

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5904 OF 2014  
(@ Special Leave Petition (C) No. 4269/2012)

MOHIUDDIN BAITHA

APPELLANT

VERSUS

STATE OF BIHAR & ORS.

RESPONDENTS

O R D E R

Leave granted.

Heard Mr. Narendra Kumar,, learned counsel for the  
appellant, Mr. Gaurav Agarwal, learned counsel  
for the respondent no. 5 to 12 and Mr. Gopal Singh, learned counsel  
for the State.

The father of the appellant was declared  
as a privileged tenant by the Collector, Araria,  
Bihar in respect of 10 decimals of land belonging to the landlord.  
The present controversy does not relate to  
the land allotted in favour of the father under The Bihar Privileged  
Persons Homestead Tenancy Act, 1947 (for brevity,  
'the Act'). The appellant was declared a privileged tenant  
under Section 2 of the Act some time in the year 1992.

The predecessor-in-interest of respondent nos. 5 to  
12 filed an application before the Collector, Araria for

Signature Not Verified

Digitally signed by  
Naveen Kumar  
Date: 2014.07.16

cancellation of the said settlement on the two grounds,

16:01:19 IST  
Reason:

namely, (i) he was not inducted as a tenant  
and (ii)

assuming he was a tenant, he could not be declared as a

tenant once his father had become a privileged tenant under the Act. The Collector by his order directed cancellation of the settlement in the year 1997.

Being aggrieved, the appellant preferred CWJC No. 6496/2007 wherein the learned Single Judge on 03.02.2009 opined that the Collector has passed the order on the ground that identical benefit of settlement of land cannot be given to the son in a situation where the father was given the same benefit. That apart, the learned Single Judge also took note of the fact that the writ petition was hit by doctrine of delay and laches. On an appeal being preferred, the Division Bench concurred with the view of the learned Single Judge and dismissed the appeal.

It is submitted by Mr. Narendra Kumar, learned counsel appearing for the appellant that there is no prohibition under the Act if the father is given land on settlement under a particular landlord, the son cannot become a settlee in respect of another land under another landlord if he is a tenant. Mr. Agarwal, learned counsel would contend that the appellant is not a tenant and if the son of a privileged tenant is conferred the said benefit in respect of another landlord, it would lead to an anomalous situation.

Ordinarily we would have adverted to the legal questions, but on a perusal of the orders passed by the Collector as well as by the High Court, we find the facts have not been adverted to and no finding has been recorded

3

whether the appellant, in law, could have been declared as a privileged tenant within the dictionary clause contained under Section 2 of the Act.

In view of the aforesaid, we have no other option but to set aside all the impugned orders and direct the Collector, Araria to dispose of the application in accordance with law. Needless to emphasise, while dealing

with the application preferred by the predecessor-in-interest of the respondent nos. 5 to 12 who would be substituted in place of their ancestor, all questions of law and fact being kept open shall be addressed to.

In the result, the appeal is allowed, all the orders which are impugned herein are set aside and the matter is remanded to the file of the Collector to decide the controversy regard being had to the observations made hereinabove. There shall be no order as to costs.

.....J.  
(DIPAK MISRA)

.....J.  
(V. GOPALA GOWDA)

NEW DELHI  
JUNE 30, 2014

4

ITEM NO.44

COURT NO.10

REVISED  
SECTION XVI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s). 4269/2012

(Arising out of impugned final judgment and order dated 30/11/2011 in CWJC 6496/2007 in CWJC 6496/2007 passed by the High Court Of Patna)

MOHIUDDIN BAITHA

Petitioner(s)

VERSUS

STATE OF BIHAR & ORS.

Respondents(s)

(With appln.(s) for substitution of deceased respondent and Prayer for Interim Relief and Office Report)

Date : 30/06/2014 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA  
HON'BLE MR. JUSTICE V GOPALA GOWDA

For Petitioner(s) Mr. Narendra Kumar, Adv.  
Mr. Vinod Mehta, Adv.

For Respondent(s) Mr. Gaurav Agrawal, Adv.  
Mr. Gopal Singh, Adv.  
Ms. Prerna Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

Application for substitution is allowed.

Appeal is allowed in terms of the signed order.

(NAVEEN KUMAR)  
COURT MASTER

(RENUKA SADANA)  
COURT MASTER

(Signed order is placed on the file)