
(2013) 02 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 3653 of 2007

Jagnarayan Rai @ Dharikshan Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 2 PLJR 231

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Rang Nath Choubey, for the Appellant; Rajiv Ranjan Kumar Pandey and Krityanand Jha, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard learned counsel for the petitioner, learned A.C. to Addl. Advocate General No. 7, who appears on behalf of respondent nos. 1 to 4 as well as Sri Rajeev Ranjan Kumar Pandey, learned counsel appearing on behalf of respondent no. 5. In the present writ petition, the petitioner, who is full brother of respondent no. 5, has prayed for quashing of:

1. order dated 5.2.2001 passed by the Circle Officer, Dumraon in Mutation Case No. 1444 of 2000-2001, as contained in Annexure-"2",
 2. order dated 17.7.2003 passed by the D.C.L.R., Dumraon in Case No. 20 of 2002-2003, as contained in Annexure-"3",
 3. order dated 16.10.2006 passed by the Collector, Buxar in Mutation Revision No. 113 of 2003/377 of 2006, as contained in Annexure-"4" and
 4. confirming order dated 30.3.2000 passed by the Circle Officer, Dumraon, Buxar in Mutation Case No. 1144 of 1999-2000, as contained in Annexure-"1",
2. It was submitted by learned counsel for the petitioner that land pertaining to Khata No. 133 & Kheshra No. 1613, Khata No. 48 & Kheshra No. 591 and Khata No. 77 & Kheshra No. 714 was earlier mutated in the name of petitioner,

however; subsequently, without any notice to the petitioner, the respondent no. 5 filed a mutation case and in camp court, Mutation Case No. 1444 of 2000-2001 was allowed. In the said case, no notice was issued to the petitioner. Aggrieved with the order of the Circle Officer, Dumraon, Buxar (hereinafter referred to as "Circle Officer") dated 5.2.2001, the petitioner preferred an appeal before the D.C.L.R., Dumraon, Buxar (hereinafter referred to as "D.C.L.R.") vide Case No. 20 of 2002-2003. It was argued that though learned counsel for the petitioner was not present on the date of hearing, the learned D.C.L.R., instead of dismissing the petition for non-prosecution, had decided the appeal on merit and in similar manner, the Collector, Buxar has rejected the petition filed by the petitioner, vide Case No. 113 of 2003/377 of 2006 by order dated 16-10-2006. It was argued by learned counsel for the petitioner that once a petition was entertained by the D.C.L.R. and on the date of hearing, counsel for the petitioner was not present, the learned D.C.L.R. would have either extended the date of hearing or due to non-prosecution, he would have rejected the petition. However, the learned D.C.L.R. decided the appeal on merit and similarly, the Collector has passed the impugned order.

3. Learned counsel appearing on behalf of private respondent i.e. respondent no. 5 submits that since repeatedly none had appeared on behalf of petitioner before the D.C.L.R. and as such, the D.C.L.R. has rightly rejected the memo of appeal, which requires no interference.

4. After hearing the parties and considering the materials available on record, the Court is of the opinion that once appeal was preferred by the appellant and it was entertained, the learned D.C.L.R. in the event of non-appearance was either required to dismiss the appeal due to non-prosecution or he would have deferred the hearing, but in any event, without hearing or in absence of learned counsel for the appellant, the D.C.L.R. was not authorized to decide the appeal on merit and on this ground alone, the Court is of the opinion that order passed by the D.C.L.R. in Case No. 20 of 2002-2003 dated 17.2.2003 is required to be interfered with. Since the order of the D.C.L.R. was not in accordance with law, obviously order passed by the Collector, Buxar in Mutation Revision No. 113 of 2003/377 of 2006 is not sustainable and as such, both orders i.e. order dated 17-02-2003 passed by the D.C.L.R. in Case No. 20 of 2002-03 as well as order dated 16-10-2006 passed by the Collector in Mutation Revision No. 113 of 2003/377 of 2006 are, hereby, set aside and the matter is remitted back to the Court of D.C.L.R., Dumraon to decide the case i.e. Case No. 20 of 2002-03 afresh after filing the date for hearing and giving opportunity to both the parties. In case of non-appearance or non-cooperation by the petitioner's counsel, the learned D.C.L.R. would be at liberty to dismiss the appeal due to non-prosecution.

5. With above observation and direction, the writ petition stands disposed of. It goes without saying that this Court has not recorded any opinion on merit of the case.