram Chandra Singh
Resident of Village- Bansa @ Barsa, P.S.- Ariari, District- Sheikhpura.

... .. Petitioner/Appellant/s

Versus

1. The State of Bihar
2. The Deputy Collector Land Reforms, Sheikhpura, P.S.District- Sheikhpura, resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
3. The Anchal Adhikari, Ariari, P.S.- Ariari, District- Sheikhpura.
4. Surendra Mochi son of Bhutali Mochi, resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
- 5.1. Kameshwar Manjhi Husband of Ram Ratia Devi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 5.2. Narayan Manjhi son of Ram Ratia Devi resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 5.3. Mohan Manjhi son of Ram Ratia Devi resident of Village Barsa, P.S. Ariari, District Sheikhpura.
6. Prahlad Paswan son of Sita Ram Paswan resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
- 7.1. Bhadhi Manjhi wife of Late Punta Manjhi resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 7.2. Ramasis Manjhi son of Late Punta Manjhi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 7.3. Sukindar Manjhi, son of Late Punta Manjhi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 7.4. Dinesh Manjhi son of Late Punta Manjhi resident of Village Barsa, P.S. Ariari, District Sheikhpura.
8. Dasho Manjhi son of Late Mangal Manjhi resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
9. Sri Manjhi son of Late Mangal Manjhi resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
10. Bhukhan Manjhi son of Late Karu Manjhi resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
11. Jetha Manjhi son of Late Baldeo Manjhi resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
12. Upendra Manjhi son of Late Dua Manjhi resident of Village- Barsa, P.S.- Ariari, District- Sheikhpura.
- 13.1. Girija Devi wife of Late Tulsi Manjhi resident of Village Barsa, P.S. Ariari, District Sheikhpura.



- 13.2. Sintu Manjhi son of late Tulsi Manjhi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 13.3. Mintu Manjhi son of Late Tulsi Manjhi resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 13.4. Rohit Manjhi son of late Tulsi Manjhi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 13.5. Tanku Manjhi minor son of late Tulsi Manjhi, minor under guardianship of their mother namely Girija Devi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.
- 13.6. Mohan Manjhi minor son of late Tulsi Manjhi, minor under guardianship of their mother namely Girija Devi, resident of Village Barsa, P.S. Ariari, District Sheikhpura.

... .. Respondents/Respondent/s

Appearance :

For the Appellant/s : Mr. Devendra Prasad Singh, Advocate
For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-07-2023

The appeal is against the judgment dated 30.08.20216 passed by the learned Single Judge directing the appellant to approach the revisional authority under Section 8 of the Bihar Land Mutation Act, 2011 (for brevity, 'the Act of 2011').

2. The allegation in the writ petition was regarding validity of issuance of *purcha* to the private respondents under Bihar Privileged Persons Homestead Tenancy Act (for brevity, BPPHT Act). In Misc. Case No.1/2007-2008 of Khata No.165, Khesra No.1236, Area 1.07 acres by the Anchal Adhikari,



Ariari was in favour of the appellant's father.

3. It is the appellant's contention that the Jamabandi of the settled land has been created in favour of the appellant and he has been paying rent to the Government regularly which even the Circle Officer has held in Annexure-6.

4. The fact remains that in an appeal filed by the respondents, the Deputy Collector Land Reforms, Sheikhpura set aside the order of the Anchal Adhikari, in the name of the late father of the appellant. It will not be proper for this Court to examine the facts, especially when there is an alternative remedy provided under the Act of 2011. We perfectly understand that the appeal was pending before this Court from 2016 and the writ petition itself was filed in the year 2011. Exercise of jurisdiction under Article 226 of the Constitution of India is purely discretionary and the appellant was relegated to the revisional remedy by the learned Single Judge; dis-satisfied with which he has filed the appeal.

5. The controversy has a chequered career as seen from the documents provided in the writ petition; which includes two decisions of this Court in CWJC No.9215 of 1998 titled as Arjun Pd. Singh v. State of Bihar & Ors. and CWJC No.11715 of 2004 titled as Nakul Singh v. The State of Bihar &



Ors. In the earlier two instances, the writ petitions were disposed off remanding the matter to the statutory authority. In fact in the decision in CWJC No.9215 of 1998, the learned Single Judge held that identification of the properties on which rival claims are raised is crucial to the adjudication. While the appellant asserts *Jamabandi* and fixation of rent in favour of his father in 1961-62, the respondent claims from a land settlement case of 1988-89.

6. We find absolutely no reason to interfere with the order of the learned Single Judge refusing to exercise discretion, especially in the context of the complexity in facts and identification and also in the wake of an alternative remedy being available. Merely for the reason of pendency of an appeal or there existing compelling facts, enabling the appellant to seek for setting aside the order, cannot by themselves result in extraordinary jurisdiction under Article 226 of the Constitution of India being invoked. The revisional remedy would have to be availed by the appellant and in such circumstances, we dismiss the appeal. However, leaving open the remedy before the revisional authority. If an application is filed within a period of two months from the date of receipt of a certified copy of the judgment, then necessarily the revisional authority shall decide



the issue on merits, without looking at the limitation in filing such a revision. We make it clear that we have not made any observations on the merits of the matter.

7. The appeal is dismissed with the aforesaid observations and directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	14.07.2023
Transmission Date	

