IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.930 of 2023
In
Civil Writ Jurisdiction Case No.264 of 2021

CNR No. BRHC010719482023

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Deepak Kumar Son of Late Munishwar Prasad Singh, Road No.1, Dwarikapuri, Hanuman Nagar, near Kumar Utsav Hall, Police Station Patarkar Nagar, District Patna and at present residing at Flat No.303, Plock -06, Rajapusha, Properties, Attapur Ring Road, Police Station-Rajendranagar, District- Rajendranagar, Hyderabad, Telangana-500048

... ... Appellant

Versus

1. The State of Bihar through its Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Collector, Patna.
4. The Circle Officer, Sampatchak, Patna.
5. The Public Grievance Redressal Officer, Government of Bihar, Patna.
6. The District Programme Officer, Patna.
7. Rakesh Roshan Son of Vijayeshwar Prasad, Resident of Ashok Nagar, Road No. 1, Lohia Nagar, Police Station- Kankarbagh, District- Patna.

... ... Respondents

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Appearance :

For the Appellant/s	:	Mr. Ratnesh Kumar Singh, Advocate Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Sanjeev Ranjan, Advocate Mr. Ravi Kumar, GP-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RANJAN KUMAR JHA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-11-2026

I.A. No. 1 of 2023

By filing this application, the appellant is seeking condonation of delay of 356 days in filing of the Letters Patent Appeal.

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2. It is the case of the appellant that neither the appellant nor his mother was a party to the writ petition and the impugned order has been passed in their absence. It is stated that the appellant is working in Hyderabad and when he came to Patna after the death of this mother, he came to know about the order passed by the learned writ court and about the contempt application on 02.07.2023 whereafter he consulted an Advocate who advised to file a Letters Patent Appeal.

3. The application has been opposed by the respondent no. 7. A counter affidavit has been filed in opposition. It is stated that one Sushila Devi, mother of the present appellant happened to be the owner of the land and during her life time, she had filed a Civil Review bearing No. 94 of 2023 on 10.04.2023 seeking review of the order dated 21.07.2022 passed in the writ petition.

4. Learned counsel for the respondent no. 7 submits that in fact the appellant was aware of the review petition filed by his mother as it was he who was pursuing the review petition. Learned counsel, however, submits that in the review petition, this appellant has not sworn affidavit and except that it is the submission of the respondent no. 7 that the appellant was aware of the review petition, there is no other documentary evidence on the record to demonstrate it.

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5. Learned counsel submits that there is a huge delay of 356 days in filing of the appeal which may not be condoned in absence of any cogent and sufficient reason to explain the delay.

6. We have heard learned counsel for the parties and perused the records. It is an admitted position that neither the mother of the appellant nor the appellant was a party to the writ petition. No one of them came to know about the pendency of the writ and there is no denial of the fact that the appellant was residing in Hyderabad. The impugned order was passed on 21.07.2022 whereafter the mother of the appellant filed a civil review petition. It was presented in this Court on 28.03.2023. During pendency of the review petition, mother of the appellant died whereafter the present appeal has been preferred. We are of the opinion that after coming to know about the impugned order, firstly, the mother of the appellant filed a review petition and then after her death, as advised, the appellant has preferred the Letters Patent Appeal. No doubt may be raised as to the bona fides of the statements made in the application seeking condonation of delay.

7. This Court further finds that on earlier occasion, the application of the appellant seeking leave to appeal was considered by this Court and vide order dated 23.02.2024 the application seeking leave to appeal had been allowed. After receipt of notice, the respondent no. 7 has not sought recall of the said order. In the

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circumstance, we find cogent and sufficient reasons available on the record to condone the delay.

8. I.A. No. 01 of 2023 is allowed.

9. We have heard learned counsel for the parties on merit of the appeal. Mr. Ratnesh Kumar Singh, learned counsel for the appellant submits that the writ petition was filed by the respondent no. 7 herein seeking a direction to the respondent authorities to register mutation case on the application submitted by the petitioner for mutation vide Application No. 05011828241606302 dated 23.11.2016, which, according to the petitioner, was kept pending for more than three and half years. A prayer was made to direct the respondent authorities to dispose of the same within the statutory period of 60 days after registration of the case. Attention of this Court has been drawn towards the prayer made in paragraph ‘1’ of the writ application.

10. It is submitted that during the pendency of the writ application a counter affidavit was filed on behalf of the respondent nos. 3 and 4. It was sworn by the Circle Officer, Sampatchak, Patna. In paragraph ‘5’ of the counter affidavit, it is stated that the Mutation Case No. 1400 and 1401 filed in the year 2015-16 by Rakesh Roshan and Hitesh Roshan (petitioner) son of Vijayeshwar Prasad has been rejected.

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11. It is submitted that the Circle Officer, Sampatchak, Patna sworn this affidavit on 11.07.2022 and it was duly served on Shri Ram Kishore, Advocate Clerk in the office of the learned Advocate Mr. Sanjeev Ranjan, who is representing respondent no.7. No rejoinder to this counter affidavit was filed. The averments made in paragraph '5' of the counter affidavit remained uncontroverted.

12. Learned counsel submits that once it was brought to the notice of the learned writ court that the application filed by the writ petitioner for mutation has been rejected, the learned writ court could not have issued a direction by the impugned order dated 21.07.2022 to the Circle Officer, Sampatchak, Patna to take a fresh decision in this matter. The only course open to the writ petitioner was to challenge the order rejecting his mutation before appropriate authority. It is submitted that with the counter affidavit the order rejecting mutation was not enclosed, therefore, the writ petitioner could have at best requested for production of a copy of the order or he could have made an application in the office of the Circle Officer, Sampatchak, Patna to obtain a certified copy of the order rejecting his application for mutation. It is submitted that in fact, the writ application had become infructuous in view of the statements present in paragraph '5' of the counter affidavit of the

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Circle Officer, Sampatchak, Patna. Thus, the order impugned in the Letters Patent Appeal is liable to be set aside.

13. Mr. Sanjeev Ranjan, learned counsel for the respondent no.7 submits that even as the Circle Officer, Sampatchak, Patna made a statement in the counter affidavit that the application seeking mutation has been rejected, the said rejection order was not brought on the record. It is his submission that in such circumstance, if the learned writ court had directed the Circle Officer to take a fresh decision in the matter, no fault may be found with the same. This Court has also been informed that by virtue of the order dated 21.07.2022 (impugned order), the Circle Officer, Sampatchak, Patna passed a fresh order and this time the mutation application has been allowed. The said order has been challenged by the present appellant, which is pending before the Deputy Collector, Land Reforms, Danapur. It is, thus, submitted that the Letters Patent Appeal may be dismissed.

14. We have given our anxious consideration to the rival submissions at the Bar. The facts are not much in dispute. The writ petition was filed seeking a direction to the respondent authorities to register the mutation case and to dispose of the same within the statutory period. The prayer made in the writ petition would show that the petitioner further prayed for issuance of the writ of mandamus commanding the respondent nos. 5 and 6 to redress his

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grievance by passing appropriate order and communicating the decision in case bearing No. 05011828241606302 dated 23.11.2016 filed by the petitioner under the Bihar Right to Public Grievance Redressal Act, 2015 on account of the failure of respondent no. 4 to dispose of his mutation application within the statutory period and to punish the erring official, if found guilty.

15. There is no iota of doubt that with the simple prayer for registration of mutation case and disposal thereof when the writ petition was presented before this Court, the Circle Officer, Sampatchak, Patna filed a counter affidavit. In paragraph '5' of the counter affidavit, he made the following statements:-

> "5. That it is needful to state that after the verification of the revenue records that the Mutation Case No. 1400 and 1401 filed in the year 2015-16 by Rakesh Roshan and Hitesh Roshan (petitioner), S/o-Vijayeshwar Prasad has been rejected."

16. The counter affidavit was served in the office of the learned counsel for respondent no.7 but no rejoinder was filed and as a result thereof, the statements made in paragraph '5' of the counter affidavit remained uncontroverted.

17. In our considered opinion, the moment this information was brought to the notice of the Writ Court that the Mutation Case No. 1400 and 1401 filed by the writ petitioner have

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been rejected, the writ application became infructuous. Since the impugned order is a short order, we reproduce the same hereunder for a ready reference:-

> "Heard the parties.
> A confusing counter affidavit has been filed on behalf of the State. The Circle Officer, Sampatchak, Patna has mentioned one Title Suit details of which are missing.
> It is surprising that because of pendency of the title suit, mutation is not being done by the Circle Officer whereas mutation is to be done in favour of a person who is in possession of the land and nothing else. The petitioner claims the land through the sale deed. The name of his vendor has already been mutated as owner and occupier of the land and thereafter the petitioner is the owner and mutation on flimsy ground cannot be denied in favour of the petitioner by the Circle Officer.
> Put up both these cases after ten days for further hearing.
> The Circle Officer, Sampatchak, Patna is directed to take a fresh decision in the matter and he should not act illegally. If no decision is taken within next ten days about the mutation matter then the Circle Officer will appear on the next date of hearing."

18. On going through the impugned order, it appears that the statements made in paragraph '5' of the counter affidavit sworn by the Circle Officer has not been taken note of. The learned writ court expressed surprise that because of the pendency of the title suit, mutation is not being done by the Circle Officer. The learned writ court observed that the petitioner is the owner and mutation on flimsy ground cannot be denied in favour of the petitioner by the Circle Officer.

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19. To this Court, it appears that even as the order rejecting the mutation case of the petitioner was not on the record, the learned writ court by its observations set at naught the rejection of the mutation and proceeded to issue a direction to the Circle Officer to take a fresh decision in the matter. For purpose of a fresh order, nothing was left for the Circle Officer as the writ court observed that "the petitioner is the owner and mutation on flimsy ground cannot be denied …."

20. Thus, direction to take fresh decision by nullifying the order rejecting the mutation, even as the said order was not on the record, would amount to usurping the jurisdiction which is vested with the statutory authorities such as Circle Officer, the Deputy Collector, Land Reforms and other authorities under the Bihar Land Mutation Act, 2011.

21. For the aforesaid reasons, we find the impugned order dated 21.07.2022 unsustainable. Accordingly, the impugned order is set aside. The consequences shall follow. This appeal is allowed.

(Rajeev Ranjan Prasad, J)

(Ranjan Kumar Jha, J)

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CAV DATE	
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