

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1393 of 2004

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Ram Ratan Singh son of Late Parmeshwar Singh, resident of Village-
Ganiyari, P.S. Desri, District- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Vaishali
3. Ganga Chaudhary son of Nand Lal Chaudhary, resident of Village-
Naya Gaon, Post- Naya Ganj, P.S. Desri, District- Vaishali (Expunged
vide order dated 29.09.2004)
 - (a) Ashok Choudhary
 - (b) Manoj Choudary
 - (c) Vinay Choudhary,
 - (d) Sudha Devi
 - (e) Mamta Devi, All sons and daughters of late Ganga Choudhary,
resident of Village- Naya Gaon, Post- Naya Ganj, P.S. Desri,
District- Vaishali
4. Ram Ishwar Choudhary son of late Babu Lal Choudhary of Village
Mohammadpur, Muradpur @ Naya Gaon Ganj, P.S. Desari, District
Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shrinand Pd. Singh,
Mr. Manoj Kumar I
Mr. Ashok Kumar I

For the Respondent No.1 & 2 : Mrs. Nutan Sahay, AC to SC 1.

For the Respondent No. 3 & 4 None.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 31-07-2013 Heard learned counsel for the petitioner and the learned
State counsel appearing on behalf of the respondent no. 1 and 2.
However, despite valid service of notice on substituted heirs and
legal representatives of deceased respondent no.3 as also
respondent no.4, none has appeared on their behalf to oppose the
prayer made in the present writ petition.

The petitioner is aggrieved by an order dated 12.01.1996/
27.02.1996 (Annexure-1) passed in Revenue Miscellaneous Case
No. 61 of 1993-94 by the respondent District Collector, Vaishali
in purported exercise of his powers under Section 32 of *The Bihar*


Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short “the Act”).

Learned counsel for the petitioner submits that the impugned order is an ex-parte order and has been passed against a dead person, who was the vendor of the petitioner. It has been specifically stated in paragraph-9 of the writ petition that no notice was served either upon the petitioner or his vendor Ganga Choudhary. It has further been stated that the aforesaid Ganga Choudhary was already dead when a petition under Section 32 of the Act was filed by the respondent No. 4 Ram Ishwar Choudhary before the respondent District Collector.

Though the present writ petition was filed on 30.01.2004 and the matter has remained pending before this Court for more than 9 years, yet no counter affidavit has been filed either on behalf of the respondent District Collector, or on behalf of the contesting respondent no. 4. From the findings recorded by the respondent District Collector also it appears that at the time of passing the impugned final order one of the executants of deed of partition was dead.

After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the impugned order dated 12.01.1996/ 27.02.1996 (Annexure-1) passed in Revenue Miscellaneous Case No. 61 of 1993-94 by the respondent District Collector, Vaishali is not sustainable in law on the ground of violation of the principles of natural justice as also on the ground that it was passed against a dead person. Hence, matter requires reconsideration and fresh decision by the respondent District Collector, Vaishali.

For the reasons recorded above, the impugned order dated



12.01.1996/27.02.1996 (Annexure-1) passed in Revenue Miscellaneous Case No. 61 of 1993-94 by the respondent District Collector, Vaishali is hereby set aside and the matter is remitted back to the respondent District Collector, Vaishali with a direction to re-hear and re-decide the matter afresh in accordance with law after giving an opportunity of hearing to all the parties including the petitioner. While passing a fresh final order the respondent District Collector, Vaishali shall be obliged to consider and decide all the issues of facts and law raised on behalf of the parties by a reasoned and speaking order.

In order to expedite the matter, the petitioner is directed to appear before the respondent District Collector, Vaishali with a certified copy of the present order within a period of six weeks from today. Whereafter, the respondent District Collector, Vaishali shall fix a firm date and shall proceed to decide the matter in accordance with law after giving an opportunity of hearing to all concerned including the petitioner and the private respondents.

It is clarified that if the petitioner fails to appear before the respondent District Collector, Vaishali within the time prescribed, in the manner indicated above, then it shall be construed that the present writ petition filed on behalf of the petitioner stood rejected on account of non-compliance of the order of this Court, and in that case the respondent District Collector, Vaishali and/or private respondents shall be at liberty to get the impugned order implemented.

(Birendra Prasad Verma, J)

BTiwary/-