

आदेश की क्रम सं० और तारीख	<p style="text-align: center;">आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p> <p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Surplus) Case No. - 17/2001 Dist.- Madhubani</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <hr/> <p>Mahanth Ramesh Ray Das - Petitioner/ Appellant Versus The State of Bihar & Others - Opposite party</p> <hr/> <p><u>Appearance:</u> For the Appellant/Revisionist : Shri Ranjan Kumar Dubey For the OP : For the State : Shri Nirmal Kumar, Special G.P.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>16.01.2017</p> <p>This is a Ceiling Surplus case filed on 18.04.2001 in compliance to the direction passed by the Hon'ble High Court in CWJC No. 12005/1996 dated 19.03.2001. Vide the said order, the Hon'ble High Court gave the freedom to the Petitioner of filing a Revision within one month.</p> <p>Upon filing of the Revision Application, the order of the Lower Court was stayed by the Hon'ble Member, Board of Revenue on 11.07.2001. The case was finally decided by the then Member on 28.07.2001 by refusing to allow the Petitioner a second unit on behalf of the deity under Section 5 of the Act.</p> <p>Aggrieved by the order of the Hon'ble Member, the Petitioner filed a writ CWJC Case 13441/2001 wherein the Hon'ble High Court vide its order dated 24.02.2009 quashed the order of the Hon'ble Member dated 28.07.2001 and remanded the</p>	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
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matter back to the Board of Revenue for passing order afresh within four months.

In compliance to the judgement, the Petitioner again filed a Revision before the Board of Revenue and since then this case remained part heard on many dates. Meanwhile a supplementary affidavit was also filed by the Petitioner.

On 28.02.2015, the then Learned Additional Member heard the Petitioner on the issue of stay which was allowed for a period of one month. Again on 18.03.2015, the stay was vacated by the Learned Additional Member.

Meanwhile, the Lower Court Records could not reach this Court. It was informed to this court that apparently that the Collector, Madhubani has been requested many times to send the records, however, the same are yet to be received.

This Court notes the letter of the Collector, Madhubani No. 321 dated 20.12.2016 wherein he has informed the Board of Revenue that the concerned case record belonging to the Court of the Collector Madhubani (Case No. 7/73-74) was sent to the then Standing Counsel No. 2 of the Patna High Court in the year 2002 in connection with filing of counter affidavit in CWJC No. 13441/2001. And, the Collector has been asking the Standing Counsel to send the case record back to Madhubani but the same has not been done.

To my mind, it appears that the Lower Court Records concerning the Collector Madhubani have been lost at the level of the Standing Counsel.

Meanwhile, the matter had come up for hearing in 14.12.2016 where the Petitioner wanted a short adjournment and the case was adjourned to 23.12.2016.

Finally, on 23.12.2016, the Learned Advocate of the Petitioner was heard in great detail. The Learned Special GP


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/	<p>was also heard and thus concluding the hearing, the matter was posted for order.</p> <p>However, it was felt by this Court that another attempt must be made to retrieve the lost record belonging to the Court of the Learned Collector, Madhubani. Accordingly, the District Authorities were requested again and the Collector was asked to depute the Deputy Collector Land Reforms to come down to Patna and locate the lost record with the Standing Counsel which was sent to him more than 14 years ago.</p> <p>On 29.12.2016, the Learned DCLR met me and said that he has approached the concerned Standing Counsel who has now been changed and is no longer the Standing Counsel. As per the said Standing Counsel, he has handed over all the records to the new Standing Counsel. The DCLR mentions that the exact position will be clear when the High Court reopens on 09.01.2017. Accordingly, he sought time from this court and the matter was accordingly adjourned for 10.01.2017 for final orders.</p> <p>However, as is evident, till today, the case record of Collector, Madhubani has not been located despite best efforts of the District Authorities. I have advised the Collector Madhubani to take the matter seriously and file case against concerned erring persons responsible for losing an important case record.</p> <p>In light of the above, it is futile to wait any further for the records belonging to the Court of the Learned Collector. Therefore, this order is now being passed today after concluding the hearing on 23.12.2016.</p> <p>As per the Learned Advocate of the Petitioner, the Land Ceiling Case No. 7/73-74 was initiated on the property located in village Rahika. The original land holder then was Mahant Ramashraya Das who is now no more. In his place, the Petitioner has been substituted namely Mahant Ram Punit Das.</p>	



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/	<p>The Learned Advocate further argues that the proceeding was initiated on approximately 62 bigha of lands. Notification under Section 10 (2) was issued on 26.04.1979 and the notification under Section 11 (1) was issued on 2.07.1979. During the pendency of the proceeding, Mahant Ramashraya Das voluntarily declared 10 acres of land surplus. When the Ceiling Proceeding was finally concluded and notification under Section 15(1) was issued on 01.04.1980, a total of 11.84 acres was declared surplus, of which 10 acres was declared by the Petitioner voluntarily. This is regarding the land situated at Rahika village.</p> <p>However, later on, in the year 1982, again a new Ceiling Case was opened and this time, it was concerning properties in two villages namely Rahika and Benipatti. On these proceedings, the Petitioner surrendered a total of 14.21 acres voluntarily, 10 acres in Rahika village and 4.21 acres in Benipatti village. These lands were distributed to the landless persons by the District Administration.</p> <p>The Learned Advocate further mentions that while the new proceeding was on, he filed objections before the Court of the Learned DCLR. The Learned DCLR after holding an enquiry, allowed two units to the Petitioner vide his order dated 10.07.1984. One unit was allowed to the Petitioner under Section 5 of Bihar Land Ceiling Act, 1961 and other unit was allowed under Section 29 (2) (a) (ii). The Learned DCLR then referred the matter to the Learned Collector for taking a view under Section 29 (2) (a) (ii).</p> <p>The Learned Advocate of the Petitioner further avers that the said clause i.e. 29 (2) (a) (ii) was deleted in 1995 but the same clause is not applicable in this case. He does not know what order the Learned Collector passed on the matter after being referred to him by the Learned DCLR. He is not aware as</p>	

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	<p>to whether the Learned Collector has confirmed the order of the Learned DCLR or not.</p> <p>He further mentions that during the pendency of the Writ in the Hon'ble High Court, he had filed a stay Petition and the Hon'ble High Court granted the stay vide its order dated 26.08.2003. The stay is still effective and the land is still in his possession.</p> <p>The Learned Advocate of the Petitioner while concluding the argument pleads that the specific relief he wants is that he may be allowed two units under Section 5 of the Bihar Land Ceiling Act, 1961.</p> <p>The Learned Special GP argues that the matter is still pending in the High Court and we should wait for the disposal of the matter by the Hon'ble High Court. To this, the Learned Advocate of the Petitioner intervened that the matter is no longer pending in the Hon'ble High Court. This Revision Petition was filed as a result of the liberty given to him by the Hon'ble High Court in CWJC No. 13441/2001 and hence requests an early disposal of his Revision Application.</p> <p>Thus concluding the hearing, this order is being passed today. Based on the arguments extended by the Learned Advocate and Learned Special GP and on perusal of the material available on the records, my own findings on the matter are as under:-</p> <p>(a) At first, I would clarify the legal position with respect to the numerous observations of the Hon'ble High Court in the instant case. There were mainly two Writs filed by the Petitioner i.e. CWJC No. 12005/1996 and CWJC No. 13441/2001. The first writ namely CWJC 12005/1996 was filed against the order of the</p>	



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/	<p>Learned Additional Collector dated 17.10.1994 in Ceiling Case No. 7/73-74. The said writ was finally disposed of on 19.03.2001 with the liberty to the Petitioner to approach the Revision before the Board of Revenue. The Petitioner filed the Revision on 18.04.2001 which was duly dismissed on 28.07.2001 by Hon'ble Member, Board of Revenue.</p> <p>(b) Against this order of the Board of Revenue, the Petitioner filed the second Writ namely CWJC No. 13441/2001 wherein the Hon'ble High Court had granted a stay on 12.11.2001. The stay was further reinforced by order dated 26.08.2003 in the same Writ. Finally, the writ was disposed of on 24.02.2009 wherein the order of the Hon'ble Member, Board of Revenue dated 28.07.2001 was set aside and the matter was remitted back to the Board of Revenue for considering it afresh within four months.</p> <p>(c) I wish to point out the two important paragraphs of the said order of the Hon'ble High Court dated 24.02.2009. With regard to the main issue at hand, the Hon'ble High Court had observed that <i>'the issue involved over the question is with regard to whether the Petitioner was allowed two units as claimed by them, relying upon the order passed in the Land Ceiling Case No. 7/73-74 vide order dated 10.07.1984 or <u>one unit plus the exemption.</u>'</i></p>	

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/	<p>This therefore amplifies the issue that this Court has to adjudicate.</p> <p>(d) The second important paragraph of the said judgement dated 24.02.2009, it says <i>'till the disposal stay application, the possession of the Petitioner over the lands pertaining the Plot No. 55, 62, 64, 58, 184, 186, 208, 218, 254, 227, 25, 343 detailed in the order dated 26.08.2003 passed in this case will not be disturbed'</i>. I note that the stay application was heard in detail by the then Learned Additional Member and the stay was finally vacated on 18.03.2015 and hence there is no further stay on the proceeding below and the order of the Learned Additional Collector is enforceable and can be implemented.</p> <p>(e) By the said order, the Hon'ble High Court has also disposed of the Writ CWJC No. 13441/2001 and hence it can be safely concluded that there is no case pending in the Hon'ble High Court. To that extent, the Learned Special GP was not correct on facts when he mentioned that the case is pending before the High Court. I tend to agree with the Learned Advocate of Petitioner that there is no Case pending on the Hon'ble High Court and the instant Revision Application may be decided on merit.</p> <p>(f) Therefore on the above issues, my two findings are that there is no High Court case pending and there is no stay on the operation of the order of the Learned Additional Collector.</p>	

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/	<p>(g) Coming to the merits of the case, I have perused the order of the Learned DCLR dated 10.07.1984 as well as the order of the Learned Additional Collector dated 07.10.1994 and 17.10.1994. It seems that this matter of the Ceiling Case was once settled in the year 1980.</p> <p>(h) However, in exercise of power under 46A, the matter was again opened up in the year 1982 vide order of the then Learned Collector on 09.09.1982. The Learned DCLR accordingly initiated the proceeding wherein the land holder filed his return under LC Form 2. Subsequently, on 11.06.1984, the land holder filed an application that there is Ram Janki Temple located on the land and hence a separate unit must also be given for the deity. The Learned DCLR held that the deity is also entitled for one unit of land for under Section 29 (2) (a) (ii), together with the land holder. Therefore, he is entitled for two units of land equal to 60 acres. Since, the total land available for the land holder is less than 60 acres, hence the Learned DCLR felt that the case is not covered under the land Ceiling Act. Since the unit was allowed for the deity under Section 29 (2) (a) (ii), for which the Collector is a Competent Authority, the Learned DCLR forwarded the entire Proceeding to the Learned Collector for orders under Section 29 (2) (a) (ii).</p> <p>(i) It is also clear that the matter had been finally adjudicated on this issue by the Learned</p> <p>16/11</p>	

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/	<p>Additional Collector in the year 1984 to whom this case was referred to by the Learned Collector by order dated 12.01.1989. The Learned Additional Collector passed an order on 07.1.1994/17.10.1994 and allowed one unit to the deity. He however found that out of the total land available of 54.50 acres, after deducting 30 acres for the Mahant, 0.69 acres of land validly transferred and 14.21 acres voluntarily surrendered, only 9.6 acres is left for the deity.</p> <p>(j) I also find that, the Petitioner had prayed before the Learned Additional Collector that this 9.6 acres, which is given to him on behalf of the deity, should be given under Section 5 and <i>not</i> under Section 29 (2) (a) (ii). The Learned DCLR, whereas, has given the deity land under Section 29 (2) (a) (ii). The Learned Additional Collector had heard the Petitioner on this issue and still felt that the recommendation of the Learned DCLR is correct. Accordingly, the proposal was sent to the State Government from where it came back with five objections. These objections were replied by the Learned Additional Collector after hearing the Petitioner and the case was again referred to the State Government on 14.11.1994. In the mean time, in the year 1995, the said exemption under Section 29 (2) (a) (ii) was deleted by the State Government and hence there was no further development on this front.</p>	

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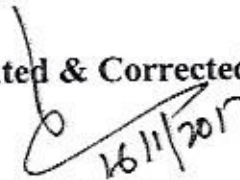

आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 10 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
/	<p>(k) Thus it can be safely held that the recommendation of exemption by the District Authorities under Section 29 (2) (a) (ii), which was only for a period of 5 years, was never approved by the State Government who is the competent authority in the matter. This therefore answers the main issue at hand, as delineated by the Hon'ble High Court in its judgement dated 24.02.2009, <i>as to whether the Petitioner was allowed only one unit or was allowed one unit plus the exemption</i>. This, therefore sufficiently proves that the Petitioner was only allowed one unit. The exemption under Section 29 (2) (a) (ii) was never allowed by the State Government even though it was recommended by the District Authorities, for, initially, a period of five years only.</p> <p>(l) The issue now at hand is whether the deity is entitled to one unit equalling 9.64 acres under Section 5 or under Section 29 (2) (a) (ii). The Petitioner, since the deletion of Section 29 (2) (a) (ii), has been pleading that the deity should also be given land under Section 5 of the Act. The Learned DCLR and the Learned Additional Collector have however held that the deity is entitled for exemption under Section 29 (2) (a) (ii) and <u>not</u> under Section 5.</p> <p>(m) I find it difficult to grant one more unit on behalf of the deity to the Petitioner under Section 5 of the Act for the following reasons:-</p> <p>16/11</p>	

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	<p>i. Vide order of the Hon'ble High Court dated 21.12.1922, Mahant Jaganath is the undisputed owner of the property. There is no mention of separate entitlement on behalf of the deity.</p> <p>ii. As per the sale deed executed by the Mahant Jaganath Das in the year 1964, Mahant Ramashraya Das (Petitioner) was declared the successor of all the property <i>including</i> the deity. Thus, whatever property that the Petitioner is claiming is not his personal property but the property on account of his being a Mahant otherwise succession would not have been through a sale deed.</p> <p>iii. There is no registered Samarpan Nama (surrendered deed) in the name of the deity. This also means that the deity is presume to have been looked after by the Mahant who is holding his share of property also on behalf of the deity.</p> <p>(n) From the above following reason, it can be concluded that the deity cannot be construed as a separate family within the meaning of the Section 2 (ee) of the Bihar Land Ceiling Act, 1961. And hence allotment of additional unit</p>	



आदेश की क्रम सं० और तारीख	<div style="text-align: center;">12 आदेश और पदाधिकारी का हस्ताक्षर</div> <div style="text-align: center;">2</div>	<div style="text-align: center;">आदेश पर की गई कार्रवाई के बारे में रिपोर्ट की तारीख सहित</div> <div style="text-align: center;">3</div>
/	<p style="text-align: center;">under Section 5 does not arise. Therefore, the Learned DCIR and Additional Collector were correct in granting the deity exemption under Section 29 (2) (a) (ii) instead of allotting an additional unit under Section 5.</p> <p>Conclusion:-</p> <p>Based on the forgoing findings, it can be held that the deity or any other Religious Institution cannot in itself survive unless it is looked after by a person (Mahant) behind the deity or a body of individual behind the Religious Institution. Had the word 'family' been included to mean the deity as well, the Government would not have included a separate chapter on exemption under Section 29 wherein elaborate arrangements were made for exemption applicable to Religious Institutions which were specifically for performing of Religious Rites and maintenance of Religious Institutions.</p> <p>After the deletion of the said exemption in the year 1995, naturally, the deity would or the Religious Institutions would not have any separate exemption. Therefore, the deity and Religious Institutions cannot have one unit in addition to the care taker or the body corporate of the Religious Institutions at the same time.</p> <p>Under the word 'family', one cannot include two persons where one person is the Religious Institution and second person is the body of persons running the Institution. Similarly under Section 5, one cannot get one unit to the deity and another unit for the Mahant, who looks after the deity. It has already be observed by me that the Mahant has already been allowed 30 acres (one unit) of land which he got by virtue of being a Mahant and not been a landlord because the original landlord was Sri</p>	

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आदेश की क्रम सं० और तारीख	<p style="text-align: center;">13 आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p>	<p style="text-align: center;">आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित</p> <p style="text-align: center;">3</p>
	<p>Mahant Jagannath and upon his death the entire property of 54 acres would have vested in the State.</p> <p>Therefore, the Petitioner have been allowed 30 acres of land, <u>not</u> in his capacity as a private person but as a Mahant heading a Religious Institution and looking after a deity. Therefore, he cannot claimed two units of land – one for himself and one for the deity under Section 5 perhaps, had Section 29 (2)(a)(ii) not been deleted, still the State Government may not have approved a separate exemption for deity but all this remains in the realm of speculation because the State Government delete the clause before it could consider any exemption to the deity.</p> <p>That be the case, I find difficult to grant separate unit to the deity under Section 5 of the Act.</p> <p>Revision application is dismissed with the direction to the Learned Collector to proceed further in the matter.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>16/11/2017</p> <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>16/11/2017</p> <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	