

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Surplus) Case No. – 07/2017
Dist. – Arwal

**PRESENT :- K.K. Pathak, I.A.S.,
Additional Member**

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State of Bihar through Collector, Arwal	Versus	- Petitioner/ Appellant
Shiv Lakhan Singh & Others		- Opposite party

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Appearance:

For the Appellant/Revisionist	:Shri Nirmal Kumar, Spl. G.P.
For the OP	:Shri Rajesh Kumar

ORDER

15.05.2017

This is a ceiling surplus case in which the State is the Petitioner. The State has filed this Revision Petition on 21.03.2017 against the order passed by the Learned Additional Collector, Arwal in Ceiling Appeal No. 13/AC/2004-05 dated 22.10.2014.

The case was admitted for hearing on 21.03.2017. The delay was condoned and the Lower Court Records was called for. In the meantime, it was informed to the Court that OP No. 4 has died and has been substituted by his son.

The case was finally heard on 02.05.2017 wherein the Learned Special GP argued in favour of the State, who is also the Petitioner. The Learned Advocate of the OP was

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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also heard in great detail. Thus concluding the hearing, this final order is being passed.

As per the Learned Special GP, the impugned order passed by the Learned Additional Collector was passed ex-parte. The State was not heard by the Learned Additional Collector. Moreover, the Learned Additional Collector passed the impugned order on 22.10.2014, just few days before he was about to retire. In the said order, the Learned Additional Collector set aside the order passed by the Learned SDO and made this order in favour of the landlord.

The Learned Special GP also drew the attention of this Court to Annexure-1 of the Counter Affidavit. Annexure-1 is a Letter No. 486 dated 11.07.2015 written by the Learned Collector, Arwal to the Principal Secretary, Department of Revenue and Land Reforms recommending action against the Learned Additional Collector who passed the order in the absence of the State and that too, just three days before his retirement.

I also heard the Learned Advocate of the OPs, who is representing all the OPs, who claim to be the khatiani landholders and whose land has been by mistake included in the ceiling proceeding drawn against the original landlord namely Sri Ram Rajeshwari Prasad Ojha. As per the Learned Advocate of the OPs, the State cannot prefer jurisdiction on concurrent dispute. This instant matter is already pending before Bihar Land Tribunal wherein the Tribunal has already

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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stayed the order of the Learned Additional Collector. Therefore, the State cannot prefer concurrent jurisdiction.

Continuing his arguments further, the Learned Advocate says that the order passed by the Learned Additional Collector is based on documents and survey records. The order is perfectly legal and passed on merits and there is no infirmity whatsoever. He also mentioned that the Revision Petition filed by the State is hopelessly time barred. The impugned order was passed in 2014 and the State has preferred the Revision in the year 2017 but has not mentioned any reason for the delay.

To this, the Learned Special GP pointed out that the internal approval for filing Revision application took time as the approval require consent of various Authorities in the State capital. Moreover, he mentioned a judgement of the Hon'ble Supreme Court (Civil Appeal No. 8577/2014 with IA No. 2/2014) regarding condonation of delay under the Limitation Act wherein the Hon'ble Supreme Court has condoned a delay of 1373 days in filling the second appeal.

Based on the arguments made by the Learned Special GP and the Learned Advocate of the OP and after having perused the documents available on records as well as the Lower Court Records, my own findings on the case are as under:-

- a. I would first like to address the issue of Limitation. There is some merit in the argument forwarded by the

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 4 2	आदेश पर की गई कार्रवाई के बारे में दिपणी तारीख सहित 3
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Learned Advocate of the OPs about the delay of about two and half years by the State in preferring this Revision application. I find that the State, in this whole period, is not sitting idle and had entered into active correspondence with the State Government as is evident from the letter of the Learned Collector dated 11.07.2015.

- b. Therefore, in the light of above facts, I hold that the State was already actively pursuing the matter. Thus, in the interest of justice, the delay needs to be condoned and the matter decided on merits.
- c. Coming to the other issue raised by the Learned Advocate of the OP regarding the similar matter pending before the Bihar Land Tribunal, I note that the order of the Learned Additional Collector has been stayed. However, there is no stay in the instant proceeding of this Court. Therefore, this Court can continue to proceed and pass an order on merits.

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी ⁵ का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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d. Coming to the merits of the case, I find some strength in the arguments of the Learned Special GP that the impugned order was passed ex-parte and in the absence of the State. However, I am surprised to see that the Learned Additional Collector mentioned in his order dated 22.10.2014 (which is the order under challenge) that he heard the Learned Advocate of both the sides. In the instant case before the Learned Additional Collector, the landlord was the Appellant and the State and the bataidars, together, were the OPs. That be the case, only the bataidars do not constitute the OP. The Learned Additional Collector should not have mentioned in his order that he heard both the parties.

e. This is further borne out from the order sheets of the case record of the Learned Additional Collector. I had the privilege of perusing the entire order sheets. For the past many years, the second party has been continuously marked absent. So much so that the Learned Additional

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>Collector observed on 14.10.2014 that since the second party (State and the Bataidars) have been continuously absenting themselves, he feels that they are not interested in the case and order be passed ex-parte. He accordingly heard only the Appellant (landlord) on 14.10.2014 and passed an order on 22.10.2014. Thus, as per his own observations on 14.10.2014, the second party was absent, who has been continuously absenting themselves since the year 2004, when the case was first registered before the Learned Additional Collector.</p> <p>f. Therefore, it is rather surprising that the Learned Additional Collector, on 14.10.2014, himself observes that the second party (meaning the State and bataidars) have been continuously absenting themselves, on the other hand, while passing the order on 22.10.2014, the Learned Additional Collector mentions that he heard both the parties. Not only that, he quotes the arguments of the second party also. This is rather confusing.</p>	

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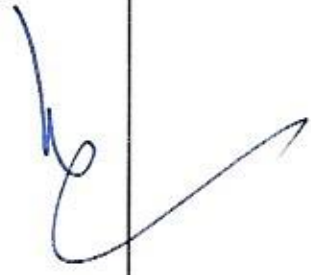
g. The Learned Additional Collector therefore, apparently has proved himself contradictory. He has not clarified that which second party he heard on 14.10.2014 because he himself says that the second party is absent. If he had heard the bataidar as second party, then he should have clarified this position in his order. Whatever may be the case, it is certain that the State certainly was not heard.

h. This, therefore, lends an element of mala fide in the order passed by the Learned Additional Collector.

i. I have further perused the order of the Learned Additional Collector dated 22.10.2014. It seems that the Learned Additional Collector has set aside the order of the Learned SDO on the grounds that the Learned Lower Court did not consider the documents filed by the Appellant. He also held that the Appellant had submitted papers of Cadastral Survey Khatian, Chakbandi order and Continuous Khatian copies with the request that the said land be excluded from the Ceiling Proceeding.

But the Learned Lower Court did not

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	<p>consider this. Hence, the Learned Additional Collector found that ends of justice were not met when the Learned Court of SDO ignored the papers submitted by the Appellant.</p> <p>j. However, the Learned Additional Collector has not dwelt in detail as to whether these papers were shown to him by the Appellant and whether he gone through them and whether he found them to be strengthening the case Appellant or not.</p> <p>k. I have also perused the order passed by the Learned SDO dated 04.05.1996 in Land Ceiling Case No. 28/1973-74 (Ram Rajeshwari Prasad Ojha vs. State of Bihar). It seems that before the Learned SDO, various persons have filed Petitions for exclusion of their land.</p> <p>l. The Learned SDO in his order dated 04.05.1996 has dwelt on many issues including the land holder's number of units, classification, admissibility of land to deities etc. He, in Para 15 onwards, has also dealt with all the cases of settees or interveners who</p>	

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	<p>have claimed to purchase the land from the landholder between 22.09.1959 and 09.09.1970. In Para-16, the Learned SDO, while taking a reasonable stand, has allowed such land to be excluded from the ceiling proceeding because the claims of these settlees were accepted by the landholder himself.</p> <p>m. Para-17 of the order of the Learned SDO deals with the case of the OPs in this Revision Application. He mentioned that Sri Ram Lakhan Singh, son of Ambika Prasad Singh, Shiv Prasad Singh and Shiv Lakhan Singh both sons of Jamindar Singh, and Darmuram son of Late Banauchi Dusadh have claimed that their lands have been, by mistake, included in this Ceiling Proceeding. The Learned SDO has mentioned that since they have not produced any documents in support of their claim, their averments cannot be agreed to.</p> <p>n. In the light of the above, I find it difficult to believe as to why the Learned SDO, while giving relief too</p>	

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	<p>order, would deny the relief to the OPs.</p> <p>o. Similarly in Para-19 many other settlees have submitted some other papers which, after being duly considered by the Learned SDO , were rejected and their lands were retained in the ceiling proceeding.</p> <p>p. I would have little reason to doubt that if the Appellant had indeed submitted their papers (as they have claimed before the Learned Additional Collector), why would the Learned SDO not take those documents into account?</p> <p>q. Now coming to the main point whether the Appellant has submitted these papers before the Learned Additional Collector or not and whether the Learned Additional Collector had the benefit of perusing these papers, I see that no original papers were to be found in the records of the Learned Additional Collector. From the orders of the Learned Additional Collector, nowhere it has come out in his observation that he</p>	

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	<p>has seen the papers of the Appellants. Though, the Learned Additional Collector mentioned that he perused the documents available on record but he has not mentioned what are these documents.</p> <p>r. While perusing the Lower Court Records of the Learned Additional Collector, I found 3 lists of documents which indicate, between the three lists, at least nine documents which the Appellant has purportedly annexed before the Court of the Learned Additional Collector. However, at a later stage, the Appellant has withdrawn these original documents after the order was passed by the Learned Additional Collector. As of now, there are only photocopies of only three papers, instead of nine. There is one notice of Chakbandi Court and an order of the Chakbandi officer and a copy of the khatian. Not one paper can be rightfully said to be supportive of the case of the Appellant.</p> <p>s. The chakbandi notice is for a Case</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 12 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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ancestors of the Appellant and the OP is the landlord, Sri Ram Rajeshwari Ojha. This notice also does not indicate anything supportive of the appellant.

- t. I have perused the Chakbandi Order dated 18.06.1984 where the Chakbandi Officer ordered that certain plots be entered with in the name of the Appellants. However, one good reading of the Chakbandi Order itself knocks the bottoms out of the case of the Appellant (OPs in the Revision case). As per the order, the original landlord, namely, Ram Rajeshwari Prasad Ojha's representative Jhigan Singh appeared before the Chakbandi Officer and supported the case of Appellant and based on this, the Chakbandi Officer ordered in favour of the Appellant.

- u. Nothing can be more evident of the collusion between the Appellant and the landlord Sri Ram Rajeshwari Ojha. As per this order, purportedly, the landlord is supporting the case of Appellant. This in itself proves that the Appellants are merely a front for

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the landholder and a tool in his discrete attempt to save his lands from the ceiling proceeding. Normally, any Chakbandi Officer would have conducted an on the spot enquiry which was not done in the instant case. Thus, not much reliance can be placed upon the order of the Chakbandi Officer.

v. Other papers are not at all relevant in the sense that they do not establish the Appellant as the original khatiani raiyats.

w. However, it is evident that the Learned Additional Collector himself has not gone into the merits of these documents which he should have done.

x. Interestingly, I also find that the order of the Learned DCLR passed on 13.07.1998 in rent fixation case No. 1/1998, wherein the Appellant has requested for rent fixation of the land in question. However, the same has been rejected by the DCLR. In this matter of rent fixation, again both the parties are same as in the chakbandi

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	<p>case i.e. the Appellant on one side and the landlord on the other (Shiv Lankhan Singh vs. Ram Rajeshwari Prasad Ojha)</p> <p>y. Here also, the landlord supported the case of Shiv Lankhan Singh and has claimed that Shiv Lakhan Singh and his ancestors are the khatiani raiyats of land in question. He concedes that by mistake, in Register- II, the name of Sri Ojha has been entered. In my opinion, this also indicates the nexus between the two and sufficiently convinces this Court that Shiv Lakhan Singh is merely a front for the landlord Sri Ram Rajeshwari Prasad Ojha.</p> <p>z. The Learned DCLR, while rejecting the Petition of Shiv Lakhan Singh in rent fixation case, noted this 'bonhomie' between the landlord Sri Ram Rajeshwari Ojha and Sri Shiv Lakhan Singh. He rightly notes that the landlord, Sri Ojha, has come after 40 years before the Rent Fixation Court to make a confession that the said land belongs to Sri Shiv Lakhan</p>	

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pay the rent for that land for the last 40 years.

aa. In this Rent Fixation Proceeding No. 1/1998, two things came out very openly that :

i. In the Register-II, the name of the landholder Ram Rajeshwari Prasad Ojha appears. This is conceded by Sri Shiv Lakhan Singh himself who is the OP in this Revision case.

ii. That the rent for this said land had been paid for at least 40 years, if not more, by the landlord Sri Ojha.

bb. Why would a person pay rent for a land that does not belong to him and that too for a period of 40 years. This convincingly proves that the OP Sri Shiv Lakhan Singh is merely a front for the original land lord Sri Ram Rajeshwari Prasad Ojha.

आदेश की क्रम सं० और तारीख 1	16 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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Conclusion:-

From the aforementioned findings, it is clear that the Learned Additional Collector has erred on various counts. These are, to summarise, as under:-

- a. He passed an order ex-parte and in the absence of the State which was a major stake holder. Yet he wrote in his order that *he heard both the parties*. This attempt to mislead is unbecoming of a Senior Officer of the rank of Additional Collector.
- b. He did not see any of the so called documents in support of the Appellant for the simple reason that most of these so called documents were not filed before the Court of the Learned Additional Collector.
- c. He did not mention or discuss a single document on merits or otherwise and given no indication as to how he found that the particular documents are supportive of the case of the Appellant.
- d. Howsoever small the fact may be, but it raises a suspicion that the Learned Additional Collector passed this order in an unnatural hurry just a few days before his retirement.

It is also clear the above findings that the Appellant is merely a front for the original landholder Sri Ram Rajeshwari Prasad Ojha.

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 17 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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It is also clear that no papers were submitted by the Appellant before the Learned SDO. I have my reasons, already mentioned above, to believe that no important papers were submitted before the Learned Additional Collector also. As per three lists, there were supposed to be nine documents. However, I could see photocopies only three documents, none of which were supportive of the Appellant.

That be the case, I find that the order passed by the Learned Additional Collector on 22.10.2014 cannot be supported and the same is hereby set aside. I, accordingly, restore the order of the Learned SDO dated 04.05.1996 passed in Land Ceiling Case No. 28/1973-74. Accordingly, the Learned Collector, Arwal may proceed further with the distribution of the land, if already not done so.

Let a copy of this order be sent to Principal Secretary, Department Of Revenue and Land Reforms for taking such action against the Learned Additional Collector who has since retired, as deem fit.

Revision Allowed.

Dictated & Corrected


K.K.Pathak
Additional Member
Board of Revenue, Bihar.


(K.K.Pathak)
Additional Member
Board of Revenue, Bihar.