
(2019) 11 JH CK 0086

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 393 Of 2012

State Of Jharkhand

APPELLANT

Vs

Nasiruddin Ansari & Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 87(1)

Citation : (2019) 11 JH CK 0086

Hon'ble Judges : Aparesh Kumar Singh, J; Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Manoj Tandan, Navneet Sahay

Judgement

Considering the huge delay of 1587 days in preferring the instant memo of appeal on the part of the State, a Co-ordinate Bench of this Court vide

order dated 04.09.2018 read with order dated 01.10.2018 directed the Chief Secretary to file an affidavit on certain points. Two affidavits have been

filed by the Chief Secretary, State of Jharkhand, Ranchi, the first one dated 25.01.2019, which is rather voluminous one and the second one on

15.02.2019. Based on the first affidavit, statement has been made at para 10 of the second affidavit to the effect that no erring officer could be

identified for the delay in preferring the appeal.

State is aggrieved by the impugned judgment dated 15.04.2008 primarily for two reasons as canvassed by the learned counsel for the State: (i) that the

learned Single Judge failed to address on the main prayer of the writ petitioners which sought quashing of an order of the Deputy Commissioner,

Dhanbad whereby a long standing jamabandi in the name of the ancestors of the writ petitioners was cancelled; (ii) without adjudicating on the first

prayer the learned Single Judge directed the Deputy Commissioner, Dhanbad to pay the amount of compensation to the petitioners forthwith, if there is no other legal impediment within the stipulated period with a condition of payment of interest in default of payment apart from statutory interest. This was a prayer made apparently in I.A. No.290 of 2008 during pendency of the writ petition. Another Interlocutory Application being I.A. No.938 of 2008 was also preferred by the petitioners to bring on record further developments like the decision of appeal and acquisition of land by the respondents.

Learned counsel for the State has taken pains to explain the delay as worked out from the detail supplementary affidavit of the Chief Secretary dated

25.01.2019 which refers to a report of Four Men Committee constituted by the Deputy Commissioner, Dhanbad on complaints receipt from number of

persons with respect to the land acquired in mouza-Bhelatand (Thana No.89) for construction of Water Treatment Plant (under Dhanbad Water

Supply Project). He has also referred to an inquiry report by seven members committee, another Departmental Inquiry Committee under the

Chairmanship of Special Secretary, Department of Revenue and Land Reforms which examined the report of Four Men Committee and other

complaints in the matter and thereafter sought legal opinion from the office of the learned Advocate General for preferring an appeal against the

impugned judgment. Another fact which is discernible from these affidavits and also from the order passed by the co-ordinate Bench of this Court is

that Second Appeal no.135 of 2009 preferred by the State on being aggrieved by the dismissal of their appeal being Miscellaneous Appeal No.77 of

2004 rendered by the District Judge, Dhanbad against dismissal of their C.N.T. Suit No.5181 of 2001 (under provisions of Section 87(1) of the C.N.T.

Act challenging the entry made in favour of the writ petitioners as recorded raiyat in the survey records) had got dismissed for default before this

Court. Perusal of the supplementary affidavit dated 15.02.2019 and specific submissions of the learned counsel for the State thereupon indicates that

the said Second Appeal was dismissed for default twice and at the present another Civil Miscellaneous Appeal is pending for its restoration.

Considering the nature of the dispute and the quantum of compensation being paid or to be paid by the State promptitude was required to be shown in

preferring the memo of appeal on the part of the concerned officials of the State. However, affidavits of the Chief Secretary do not attribute any fault

on the part of any of the officials of the State.

Learned Additional Advocate General, Mr. Manoj Tandan has prayed for time to seek fresh instruction.

We are inclined to give one more indulgence in this respect. It is open for the Chief Secretary to file further affidavit in this regard.

Apart from the above aspect of the delay in preferring the memo of appeal, learned counsel for the State has brought to the notice of the Court that

writ petitioner no.1 had died during pendency of the writ petition on 27.03.2007, death certificate is annexed as Annexure-6 to the supplementary

affidavit dated 31.08.2018 and prayer for his substitution has been made through I.A. No.5474 of 2019. During course of the argument however,

learned counsel for the State has taken a legal plea based upon the judgment of the Apex Court in the case of Gurnam Singh (Dead) Through Legal

Representatives and Others vs. Gurbachan Kaur (Dead) by Legal Representatives, reported in (2017) 13 SCC 41 4that the impugned judgment is a

nullity in the eye of law since heirs of dead parties were not brought on record within stipulated time during pendency of the writ petition.

It appears from the order dated 09.04.2019 that notices were issued upon respondent no.4 to be served through personal service and as per office

note, personal service of notice has been received. Therefore, notice needs to be issued upon the respondent nos.2 and 3 in the limitation matter and

also on the main memo of appeal. Certain persons have also sought to intervene in the matter through I.A. No.3028 of 2018 and I.A. No.9059 of

2018.

Therefore, let notice be issued upon the three proposed legal heirs of writ petitioner no.1/respondent no.1 as indicated at para 6 of I.A. No.5474 of

2019 and also upon respondent nos.2 and 3 under ordinary process and registered cover as also through dasti for which requisites etc. be filed on all

three modes within a period of two weeks.

Let the matter appear in the 2nd week of January, 2020.

Service report of notice should be brought on record by the next date.