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<p>19.12.2016</p> <p><i>[Signature]</i> 17/12</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.- 61/2015 Dist.- East Champaran</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Shanti Devi and Others - Petitioner/ Appellant</p> <p style="text-align: center;">Versus</p> <p>The State of Bihar & Others- - Opposite party</p> <p>=====</p> <p><u>Appearance:</u></p> <p>For the Appellant/Revisionist : Shri Umakant Tiwari</p> <p>For the OP :</p> <p>For the State : Shri Nirmal Kumar, Special G.P.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Ceiling Surplus Case which was filed on 07.01.2016 against the order of the Learned Divisional Commissioner Muzaffarpur in Miscellaneous Case No. 61/2015 arising out of Ceiling Appeal No. 1/2003-04. The matter was heard on 09.02.2016 by the Hon'ble Member himself and the case was admitted and delay was condoned. Accordingly, the lower court records were sought and were received.</p> <p>The case came up for hearing 06.12.2016 but the Petitioner himself was absent. Notices were again sent that if he does not appear on next date, that the matter will be decided ex-parte. The Case was finally heard on 16.12.2016. The Petitioner was absent, however the Learned Special GP was present. He argued that this case has been delayed by the Petitioner needlessly by keeping the proceeding pending for some reason or</p>	

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	<p>other. The Petitioner knows that if the proceeding remains pending, the land so declared surplus in this Ceiling Proceeding drawn in 1973-74 cannot be distributed thus benefiting the Petitioner.</p> <p>The Learned Special GP urged the court to decide the matter in the interest of justice as the land holder is trying to defeat the ceiling law.</p> <p>I have perused the material available on the record as also the lower court records pertaining to the court of the Divisional Commissioner.</p> <p>As regards the background of the matter, it will be pertinent to mention that this case has come to the Board of Revenue on two occasions before also. On the very first occasion, the Board dismissed the Revision on the ground that the Board has no power to condone the delay. Aggrieved by this order the petitioner moved the Patna high court which remanded the Case back to the Board for disposal on merit.</p> <p>Subsequently, in Case no 137/1989, the Board vide order dated 14.11.1994 passed a speaking order and remanded this case to the Divisional Commissioner on the issues raised in the Revision application and dispose of the case on merit. This order was passed on 14.11.1994 but the Petitioner, quite mischievously, did not make an application before the Hon'ble Divisional Commissioner for about 8 years and filed an application only on 17.01.2003 claiming that the Board had not given any time limit for filing the application.</p> <p>However once it is filed, the Divisional Commissioner should have passed a reasoned order based on merit. I have perused the order of the Divisional Commissioner dated 29.04.2013 which says that 'Application is dismissed for lack of material'.</p>	

आदेश की तारीख

आदेश और पदाधिकारी का हस्ताक्षर

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आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित

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Aggrieved at this order, the Revisionist again went to the Court of Divisional Commissioner and asked for restoration of its Appeal no 01/2003-04. The Learned Divisional Commissioner vide order dated 22.09.2015 felt that the order of the earlier Divisional Commissioner dated 29.04.2013 is an order passed on merit. He further mentions that since this order is passed on merit, the Divisional Commissioner cannot review his own order and he rejected the restoration appeal vide order dated 22.09.2015.

I have perused both the orders of the Divisional Commissioner dated 29.04.2013 and 22.09.2015. I am constrained to hold that the order dated 29.04.2013 cannot be called an order passed on merit, whereas the direction of the Board, vide order dated 14.11.1994, was to pass the order on merits. Nor do I agree that there is a lack of material. The Appellant has raised significant issues before the learned Divisional Commissioner as can be seen from the lower court record itself. Some of the issues, inter alia, that required the attention of the learned Divisional Commissioner were :-

- (a) Whether the descendants of Shiv Lal Kuwar are entitled to half the share in the entire property
- (b) Whether separate units are allowed and allotted to Appellant no 1,2,3 and 4 depending upon their age as on 09.9.1970.
- (c) Whether the Appellant indeed be allowed half share of the entire property (approximately 28 acres)

These are the some of the issues which required the attention of the learned Divisional Commissioner who should have passed a reasoned order taking the cue from the order passed by the learned Collector, Each Champaran in the Ceiling Case no 42/73-74 and Revenue Misc case no 12/87-88.

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Therefore, it will not be correct to say that there is no material for consideration. Hence the order of the Divisional Commissioner dated 29.04.2013 cannot be treated as the one passed on merit. Accordingly, I remand the case back to the Divisional Commissioner to pass a reasoned order on merit in light of the order of the Board of Revenue dated 14.11.1994. I also order the Petitioner to file an application before the learned Divisional Commissioner within 15 days of this order who shall pass an order on merit within three months.

Considering the past mischievous record of the Petitioner, I also advice the Divisional Commissioner to not to wait for the Petitioner to file an application in his court and instead issue a notice to the Petitioner as soon as a copy of the order is received by the Divisional Commissioner. The Divisional Commissioner shall then proceed to pass an order based on merit within three months.

Dictated & Corrected
19/12/2018
K.K.Pathak
Additional Member
Board of Revenue, Bihar.

19/12/2018
(K.K.Pathak)
Additional Member
Board of Revenue, Bihar.