

**Deepak Jaiswal Vs. State and ors.**

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**Court :** Patna

**Decided On :** Nov-14-2005

**Judge :** Aftab Alam and V.N. Sinha, JJ.

**Appeal No. :** LPA No. 1173 of 2004

**Appellant :** Deepak Jaiswal

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** Mr. Gajendra Pratap Singh

**Disposition :** Appeal allowed

**Judgement :**

1. Heard Mr. Gajendra Pratap Singh, counsel for the petitioner and Mr. Bipin Kumar, counsel representing the private contesting respondent No. 3. Mr. Mahesh Prasad, Government Pleader-2 is also present but since the matter arises out from the mutation proceeding, the State has no interest in this case.

2. The learned Single Judge declined to go into the merits of the case of the writ petitioner-appellant on the sole ground that he came to this Court after inordinate and unexplained delay. On hearing counsel for the parties, we find that the position is not so and the delay can be explained. Moreover, as would appear from the following facts the petitioner has been rendered remediless and it is, therefore, just and reasonable that his case should receive due consideration by

the statutory authority.

3. The rights, title and the interests in the disputed plot was earlier decided in the year 1960 in favour of the petitioner in a title suit before the Civil Court. He, however, makes the grievance in the year 1992, the Circle Officer allowed an application for mutation filed by respondent No. 3 and mutated the disputed plot in her name. Against the order passed by the Circle Officer, the petitioner came to this Court in CWJC No. 4012/1995. That writ petition was partly allowed by order dated 1.2.1996 and the matter was remitted to the Circle Officer. On remand the Circle Officer passed the order, dated 3.6.1996, reiterating his earlier direction. The petitioner challenged the order of the Circle Officer in appeal before the Deputy Collector, Land Reforms, Katihar which was recorded as Mutation Appeal No. 64/96-97. At the same time he came to this Court in CWJC No. 6617 of 1997, challenging the order of the Circle Officer. The DCLR dismissed the appeal by order dated 5.2.1997 primarily on the ground that a writ petition against the order of the Circle Officer was pending before the Court. Though this fact was brought on record by filing a supplementary affidavit in the pending writ petition, it appears that it was overlooked and CWJC No. 6617/96 was dismissed by a brief order dated 22.5.1997 on the ground that against the impugned order an appeal was already pending before the Appellate Court, the DCLR.

4. Thereafter, the parties were locked in litigation over the disputed plot before the consolidation authorities and those proceedings still remain inconclusive. In those circumstances, the petitioner again came to this Court in CWJC No. 2097/2004 making the grievance with regard to the disputed plot being entered in the revenue records in the name of respondent No. 3. The writ petition was dismissed on the sole ground of inordinate delay in coming to the Court.

5. On hearing the counsel for the parties, we are of the view that in the facts and circumstances of the case it would be appropriate to direct the DCLR to hear and decide on merits the petitioner's appeal filed against the order of the Circle Officer. We, accordingly, set aside the order of the DCLR dated 5.2.1996, passed in Mutation Appeal No. 64/96-97 and direct him to reconsider the petitioner's appeal against the order of the Circle Officer dated 3.6.1996 after giving due notice to

both sides and hearing them in accordance with law. It would be open to the parties to rely upon any developments that might have taken place after passing of the order by the Circle Officer and to produce materials in support of their respective cases. We need hardly state here that the mutation of the disputed land must abide the decision of a competent Court of Civil jurisdiction with regard to the rights, title and interests of the parties in the disputed plot.

6. In the result, we allow the appeal and set aside the order of the learned Single Judge. There will be no order as to costs.

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