
(2008) 01 PAT CK 0162
In the Patna High Court
Case No : LPA No. 749 of 2007

The State of Bihar and Others

APPELLANT

Vs

Poonam Singh

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Citation : (2008) 2 PLJR 370

Hon'ble Judges : J.N. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Lalit Kishore, Satyabir Bharti and Grijesh Kumar, for the Appellant;
Nand Kr. Singh and Mukul Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

1. In or about 1964 a piece of land was settled by the State of Bihar in favour of the father of the writ petitioner. In the year 1989 the said settlement was cancelled. In 2005 writ petitioner approached this Court and challenged the said order of cancellation by filing a writ petition. Writ petition having succeeded before a learned Single Judge of this Court, the present Letters Patent Appeal has been filed. It had been and still is the contention of the State that in accordance with the Rules it was the District Magistrate who alone was competent to make settlement in favour of an ex-Army personnel and the father of the writ petitioner obtained the settlement claiming to be an ex-Army personnel. However, such settlement was accorded by the Block Development Officer, who had no jurisdiction to accord such settlement and accordingly the settlement, being contrary to law, the State Government had no other option but to cancel the settlement. The State Government contends that inasmuch as settlement was made by the Block Development Officer and not by the District Magistrate, the fact of grant of such settlement did not come to light for a long period of time and only in 1989, as soon as the same came to light, the settlement was cancelled.

2. We feel that instead of canceling the settlement, the appropriate authority of

the State at the time of cancellation of settlement ought to have looked into and ascertained whether the original allottee was in fact entitled to settlement and if so to accord settlement and thereby to remove the defect as was originally created. That is because a private person can only apply to the State Government to take a benefit which the State Government has proposed to accord to him. It is thereupon officers of the State who are to deal with the same. In the event an inappropriate officer has dealt with the same, his right to get the benefit available under the Scheme cannot be taken away. In those circumstances, while we are of the view that the settlement having been accorded by an officer incompetent, it was well within the competence of the State Government to put to an end the settlement in question and the same having been done, we allow the appeal and set aside the order under appeal, but at the same time we allow the writ petition in part and direct that the order of cancellation of the settlement be kept in abeyance until such time a fresh application to be made by the writ petitioner on behalf of her father as was made originally claiming the settlement as an ex-Army personnel and such application is considered and decided in accordance with law. Let such application be made by the writ petitioner as quickly as possible but not later than three months from today with a request to the appropriate officer of the State to decide the said application at an early date.