

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7073 of 2016

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Md. Rizwan Son of Late Md. Ramzan, resident of Naya Quila Mali Tola
Siwan, Police Station- Siwan, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Siwan, District- Siwan.
3. The Circle Officer, Circle Office Siwan Sadar, District- Siwan.
4. The Circle Inspector cum Kanoongo, Circle Office Siwan Sadar, District- Siwan.
5. The Halka Karamchari, Circle Office Siwan Sadar, District- Siwan.
6. The State Information Commissioner, Bihar State Information Commission, Patna Bihar.

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Adv.
Mr. Nirbhay Prashant, Adv.

For Respondent No.6

(State Information Commission) : Mr. Binita Singh, Adv.

For State : Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE RAJ KUMAR
CAV JUDGMENT

Date : 11-08-2026

Heard learned counsel for the petitioner, learned counsel
for the State as well as learned counsel for the State Information
Commission.

Relief

2. The present writ application has been filed for the
following reliefs :-

(i) Seeking the issuance of a writ in the nature of
certiorari for quashing of the final order dated 06.01.2012
passed in Case No. 37744/2010-11, by the State Information



Commission, Patna, Bihar, issued under memo no. 11206 dated 11.01.2012, whereby and whereunder, the Respondent No. 6 has deemed it fit to drop the entire proceedings, while admitting the justification provided by PIO-cum-Circle Officer, Siwan, Sadar (Respondent No. 3), under Section 20(1) of the Right to Information Act, 2005 and as such refused to furnish the certified copy of the *barwarda* and Register- II to the petitioner.

(ii) The petitioner has further prayed for the quashing of the memo No. 605 ii dated 28.06.2011, issued by the Respondent No. 3, whereby the Respondent No. 3 has refused to furnish the aforesaid documents to the petitioner, stating that since the requisitioned documents are not available in original and whatever is available is in an unreadable condition, therefore, a certified true copy of the same cannot be supplied.

(iii) Alternatively, the writ petitioner has prayed for the issuance of a direction to the Respondent Authorities for the consideration of the petitioner's objection dated 30.07.2011, preferred before Respondent No. 6.

Submission of the Petitioner

3. Learned counsel for the petitioner has submitted that the impugned order dated 06.01.2012 passed by the Respondent No. 6 is cryptic, unreasoned and non-speaking. He next submits



that the impugned order has been passed without considering the information supplied by the petitioner in the objection filed by him, that is marked as Annexure-9 to the writ application. In this vein, he has submitted that it is the obligatory duty on part of the quasi-judicial authority, to pass a reasoned order with respect to the issues raised, for ensuring lawful adjudication. Hence, he submits that the impugned order dated 06.01.2012 has been passed against the mandate of the 'RTI Act, 2005'.

4. Learned counsel has submitted that once request for information was sought under the terms prescribed under Section 6(1) of the 'RTI Act, 2005', the Public Information Officer is obligated to dispose of such request within a period of thirty days as envisaged under Section 7 of the 'RTI Act, 2005'. He further submitted the information which was sought by the petitioner did not fall within the purview of 'exempted information' within the meaning of Section 8 of the 'RTI Act, 2005'. Thus, upon a combined reading of Sections 6, 7 and 8 of the 'RTI Act, 2005', it has been contended that the respondents could not deny the furnishing of the information sought by the petitioner. On the factual aspect, learned counsel has pointed out the contradictory stand that unfolds on a bare perusal of the letter issued by Respondent No. 3 dated 28.06.2011, to the



petitioner wherein, the P.I.O.-cum-Circle Officer/Respondent No. 3, Siwan Sadar refused the furnishing of the aforesaid document on the ground that it was not available in original and at the same time stated that the document in question was not legible/unreadable and therefore, a certified true copy of the same could not be supplied. Furthermore, this contradictory stand is reflected and would be apparent upon a plain reading of the counter-affidavit filed by Respondent No. 6, at Paragraph-11, which goes to show that the respondents have acted in a contradictory and capricious manner. Learned counsel has next contended that the objection dated 30.07.2011, marked as Annexure-9 to the writ application, filed by him before Respondent No. 6, was not considered while passing the final order dated 06.01.2012 in Case No. 37744/2010-11, as the said impugned order makes no reference to the objection having been filed by the petitioner, and thus, it does not reflect any consideration on this issue. Learned counsel thus, submits that the impugned order suffers from the vice of illegality and unreasonableness.

5. Learned counsel also pointed out that vide Annexure-9, he has specifically mentioned the details of the persons to whom the certified copy and copy of the *barwarda* and register-



II pertaining to the same *Halka* and *Tauzi* have been issued from the Circle Office, Siwan, Sadar. The said fact has not been denied by the respondents in their respective counter affidavits, as in response to the same they have only mentioned that the same is a matter of record. Learned counsel has further submitted that the petitioner requires the aforesaid documents/information for submitting it before the concerned Court in Title Suit No. 106/1992 and thus, requires the documents in his support for the factual adjudication of the title suit, pending before the concerned court.

6. Learned counsel has thus pointed out that there is no reason as to why the authorities could not grant him the requisite information or documents, when the same is a public document under Section 74 of Indian Evidence Act. Learned counsel has also submitted that the plea of non-availability of records is unsubstantial and *mala fide* in as much as the State Information Commission has the power to conduct an inquiry, if it is satisfied that reasonable grounds warranting the same exist, before passing of a final order as enshrined under Section 18 (2) & (3) of the 'RTI Act, 2005'.

7. Lastly, learned counsel has pointed out that the second appeal was filed by the appellant on 18.05.2010, but was



disposed of only on 30.07.2011, i.e., almost after a year and it also in a way frustrated the mandate of Section 19(3) of the 'RTI Act, 2005'. It has been pointed out that in terms of Section 19(6) of the 'RTI Act, 2005', no time limit has been prescribed for the disposal of the second appeal and the same only stipulates that an appeal under sub-Section (1) and (2) of Section 19 shall be disposed of within a period of 30 days or within such extended period not exceeding 45 days from the date of filing of such appeal.

8. Thus, upon a combined reading of Section 19 and specifically sub-Section (6) it could be construed that the second appeal must also be disposed of within a period of thirty days or within such extended period not exceeding 45 days. In this regard, reliance has been placed upon the judgment passed by the Honb'le High Court of Karnataka in the case of *Jayaprakash Reddy v. Central Information Commission (In writ petition nos. 28310-28311 and 45540-45542, judgment date: 29th October, 2015)* as well as the judgment of the Hon'ble Calcutta High Court in the case of *Akhil Kumar Roy v. The West Bengal Information Commission and Ors. (In writ petition no. 11933 of 2010, Judgment date: 7th July, 2010)*. In both the judgments, it has been categorically held that the second appeal



should be decided within a period of 30 days or within such extended period not exceeding 45 days from the date of the filing of the appeal.

Submission of the State

9. Learned counsel for the State has contended that *barwarda* is not a public document, as stated in paragraph-4 of their counter affidavit. It has been argued that *barwarda* means a partition of *tauzi* by the ex-landlord amongst their co-sharers themselves and is an unsurveyed land of which *Khatiyan* was not prepared and therefore, *barwarda* in original was not available in Circle Office and it was not possible to furnish the certified copy of the same. It was also argued by the State that no *Jamabandi* has been created in respect of the *barwarda* land and in that context the State Information Commission vide final order dated 06.01.2012, issued in memo no. 11206, dated 11.01.2012, has rightly closed the proceedings.

Submission of State Information Commission

10. Learned counsel appearing on behalf of the State Information Commission has also filed an affidavit and has defended the impugned orders and has contended that the document was not available in original, rather the photocopy of



the same is available in a very unreadable and torn condition and thus, it is a settled principle of law that no certified copy of a photocopy can be issued. Since the *barwarda* in original was not present in the Circle Office, Siwan, Sadar, hence, a certified copy of the same cannot be granted by the respondent authorities. Learned counsel has further contended that the information has already been furnished after due consideration and a proper compliance of the order dated 10.03.2011 has been made. In this view, reference has been drawn to paragraph-11 of the counter affidavit filed by the Respondent No. 6.

11. Learned counsel on behalf of the State Information Commission has also submitted that while passing of the impugned order, the State Information Commission has gone through the objections raised by the petitioner and after due consideration of the same has issued directions to the Public Information Officer-cum-Circle Officer for providing due justification under Section 20(1) of the RTI Act, 2005, and after considering entire materials on record has rightly dropped the proceedings. Learned counsel has argued that the petitioner has not appeared before the appellate authority on the date of passing of the impugned order.

12. Lastly, learned counsel for the State Information



Commission has contended that the *barwarda* is not a public document and further, in view of the fact that the document in original was not available, hence the certified copy of the said *barwarda* could not be furnished to the petitioner.

Analysis and Consideration

13. In the background of these facts, the issue which needs attention is whether the *barwarda* could be given to the petitioner when the same was untraceable or present in an unreadable form. Coming to the etymology of the aforesaid document, it is defined as an year wise rent payment and it may not be registered but is used to determine the rent paid by the co-sharers, which is used as proof in partition suits as well as for Order 20 Rule 20 of the CPC. It contains the details of the co-sharers and further regarding the rent paid by them to the extent of their share of the Khesra or as per payment register to identify the co-sharers paying rent. This document is a public document as defined under Section 74 of the Indian Evidence Act, which can be used as an exhibit in a suit and as evidence under Section 114 of the Indian Evidence Act as it is a Government record and can also be adduced as a secondary evidence.

In a decision rendered in a case of Anil Kumar Shukla v.



Central Public Information Officer, Ministry of Human Resource and Development Department of Higher Education, Decision No. CIC/MOHRD/A/2018/129097/01715, para-8 is being quoted hereunder:

“Prima facie, any public authority cannot deny the right of the appellant to get the information by putting forward an excuse of the file going missing. The defence of missing file cannot be accepted even under the RTI Act. If the file is really not traceable, it reflects on the inefficient management of files by the public authority. If the file could not be traced in spite of best efforts, it is the duty of the respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant.”

13A. Under Rule 80 of the Bihar Records Manual, 1960, it has been stipulated that the District Collector is responsible to account for all missing files. Section 4 (1) of the R.T.I. Act, 2005, also emphasises that Public Information Officers have a duty to maintain all records which facilitates furnishing of the information. In this regard, reference has been made to Rule 230 of the Bihar Records Manual, 1960 wherein it has been stipulated that when a document is found to be illegible, it may be destroyed only after the same has been personally inspected



by the Collector/S.D.O. The authorities therefore are duty bound to assign the reason for the destruction of the document and accordingly a memorandum must be prepared stating the fact of destruction, the nature of document destroyed and the same must bear the signature of the Collector/S.D.O. Hence, there appears to be a complete violation of the Rule 230, of the Bihar Records Manual, 1960 on part of the respondent authorities.

Conclusion

14. What comes out in this matter for adjudication is that the respondents have not denied that the document/*barwarda* was falling within the parameters or purview of an exempted information within the meaning of Section 8 of the Right to Information Act, 2005. On the one hand, while the authorities have categorically mentioned that the document in the original was not present at the Circle Office, Siwan, Sadar, but at the same time they have mentioned that a photocopy of the same was available in an unreadable and torn condition. These two statements are contradictory to each other and strikes at the core of the object underlining the R.T.I. Act, 2005. It is also taken into consideration by this Court that the objection filed by the petitioner vide Annexure-9 to the writ



petition in which it was mentioned that the other persons, who had made applications for the procuring this *barwarda* document had been handed over the documents in question. Although, no averments have been made by the concerned authorities denying the claim or the contention raised on behalf of the petitioner.

15. In the background of these facts, this Court is of the opinion that it is the statutory duty of the public authority to maintain all records which can facilitate the furnishing of information under the R.T.I. Act, 2005. It is also not in dispute that if original is damaged, then a secondary evidence can be created by a typed transcript prepared by *Anchal Amin* and attested by Circle Officer from the *Lagan Rasheed* as well as *Khesra* copy of the land pertaining to the said *barwarda*.

16. It is incumbent upon the authorities to maintain the records manual. The document being torn or not being legible or untraceable cannot be a ground to deny the furnishing of information which is a public record. The State cannot take advantage of its own failure to preserve records.

17. In this background, the writ petition is allowed with following directions:-

(i) The District Magistrate, Siwan, Sadar/Circle Officer



(respondent no. 3), Siwan Sadar are thus directed to conduct a physical search of the *barwarda* register from the Circle Office or the office of the D.C.L.R. or District records, Siwan within four weeks and if the same is not traceable, then the authorities should reconstruct the record on the basis of the entries in the revenue records.

(ii) Secondly, if the document is found torn or not legible, then it could be digitized or enlarged or typed by the expert and it could be given to the petitioner after being certified by the concerned Circle Officer. This exercise should be carried out by the respondent authorities expeditiously.

(iii) At this juncture, if the document is traced out by the authorities, a communication to that effect be made to the petitioner to inspect the document in question along with his counsel so that petitioner is also made aware of the actual status of the document in question. If the petitioner finds that the document is torn or document is not legible and as such it will be difficult on part of the authorities to reconstruct or get it typed, petitioner can duly inform the authorities about his decision to either receive or not receive this document. It is expected that authorities will take proper steps in complying with the order and petitioner shall lend full cooperation to the



authorities. However, if the parties' fail to arrive at a definitive conclusion and are at an *impasse*, regarding the receipt or non-receipt of the documents or as to the status or condition of the documents in question, the concerned authorities shall be obligated to pass a reasoned order in accordance with law, providing cogent reasons to the effect that the information could not be given despite making best efforts to furnish/reconstruct the same to the petitioner and despite ensuring full compliance to the directions issued in the light of this judgment.

18. Learned counsel has further pointed out the provision of Section 19 of the R.T.I. Act, 2005, wherein no time frame has been stipulated for disposing of the second appeal. Learned counsel has referred to the judgments reported in *Jayaprakash Reddy* and *Akhil Kumar Roy* (*supra*) in which it has been held that the appeals should be decided within a period of 45 days as it would be travesty of justice if the appeals are kept pending and undecided for a long period. This Court is of the view that a second appeal must be decided within a period of 30 days or within such period not exceeding 45 days as decided through various judgments referred above so that, the person seeking information is not left remediless.

19. Taking into consideration, that the application was



made by the petitioner in 2009 for obtaining this document and till 2026 this small issue is yet to be resolved, matter must be set at rest and steps should be taken up by the authorities to comply with the directions of this Court within a period of eight weeks.

20. In view of discussions made above the writ petition stands allowed, orders passed by the appellate authority dated 06.01.2012 in Case No. 37744/2010-11 of State Information Commission and the letter dated 28.06.2011 issued by respondent no. 3/P.I.O.-cum-Circle Officer, Siwan, Sadar, are hereby quashed.

21. Respondents are thus directed to ensure compliance in view of the directions given in Paragraph-17 of this order. The entire exercise should be completed within a period of eight weeks from the date of this order.

22. The writ petition stands/allowed/disposed of in view of observations made aforesaid.

(Raj Kumar, J)

Prachi/-

AFR/NAFR	AFR
CAV DATE	11.08.2026
Uploading Date	20.08.2026
Transmission Date	20.08.2026

