



2026:PATHC:77743-D

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 225 of 2023

In

Civil Writ Jurisdiction Case No.2041 of 1993

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Anil Kumar, Male, Son of Late Ram Charitra Prasad Singh, Resident of
Village- Walipur, P.S.- Pipariya, District- Lakhisarai.

... .. Appellant/s

Versus

1. The Patna Regional Development Authority through its Vice-Chairman,
Maurya Lok, P.S.- Kotwali, Town and District- Patna.
2. The State of Bihar.
3. The Patna Municipal Corporation, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abhay Shankar Singh, Advocate
For the State	:	Mr. Yogendra Pd. Sinha, AAG 7
For the PMC	:	Mr. Prasoon Sinha, Sr. Advocate
		Mr. Prabhat Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 03-08-2026

The present appeal has been filed against the order dated
30.01.2015 passed by the Ld. Single Judge of this Court in CWJC
No.2041 of 1993 after a delay of 6 years and 334 days *i.e.*
approximately seven years.

2. Though the present appeal has been listed before this Court
to consider I.A. No.1 of 2023, which has been filed for condoning





delay of approximately seven years in filing the present appeal, however we have heard the learned counsel for the appellant on merits as well.

3. The learned counsel for the appellant has submitted by referring to the Interlocutory Application bearing I.A. No.1 of 2023 that the reason for delay in filing the present appeal is that firstly, the case file was misplaced from the Office of the conducting lawyer and despite several attempts, the appellant could not trace his file, whereafter he had applied for the certified copy of the entire records of the aforesaid writ petition bearing CWJC No.2041 of 1993 and after getting the same, he had approached the present counsel in the month of January, 2023 and secondly, the father of the appellant who was looking after the case had died on 02.01.2015, the month in which the impugned order dated 30.01.2015 was passed and since the appellant is a Professor at Visva Bharati University, Shantiniketan, West Bengal, he rarely visits Patna, thus he could not pursue the case diligently. It has also been stated that the previous lawyer of the appellant was elevated to the Bench of this Hon'ble Court in the year 2021 resulting in lack of communication and the file being not traced in his chamber. It is further submitted that the Hon'ble Apex Court by its order dated 10.01.2022 passed in *Miscellaneous Application No.*





21/2022 in *Suo Motu Writ Petition (C) No.3/2022* has directed that on account of outbreak of COVID-19 Pandemic, the period from 15.03.2020 to 28.2.2022 shall stand excluded for the purpose of calculation of the period of limitation. Thus, it is submitted that the delay be condoned and the appeal be heard on merits.

4. We find that there is inordinate delay of approximately seven/eight years on the part of the appellant in filing the present appeal. The impugned order was passed on 30.01.2015, however it is apparent from the averments made in I.A. No.1 of 2023 that the appellant had been making attempts to retrieve his case file from the Office of the conducting lawyer and obtaining the certified copy of the entire records of the said writ petition bearing CWJC No. 2041 of 1993 from the High Court for a period of approximately eight years, which is neither believable nor can be a sufficient cause so as to condone the inordinate delay which has taken place in filing the present appeal. Even if the period of approximately two years as directed by the Hon'ble Apex Court to be excluded for the purpose of limitation is considered, still there is delay of approximately six years in filing the present appeal for which no plausible explanation, whatsoever has been furnished.

5. In this regard, we would quote a maxim which reads as follows: "*Vigilantibus non dormientibus jura subveniunt*", which





means that the law assists those who are vigilant and not who sleep upon their rights. We would first refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon Medium Project & Another*** reported in (2008) 17 SCC 448, paragraph Nos. 26 to 30 whereof are reproduced herein below:-

“26. Basically, the laws of limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, Para 605, the policy of the Limitation Acts is laid down as follows:

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

27. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This Court in Rajender Singh v. Santa Singh [(1973) 2 SCC 705] has observed: (SCC p. 712, para 18)

“18. The object of law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.”

28. In Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] this Court observed that this principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be





end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

6. We would gainfully refer to a judgment rendered by the Hon'ble Apex Court in the case of ***P.K. Ramachandran vs. State***





of Kerala & Another reported in (1997) 7 SCC 556, Paragraph No.6 whereof is reproduced herein below:-

“6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs.”

The aforesaid principle of law laid down by the Hon’ble Apex Court has already been noted in a judgment rendered by the Hon’ble Apex Court in the case of *Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors.*, reported in (2021) 18 SCC 384.

7. It would be apposite to refer to yet another judgment rendered by the Hon’ble Apex Court in the case of *Thirunagalingam vs. Lingeswaran & Another* reported in 2025 SCC OnLine SC 1093, paragraph Nos. 28 to 34 whereof are reproduced herein below:-

“28. Since the Respondents assigned the very same reasons in I.A. No. 1 of 2022 in Unnumbered A.S. No... of 2022 as raised in I.A. Nos. 462 of 2018 and 119 of 2019 that had already been dismissed by this Court vide S.L.P. (C) Nos. 2054 & 2055 of 2022, the application for condonation of delay of 1116 days cannot be sustained. This Court in S.L.P. (C) Nos. 2054 & 2055 of 2022, after





going through the evidence placed on record, rightly held that the delay has not been properly explained. The relevant portion of the order is reproduced hereunder:

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained, and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

5.1 In the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under:

“The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the





courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

6. In view of the above and for the reasons stated above, we are in complete agreement with the view taken by the High Court. The Special Leave Petitions stand dismissed.

Pending application, if any, also stands disposed of.”

29. Therefore, this Court, having previously adjudicated upon the application for condonation of delay filed in I.A. Nos. 462 of 2018 and 119 of 2019, and having rendered a reasoned order passed in S.L.P. (C) Nos. 2054 & 2055 of 2022, after a thorough perusal of the evidence & materials on record, held that the grounds put forth were insufficient to constitute ‘sufficient cause’ under Section 5 of the Limitation Act, 1963. An order of this Court, passed upon judicial consideration, attains finality unless set aside through appropriate appellate or review mechanisms.

30. In the present appeal, the Respondents seek to raise the very same reason to condone the delay as were previously canvassed, without placing any fresh or additional material to distinguish the current reason from the one already discussed and dismissed. This Court is of the considered view that such a repetition of grounds already scrutinized and held untenable amounts to an abuse of the process of law. Although the applications for condonation of delay are filed under different provisions of the law but the said provisions provide for concurrent remedies through different mechanisms and if the application filed under one provision has already been dismissed by a court of competent jurisdiction, by applying its judicial mind and held that the reasons for delay were not sufficient, a subsequent application filed under different provision, reiterating the same contentions or grounds of delay, cannot be entertained.





31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.

33. Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.

34. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the Impugned Order dated 25.04.2023 passed by the High Court is liable to be set aside and is, accordingly, set aside.”

8. We would also refer to a judgment rendered by the Hon’ble Apex Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*** reported in (2013) 12 SCC 649, paragraph Nos. 20 to 27 and 30 to 33 whereof are reproduced herein below:-





“20. In B. Madhuri Goud v. B. Damodar Reddy [(2012) 12 SCC 693] the Court referring to earlier decisions reversed the decision of the learned Single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the





former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. *(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. *(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. *(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. *(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. *(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1. *(a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*





22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

23. Presently to the assertions made in the application for condonation of delay and the asseverations in oppugnation of the same. It may be stated here that the Division Bench while dealing with the application for condonation of delay has also adverted to the legal tenability of the interim order in a matter of appointment and approval of a teacher, and condoned the delay. It does not require Solomon's wisdom to perceive that the delay was colossal.

24. In the application for condonation of delay the appellant before the High Court had stated about the circumstances in which the order came to be passed by the learned Single Judge, the order in the earlier contempt petition and the second petition for contempt, the extinction of right of the respondent employee to continue in the post and thereafter proceeded to state the grounds for condonation of delay. We think it apposite to reproduce the grounds:

“14. That from the record it appears that the order impugned was communicated to the then Managing Committee including the headmaster in question and the said fact is totally unknown to the newly elected Managing Committee as they have been elected on 20-9-2009 and they have been handed over charge on 21-11-2009 and to the teacher in charge who has been





handed over charge on 1-3-2010. It is pertinent to mention in this context that after having received the notice and the contempt application the applicants entrusted the learned advocate for taking appropriate steps and they have been advised to defend the case but due to miscommunication the applicant herein again handed over the brief from Mr Banik, learned advocate to Mr Baidya, learned advocate. After having received the said papers and after perusing all the records he opined to prefer an appeal before the appeal court or to prefer an application for vacating the interim order and ultimately the same was filed on 7-6-2010 after several pursuance in spite of taking the application for vacating the interim order the court below day to day is proceeding with the contempt application.

15. Having got no other alternative applicant have been advised to prefer an appeal without certified copy and the leave has been prayed for & the same was allowed.

The photocopy of the receipt for application of xerox certified copy is annexed herewith and marked with letter 'A'.

16. That the delay occasioned in presenting the said mandamus appeal has taken place due to the aforesaid reasons which was beyond the control of the applicants and was completely unintentional."

25. Thereafter, the applicant therein stated about the duty of the court while dealing with the application for condonation of delay and in that context, proceeded to state as follows:

"Nonetheless adoption of strict standard of proof may lead to grave miscarriage of public justice apart from resulting in public mischief by skilful management of delay in the process of filing the appeal, the appellants/ applicants do not stand to benefit from the delay of about 2449 days occasioned in preferring the said mandamus appeal, nor is it a fact that the writ petitioners/respondents will be immense/prejudiced if





such non-deliberate delay is not condoned. There has not been deliberate delay as would be evidenced from the foregoing paragraphs. Refusing to condone such non-deliberate delay may result in meritorious matters like the instant case, being thrown out at the very threshold and the cause of justice being defeated. As against this when delay is condoned the highest that can happen in the instant case is that a cause would be decided on merits after hearing the parties.”

26. The said grounds were opposed by the contesting respondent therein by stating, inter alia, that the school authorities were very much aware of the order dated 25-2-2004 [Esha Bhattacharya v. State, WP No. 6124 (W) of 2004, order dated 25-2-2004 (Cal)] as the same was communicated to them by her counsel as well as by the District Inspector of Schools. That apart, an undertaking was given before the learned Single Judge by the Managing Committee. Quite apart from the above, in any case, the new Managing Committee that had come into being in 2009 was aware of the order but it chose not to assail the order till there was a direction for personal appearance of the Secretary and the teacher-in-charge. It was further put forth that the grounds urged did not justify condonation of such enormous delay and the plea of prejudice was not at all tenable.

27. On a perusal of the grounds urged in the affidavit and the stand put forth by the respondents herein for condonation of delay are that they were not aware of the order passed by the learned Single Judge till they received the notice of the contempt application and thereafter because of miscommunication between the counsel and the parties no steps could be taken and, eventually, an application for vacation of stay was filed and thereafter, the appeal was preferred. That apart, it has been urged that if delay is not condoned there will be great miscarriage of public justice resulting in public mischief and cause of justice would be defeated if the meritorious matter like the present one is thrown at the threshold.





30. At this juncture, we are obliged to state that the persons who are nominated or inducted as members or chosen as Secretaries of the Managing Committees of schools are required to behave with responsibility and not to adopt a casual approach. It is a public responsibility and anyone who is desirous of taking such responsibility has to devote time and act with due care and requisite caution. Becoming a member of the committee should not become a local status syndrome. A statutory committee cannot remain totally indifferent to an order passed by the court and sleep like “Kumbhakarna”. The persons chosen to act on behalf of the Managing Committee cannot take recourse to fancy & rise like a phoenix & move the court.

31. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice.

32. The plea of lack of knowledge in the present case really lacks bona fides. The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from N. Balakrishnan [N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123]:

“11. ... The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort





to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

We have painfully restated the same.

33. Ex consequenti, the appeals are allowed and the order passed by the Division Bench condoning delay is set aside. As a result of such extinction the appeal before the Division Bench of the High Court shall also stand dismissed.....”

9. Having regard to the facts and circumstances of the case and considering the law laid down by the Hon’ble Apex Court in a catena of decisions, as aforesaid, apart from considering the averments made in the application filed by the appellant for condonation of delay, we are of the opinion that no explanation whatsoever much less sufficient cause or satisfactory explanation has been offered much less shown by the appellant for condonation of enormous delay of about approximately seven years in preferring the present appeal. Therefore, since the appellant has failed to demonstrate reasonable ground of delay in pursuing the matter, we do not find that sufficient cause has been shown by the appellant so as to warrant condonation of delay of about seven years in filing the present appeal, thus the present appeal stands dismissed on the ground of delay.

10. Nonetheless, coming to the merits of the case, we find that the writ petition was filed for directing the respondents to execute deed of lease for the land for which the father of the appellant had





offered his bid and the offer was accepted as also for directing the respondents to give vacant possession of the land in question. The deceased-father of the appellant Late Ram Charitar Prasad Singh was offered a plot by Patna Improvement Trust vide letter dated 31.01.1963 and he was asked to deposit certain amount, however it was made clear that the delivery of the possession of the plot could be given to him after the site was cleared by the Patna Municipal Corporation. Nonetheless, the said plot could not become vacant, hence the Patna Improvement Trust *vide* Resolution dated 24.08.1964 had taken a decision that in case the plot in question is not vacant, the successful bidder be asked to wait till vacation of land or in the alternative they may take back their money. The deceased-father of the appellant had then filed a writ petition bearing CWJC No.384 of 1968, *inter alia* seeking a direction for handing over the plot in question to him, however the same was held to be not maintainable by the Ld. Division Bench of this Court *vide* judgment dated 07.04.1969, relevant portion whereof is reproduced herein below:-

“As the right of possession which the petitioners claims is based on a contract, it is difficult for this Court in exercise of writ jurisdiction to give adequate relief to the petitioner. Realizing that difficulty Mr. Mazhar Hussain, learned counsel appearing for the petitioner sought permission to





withdraw this application. This application is accordingly permitted to be withdrawn.”

11. In fact, the Ld. Single Judge by the impugned order dated 30.01.2015, has also held that apparently no writ petition can lie to enforce a pure and simple contractual right emanating from the letter of allotment and the Patna Improvement Trust, way back in the year 1964 has very clearly resolved that the plot in question can be handed over to the successful bidder if the same gets vacant or in the alternative the successful bidder can take back his money. Therefore, the Ld. Single Judge has held that after a lapse of more than 50 years, it would be impossible to bring back the situation of the year 1963, specially when the Patna Improvement Trust is no longer in existence and even its successor body, i.e. PRDA has been abolished.

12. Nonetheless, the Ld. Single Judge had been generous to give the utmost relief possible to the appellant herein by holding that the Patna Municipal Corporation is successor in Office as per the Statute of the Patna Improvement Trust and the PRDA, hence it is bound by the earlier Resolution of the Patna Improvement Trust dated 24.08.1964, thus at best it can be directed to return the money to the legal heirs of the deceased father of the appellant. In such view of the matter, the Ld. Single Judge, by the impugned order dated 30.01.2015, had disposed of the writ petition with an





observation that in case the legal heirs of the father of the appellant approach the Office of the Patna Municipal Corporation, the decision to refund the amount in question will be taken and the amount shall be paid to the concerned person in accordance with law with simple interest @ 9 % per annum and in the alternative if the appellant does not want to get such amount with interest, it will be open to him to enforce his contractual right by filing a civil suit before the appropriate Civil Court.

13. On merits, the learned counsel for the appellant has advanced only one argument that is to the effect that the Hon'ble Apex Court in **Special Leave to Appeal (C) No(s). 19586 of 2017 (Namita Ojha vs. State of Bihar & Ors.)**, by an order dated 17.09.2018, in somewhat similar case, has been pleased to direct the Patna Municipal Corporation to look for an available plot which can be allotted to the petitioner of the said case, whereafter the plot was identified and on account of intervention of the Hon'ble Apex Court, the petitioner of the said case was allotted an alternative plot.

14. On merit, we find that the writ petition filed by the father of the appellant *i.e.* the one bearing CWJC No. 2041 of 1993, was/is itself barred by the principle of the *res judicata* and constructive *res judicata* in terms of Section 11 and Order II, Rule 2 of the





Code of Civil Procedure, 1908. It is a well settled law that the Courts are barred from trying any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court.

15. It is equally a well settled law that the principles of *res judicata* and constructive *res judicata* as provided for in the Code of Civil Procedure, 1908 are also applicable to writ petitions. In this regard, reference be had to the Constitution Bench judgment of the Hon'ble Apex Court rendered in the case of ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Others***, reported in **(1990) 2 SCC 715**.

16. Thus, we find that since the deceased father of the appellant had filed a writ petition bearing CWJC No. 384 of 1968, *inter alia* seeking same and similar reliefs as has been sought for in the connected writ petition and the Ld. counsel had withdrawn the said writ application, now filing yet another writ petition seeking same and similar reliefs as had been prayed for in the earlier writ petition or for that matter seeking such reliefs which might have been omitted in the earlier round of litigation, the connected writ





petition *i.e.* CWJC No. 2041 of 1993 is clearly barred by the principles of *res judicata* and constructive *res judicata*.

17. Yet another aspect of the matter is that the resolution of the Patna Improvement Trust dated 24.08.1964, which was never challenged by the father of the appellant, clearly stipulates that in case the plots in question are not vacant, the successful bidders be asked to wait till vacation of the land or in the alternative to take back their money, hence we find that in conformity with the said resolution dated 24.08.1964, the Ld. Single Judge has been more than considerate in directing the Patna Municipal Corporation to refund the amount in question along with simple interest @ 9 % per annum and in the alternative has also given liberty to the appellant to enforce his contractual right by filing a civil suit before an appropriate civil court. Thus, we do not find the impugned order dated 30.01.2015, passed in CWJC No. 2041 of 1993 to be suffering from any infirmity, hence the present appeal being devoid of any merit is dismissed both on limitation as well as on merits.

18. At this juncture, we would refer to an order dated 17.09.2018, passed by the Hon'ble Apex Court in **Special Leave to Appeal (C) No(s). 19586 of 2017 (Namita Ojha vs. State of Bihar & Ors.)**, referred to by the Ld. Counsel for the appellant,





from which it is apparent that since the Patna Municipal Corporation was ready and willing to offer an alternative plot, the Hon'ble Apex Court had disposed of the Special Leave Petition by observing that vacant and peaceful possession will be handed over to the petitioner within a period of four weeks, however no law was decided in the said case, hence the same cannot be treated as a precedent.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	
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Transmission Date	

