

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3364 of 1993

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Md. Gheyasuddin, Son of Late Sk. Jamadar, resident of Mangarwara, P.S.-
Kumarkhand, District-Madhepura.

.... **Petitioner/s**

Versus

1. The State of Bihar.
2. Collector, Madhepura.
3. Sub-Divisional Officer, Madhepura.
4. Deputy Collector Incharge Land Reforms, Madhepura.
5. Anchal Adhikari, Kumarkhand, District-Madhepura.

.... **Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Raghiv Ahsan, Advocate
Md. Abu Haidar, Advocate

For the Respondent/s : None

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 07-04-2015

Heard learned counsel appearing on behalf of the
petitioner.

2. The petitioner has filed the present application
under Article 226 of the Constitution of India, seeking
quashing of the order dated 18.01.1993 passed by the
Collector, Madhepura and the order dated 02.03.1993 passed
by the Sub-Divisional Officer, Madhepura as well as the

final draft statement purporting to be under Section 11 (1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (**hereinafter referred to as the 'Act'**).

3. The petitioner is son of Sheikh Jamadar. The grievance of the petitioner is that said Sheikh Jamadar died in December, 1981 and without any prior notice to the petitioner, the impugned orders have been passed in Ceiling Case Nos. 3/79-80, 15/90-91 and 18/91-92, wherein said Sheikh Jamadar has been shown to be party to the proceedings, whereas he had already died in December, 1981. It has accordingly been submitted on behalf of the petitioner that the impugned orders having been passed against dead persons cannot be sustained.

4. Despite the order of this Court, dated 22.04.1993, giving time to the State-respondents to file counter affidavit, no such affidavit has been filed so far. This Court has, thus, no option but to proceed with the averments made in the writ application.

5. It appears from the pleadings made in the writ application that Land Ceiling Case No. 3/79-80 was initiated against Sheikh Jamadar, the father of the petitioner, in the



year 1980 by the Deputy Collector, Land Reforms, Madhepura and accordingly a notice under Section 6 (3) of the Act was issued to him. Sheikh Jamadar appears to have filed his objection taking plea, *inter alia*, that he had transferred bulk of lands to the third party with effect from 09.09.1970. He is said to have gifted some lands to one of his sons, grandsons and daughters through registered deeds of gift on 17.10.1962 and 25.03.1972. Upon receiving the petitioner's objection, the Deputy Collector, Land Reforms sought for a report from the Anchal Adhikari, who submitted his report on 15.05.1981 with a finding that said Sheikh Jamadar had transferred 148.64 acres of land which were valid and the transferees and were found in possession of such lands. It is specific case of the petitioner that upon receipt of the enquiry report, the Deputy Collector, Land Reforms vide his order dated 14.07.1981 noticed the transferees, who appeared and filed their documents. The Deputy Collector, Land Reforms is said to have disposed of the objection filed by said Sheikh Jamadar by an order dated 31.03.1983, holding that the land holder had transferred 148.64 acres of land which were genuine and therefore should be excluded from the draft statement. This is to be



noted that in the meanwhile in December, 1981 said Sheikh Jamadar is said to have died. It is also the pleading of the petitioner that the Deputy Collector, Land Reforms came to a finding that after excluding the lands transferred, the said Sheikh Jamadar held only 26.30 acres land of Class - III land and accordingly declared 1.30 acres of land to be surplus. He ordered for publication of final draft statement under Section 11 (1) of Act. It has been stated in the writ application that instead of mentioning Section 11 (1) of the Act, the D.C.L.R. wrongly mentioned Section 10 (2) of the Act in his order dated 31.03.1983.

6. It is the case of the petitioner that several years thereafter, without substituting any of the heirs of late Sheikh Jamadar, a fresh draft statement under Section 11 (1) of the Act was published. The petitioner, being son of late Sheikh Jamadar, *suo motu*, appeared and filed objection upon which the Collector, Land Reforms passed the impugned order dated 18.01.1993, whereupon the Sub-Divisional Officer, Madhepura by his order dated 02.03.1993 directed for publication under Section 11 (1) of the Act.

7. Following is the order passed on 18.01.1993 by the

Collector:-

“Perused the record. The learned Advocate argued that the lands transferred in the name her persons are in the name farji persons. The O.P. has not furnished the detailed address of the persons to who the lands were transferred. It was the bounded duty of the O.P. Sk. Jamadar. The O.P. has also absented also for the last two dates.

The argument of the learned G.P. appears to be convincing. Agreeing with his submitted, the case is remanded back to the Court of Learned D.C.L.R. for proceeding u/s 11 (1) of the Land Ceiling Act.”

8. From the order dated 18.01.1993, it is apparent that the Collector remanded the matter to the Court of Deputy Collector for proceeding under Section 11 (1) of the Act as Sheikh Jamadar, shown as opposite party, could not furnish the list of the persons to whom he had transferred the lands. There is no denial of the averment that on the date, i.e., 18.01.1993, when the Collector passed the abovenoted order, Sheikh Jamadar was not alive.

9. In such circumstances, the order dated 18.01.1993 passed by the Collector cannot be sustained. The order of the Collector dated 18.01.1993 and the consequent order

passed by the Sub-Divisional Officer dated 02.03.1993 are quashed. The respondents will be at liberty to proceed further in accordance with law after giving due notice to the heirs of late Sheikh Jamadar.

10. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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