

Naresh Bhagat and ors Vs. State and ors

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Court : Patna

Decided On : Aug-30-2013

Appellant : Naresh Bhagat and ors

Respondent : State and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case
No.7534 of 1992

===== 1.

Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur,
P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal.

3. Smt. Bhagawati Devi son of Sri Nityanand Manda, both residents of village-
Dumaria, P.S. Narpatganj, District- Araria. Petitioner/s Versus 1. The State
of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Dukhan Rishideo son of Palat Rishideo.

6. Brahmdeo Rishideo son of Dukha Rishideo.

7. Tilay Rishideo son of Mangan Rishideo.

8. Giranand Rishideo son of Tilay Rishideo, all residents of village- Saifganj, P.S. Forbisganj, District- Araria. Respondent/s with Civil Writ Jurisdiction Case No. 7535 of 1992

===== 1.
Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur, P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal.

3. Smt. Bhagawati Devi son of Sri Nityanand Manda, both residents of village- Dumaria, P.S. Narpatganj, District- Araria. Petitioner/s Versus 1. The State of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Bhajju Rishideo 6. Kishan Rishideo 7. Vishun Rishideo . Sl. No. 5 to 7 are sons of Nakchedi Rishideo.

8. Tara Rishideo 9. Pingal Rishideo, Sl. No. 8 & 9 are sons of Laxmi Rishideo, all residents of village- Saifganj, P.S. Forbisganj, District- Araria. Respondent/s with Civil Writ Jurisdiction Case No. 7536 of 1992

===== 1.
Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur, P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal.

3. Smt. Bhagawati Devi son of Sri Nityanand Manda, both residents of village- Dumaria, P.S. Narpatganj, District- Araria. Patna High Court CWJC No.7534 of

1992 dt.30-08-2013 2/7 Petitioner/s Versus 1. The State of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Bechan Rishideo son of Govind Rishideo.

6. Sajjan Rishideo son of Chunni Rishideo. Sl. No. 5 & 6 are residents of village-
Saifganj, P.S. Forbisganj, District- Araria. Respondent/s with Civil Writ
Jurisdiction Case No. 7543 of 1992

===== 1.

Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur,
P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal.

3. Smt. Bhagawati Devi son of Sri Nityanand Manda, both residents of village-
Dumaria, P.S. Narpatganj, District- Araria. Petitioner/s Versus 1. The State
of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Kafil Rishideo 6. Sukinder Rishideo.

7. Khantar Rishideo, Sl. No. 5 to 7 are sons of Bauku Rishideo, all residents of
village- Saifganj, P.S. Forbisganj, District- Araria. Respondent/s with Civil
Writ Jurisdiction Case No. 7544 of 1992

===== 1.

Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur,
P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal.

3. Smt. Bhagawati Devi son of Sri Nityanand Mandal, both residents of village- Dumaria, P.S. Narpatganj, District- Araria. Petitioner/s Versus 1. The State of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Aghanu Rishidev son of Akal Rishidev.

6. Ramanand Rishidev son of Jhante Rishidev.

7. Soran Rishidev son of Jhanti Rishidev.

8. Noonulal Rishidev son of Badri Rishidev, 9. Prithi Rishdev son of Noonu Lal Rishidev, Sl. No. 5 to 9, all residents of village- Saifganj, P.S. Forbisganj, District- Araria. Respondent/s Patna High Court CWJC No.7534 of 1992 dt.30-08-2013 3/7 with Civil Writ Jurisdiction Case No. 7545 of 1992

===== 1.
Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur, P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal.

3. Smt. Bhagawati Devi son of Sri Nityanand Manda, both residents of village- Dumaria, P.S. Narpatganj, District- Araria. Petitioner/s Versus 1. The State of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Dodhain Rishidev son of Pachkauri Rishidev.

6. Binda Rishidev son of Adhik Rishidev.

7. Dhaniklal Rishidev son of Pachkauri Rishidev. Sl. No. 5 to 7, all residents of village- Saifganj, P.S. Forbisganj, District- Araria. Respondent/s with Civil Writ Jurisdiction Case No. 7546 of 1992

===== 1.
Naresh Prasad Bhagat son of late Tulsi Bhagat, resident of village- Shankarpur, P.S. Frobisganj, District- Araria.

2. Amrendra Mandal son of Sri Nityanand Mandal. Both residents of village- Dumaria, P.S. Narpatganj, District- Araria. Petitioner/s Versus 1. The State of Bihar.

2. The Collector, Araria.

3. The D.C.L.R., Araria.

4. The Circle Officer, Araria.

5. Ram Sharan Mahto son of Sri Rit Lal Mahto, resident of village- Saifganj, P.S. Forbisganj, District- Araria. Respondent/s

=====

Appearance : (In CWJC No. 7534 of 1992) For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4 : Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 to 8: None. (In CWJC No. 7535 of 1992) For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4 : Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 to 9: None. (In CWJC No. 7536 of 1992) Patna High Court CWJC No.7534 of 1992 dt.30-08-2013 4/7 For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4: Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 & 6: None. (In CWJC No. 7543 of 1992) For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4 : Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 to 7: None. (In CWJC No. 7544 of 1992) For

the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4 : Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 to 9: None. (In CWJC No. 7545 of 1992) For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4: Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 to 7: None. (In CWJC No. 7546 of 1992) For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv., with Ms. Amrita Shrivastva For the Respondent No.1 to 4 : Mr. Ranjan Kumar, AC to AAG-13. For the Respondent No. 5 : None.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA ORAL

JUDGMENT

Date:

30. 08-2013 In this batch of seven writ petitions the issues of facts and the issues of law involved are common and identical. Therefore, with the consent of the parties, all these matters have been heard together and are being disposed of by this common judgment.

2. The petitioners of all the seven cases, who are same and common persons, claim to be landholders with respect to the land under dispute. The private respondents, who are separate and distinct persons in all the seven writ petitions, filed their separate applications under Section 48E of the Bihar Tenancy Act, 1885 (in short the B.T. Act) before the respondent D.C.L.R., Araria, giving rise to Batai Patna High Court CWJC No.7534 of 1992 dt.30-08-2013 5/7 Case No. 601 of 1986-87, 599 of 1986-87, 430 of 1986-87, 431 of 1986-87, 591 of 1986-87, 432 of 1986-87 & 429 of 1986-87, respectively. For settlement of batai dispute between the parties separate Batai Boards were constituted. Since endeavour for amicable settlement between the parties could not be arrived at in terms of Section 48E (6) of the B. T. Act, the Batai Board returned the record to the respondent D. C. L. R. Araria. Whereafter, the respondent D. C. L.R., Araria himself appears to have examined the witnesses and passed final order dated 28.12. 1989 (Annexure-3) separately with respect to each of the batai cases, allowing the batai claims raised on behalf of the private respondents with respect to the lands under dispute.

3. The petitioners, being aggrieved by the aforesaid order dated 28.12.1989 (Annexure-3) passed separately in each of the batai cases, preferred separate batai appeals before the District Collector, Araria, giving rise to Rev. Appeals No. 5 of 1992-93, 7 of 1992-93, 4 of 1992-93, 2 of 1992-93, 6 of 1992-93, 8 of 1992-93 and 3 of 1992- 93, respectively, under Section 48F of the B. T. Act. However, respondent District Collector, Araria has dismissed all the aforesaid seven batai appeals filed on behalf of the petitioners by the impugned order dated 02.06.1992 (Annexure-6) passed separately in aforesaid 7 batai appeals on the ground of limitation only and has refused to examine the matter on merits.

4. Learned counsel appearing on behalf of the petitioners in each of the cases submitted that since the petitioners had no knowledge and information about the final order dated 28.12.1989 (Annexure-3) passed by the respondent D.C.L. R., Araria, they could not file appeal within statutory period of time. However, once they came to know about the aforesaid final order, they filed their separate Patna High Court CWJC No.7534 of 1992 dt.30-08-2013 6/7 Batai appeals with limitation petition under Section 5 of the Limitation Act, for condonation of delay, but the respondent District Collector, without condoning the delay, dismissed the aforesaid batai appeals filed on behalf of the petitioners on the ground of being barred by limitation.

5. Though all these seven writ petitions were filed on 10.08.1992, but till date no counter affidavit has been filed on behalf of the respondent- State of Bihar and its functionaries. Despite valid service of notice, none has appeared on behalf of the contesting private respondents to oppose the prayer made in the present writ petitions. The private respondents also have not filed any counter affidavit disputing the claims raised on behalf of the petitioners.

6. In the aforesaid factual background of the case, this Court is of the opinion that the respondent District Collector, Araria ought to have condoned the delay and ought to have decided the appeals filed on behalf of the petitioners on merit by looking into the relevant record of batai cases and after giving an opportunity of hearing to both sides, which have not been done in the present case.

7. In the considered opinion of this Court the batai appeals preferred by the petitioners require reconsideration and fresh decision on merit.

8. For the reasons recorded above, the impugned appellate order dated 02.06.1992 passed separately in Rev. Appeals No. 5 of 1992-93, 7 of 1992-93, 4 of 1992-93, 2 of 1992-93, 6 of 1992-93, 8 of 1992-93 and 3 of 1992-93, by the respondent District Collector, Araria, are hereby set aside and all these matters are remitted back to the respondent District Collector, Araria with a direction to condone the delay in filing the appeals by the petitioners and thereafter decide the aforesaid batai appeals on merit, after giving an opportunity of Patna High Court CWJC No.7534 of 1992 dt.30-08-2013 7/7 hearing to all the parties. It goes without saying that before the appellate authority the parties shall be at liberty to raise all the points, which are available to them under law.

9. Consequently, all these writ petitions are allowed to the extent indicated above. However, there shall be no order as to costs. (Birendra Prasad Verma, J)
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