

**IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4811 of 2018**

**In
Letters Patent Appeal No.1187 of 2018**

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Shahpur Matasyajivi Sahyog Samiti Ltd., Through Secretary Mahendra Choudhary Registration No. 10-19-02-2011 through Secretary Mahendra Choudhary, Son of Late Gawahir Choudhary, Resident of Village- Prasounda (Karaila), P.O.- Prasounda, P.S. Shahpur, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Sri Sanjeev Kumar, The Collector/ District Magistrate Bhojpur at Ara.
3. Sri Surendra Prasad, The Additional Collector Bhojpur at Ara.

... .. Opposite Party/s

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with
Letters Patent Appeal No. 1187 of 2018
In
Civil Writ Jurisdiction Case No.6346 of 2018

Prashant Kumar Singh, Son of Rana Pratap Singh, Resident of Village- Chakwath, P.S.-Behia, District- Bhojpur

... .. Appellant/s

Versus

Shahpur Matasyajivi Sahyog Samiti Ltd., Through Secretary Mahendra Choudhary Registration No. 10-19-02-2011 through Secretary Mahendra Choudhary, Son of Late Gawahir Choudhary, Resident of Village- Prasounda (Karaila), P.O.- Prasounda, P.S. Shahpur, District- Bhojpur at Ara & Ors.

... .. Respondent/s

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with
Letters Patent Appeal No. 1336 of 2018
In
Civil Writ Jurisdiction Case No.6346 of 2018

1. The State Of Bihar and Ors
2. The Collector, Bhojpur, Ara.



3. The Additional Collector, Bhojpur, Ara.

... .. Appellant/s

Versus

1. Shahpur Matasyajivi Sahyog Samiti Ltd. and Ors Son of Late Gawahir Choudhary, resident of Village- Prasounda Karaila, P.O.- Prasounda, P.S.- Shahpur, District- Bhojpur Ara.
2. Rana Pratap Singh, Son of Late Ram Naresh Singh.
3. Prasant Kumar Singh, Son of Rana Pratap Singh.
4. Shashank Kumar Singh, Son of Rana Pratap Singh. All are the resident of Village- Chakwath, P.S.- Dehia, District- Bhojpur Ara.

... .. Respondent/s

Appearance :

(In Miscellaneous Jurisdiction Case No. 4811 of 2018)

For the Petitioner/s : Mr.D.K. Sinha, Sr. Adv.
Mr. Abhay Kumar Pandey, Adv.
For the Opposite Party/s : Mr.Md. Khurshid Alam, AAG 12
Ms. Nutan Sahay, AC to AAG 12

(In Letters Patent Appeal No. 1187 & 1336 of 2018)

For the Appellant/s : Mr.Bishwa Bibhuti Kumar Singh, Adv.
Mr. Rakesh Kumar Srivastava, AC to GP-15
For the Respondent/s : Mr. D.K. Sinha, Sr. Adv.

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT**

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-03-2019

I.A. No.7848 of 2018 (in L.P.A.No.1336/18)

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.



L.P.A. Nos.1187 & 1336 of 2018

These two appeals, one by the State of Bihar and the other by Prashant Kumar Singh, have been filed questioning the correctness of the judgement dated 27th July, 2018 passed by a learned Single Judge of this Court whereby the writ petition filed by the respondent-petitioner, namely Shahpur Matsyajivi Sahyog Samiti, through its Secretary Mahendra Chaudhary, has been allowed and the order of settlement in respect of Suhiya Bhagar Sairat in favour of the appellant Prashant Kumar Singh vide order dated 5th April, 2018 has been quashed. The learned Single Judge has held that the settlement in favour of the appellant Prashant Kumar Singh had been made without cancelling the settlement in favour of the respondent-petitioner which, according to the learned Single Judge, was for three years, namely 2016-17, 2017-18 and 2018-19. The learned Single Judge, therefore, came to the conclusion that the advertisement which was made for fresh settlement could not have been done without annulling the previous settlement in favour of the respondent-petitioner.

Learned counsel appearing for the State of Bihar Shri Rakesh Kumar Shrivastava, A.C. to AAG 15, has urged that, as a matter of fact, the settlement in favour of the



respondent-petitioner had been earlier made for the year 2015-16 and which, according to the counter affidavit filed on behalf of the State, was for one year. He, however, submits that the subsequent settlement was on annual basis and, therefore, in the year 2017-18, after the completion of the tenure, the Sairat was advertised afresh for an open bid on enhanced rates in which the respondent-petitioner also participated and, having failed in his bid, he has turned around to challenge the settlement the tenure whereof had already expired inasmuch as he had already enjoyed a term of three years, including that of 2015-16.

It is further the submission of the learned counsel appearing for the State of Bihar that in view of the Govt. Memo. Dated 12th September, 1978, read with the subsequent clarification dated 10th April, 2013, it is evident that even though the settlement is to be made in favour of the societies for a period of three years, but, in the event of non-availability of an offer, the settlement can also be made annually. He, therefore, contends that it is on this understanding that the Parwana was issued for deposits to the respondent-petitioner for the year 2016-17 and then 2017-18 separately and which, according to him, amounts to an annual settlement which does



not extend beyond the said period. Thus, no error has been committed by the State in advertising the Sairat in question for the year 2018-19 for which bid has been carried out.

The sum and substance of the aforesaid argument, therefore, is that the settlement in favour of the respondent-petitioner, according to the State, was not for three years in a row and, consequently, after the enhancement of the amount, it was settled for which annually payments were made and which does not give a right of continuance to the respondent-petitioner for the year 2018-19.

Shri Bishwa Bibhuti Kumar Singh, learned counsel appearing for the appellant Prashant Kumar Singh, submits that it is evident from the counter affidavit of the State that there was no such settlement in favour of the respondent-petitioner for three years and given the enhanced amount which was offered by the appellant and the respondent having failed in the bid, there is no occasion for him now to claim his continuance for the period 2018-19. It has, therefore, been submitted that the learned Single Judge erroneously assumed the settlement for three years and this statement of fact occurring in the impugned judgement is against the weight of evidence on record for which reliance has been placed on the



separate Parwanas issued in favour of the respondent-petitioner.

On a perusal of the facts on record, the first question is as to whether the respondent-petitioner had succeeded in getting a settlement in the year 2015-16 or not. In this case, the settlement for the year 2015-16 was made in favour of the respondent-petitioner and which has been admitted by the learned counsel for the State to be for only one year. The second question therefore that arises is, as to whether the settlement for the year 2016-17 was to be continued for three years or was it only on an annual basis which the respondent-State had the authority to terminate and issue a fresh advertisement for the year 2018-19.

The documents which have been filed by the respondent-petitioner on record, namely Annexure-1 series, mentions about the deposits for the financial years 2016-17 to 2018-19 (2016-2017 से 2018-2019 तक). Given the aforesaid documents on record, the issuance of the Parwana to deposit the documents annually, in no way, explains as to how the said letters which have been filed as Annexure-1 mentioning the years 2016-17 to 2018-19 were meant for an annual settlement. In this regard, the Govt. Memo. Dated 12th September, 1978



also indicates that the settlement can be made for three years and which has also been fortified by the stand of the Government subject to the letter dated 10th April, 2013 which carves out an explanation that in the event no one is available, it can be done on annual basis as well.

We have been unable to find on record any order that may proceed to determine the said settlement in favour of the respondent petitioner which has been indicated in the own documents of the respondents for the years 2016-17 to 2018-19. There was no intimation to the respondent-petitioner about the period either being reduced or curtailed nor any order was passed to that effect. It is in this background that the learned Single Judge found that the initiation of the steps for fresh settlement was invalid without there being any determination of the period of settlement of the respondent-petitioner. We do not find any error in the said conclusion drawn by the learned Single Judge and the argument that the learned Single Judge has assumed an erroneous fact is not correct. The learned Single Judge has clearly relied on the said documents which we do not find to have been controverted by the State in any effective form through the counter affidavit.

There is yet another reason, namely, as to how



the enhanced rate was introduced for the intervening year. Even this exercise has not been explained in the counter affidavit. Consequently, the entire exercise of a fresh settlement for the year 2018-19 de novo was clearly, in effect, to dislodge the respondent-petitioner and, therefore, the conclusion drawn by the learned Single Judge is fully justified.

The argument about including the year 2015-16 within the period of three years is also incorrect, inasmuch as, apart from it being admitted for only one year by the State, the amount in respect thereof was also Rs.12,05000/-, which was less than the amount for the subsequent years. Obviously, the settlement in 2015-16 was, therefore, for only one year for the amount indicated therein and for which there appears to be no dispute by the State. The exercise by the Collector, therefore, does not appear to be justified for a fresh settlement before the expiry of 3 years and what we find is that when a contempt application was filed by the respondent-petitioner and notices were issued after the judgement of the learned Single Judge, then an order was passed by the Collector on 10th October, 2018 cancelling the settlement dt.5.4.18 in favour of the appellant and simultaneously allowing the respondent-petitioner to continue to enjoy the settlement in his favour.



However, when these appeals were initially entertained on 25th October, 2018, a Division Bench passed an order staying the contempt proceedings before the learned Single Judge. This order dated 25th October, 2018 appears to have been misconstrued by the Collector who took it as a stay of the operation of the judgement of the learned Single Judge and, accordingly, he stayed the operation of his own order dated 10th October, 2018 that gave rise to M.J.C. No.4811 of 2018.

Having recorded our findings aforesaid and having considered the entire documents on record, we are of the opinion that the appeals lack merit and deserve to be dismissed. Accordingly, L.P.A. Nos. 1187 of 2018 and 1336 of 2018 are hereby dismissed and the judgement of the learned Single Judge is upheld.

M.J.C. No.4811 of 2018

Since we have finally disposed of the appeals, proceeding with the contempt matter is no longer required. Accordingly, M.J.C. No.4811 of 2018 is consigned. The Collector shall comply with the judgement of the learned Single Judge dt. 27.7.18.

Apart from this, we find that the period of the



contract is to end on 31st March, 2019. It will be open to the Collector to proceed for any fresh settlement after 31st March, 2019 in accordance with law.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

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