

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.4602 of 1995

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1. Manju Thakur, W/O Late Gandhi Thakur, resident of village-Balha Manorath, Post Rasalpur, via- Janakpur, P.S. Bajpatti, District-Sitamarhi.
  2. Rita Jha D/O Rita Jha, D/O Late Gandhi Thakur W/O Dr. B.N. Jha, Department Superintendent, Sadar Hospital, Muzaffarpur.
  3. Madhumita Thakur, D/O Late Gandhi Thakur, W/O A.K. Thakur, resident of Quarter No.1015, Sec-4B, Bokaro Steel City, Jharkhand.
  4. Sanchita Jha, D/O Late Gandhi Thakur, W/O Sudhansh Jha, resident of Sec-2, E- Type-3, Dhusra, Ranchi-4
  5. Chiranjib Thakur, son of Late Brahmadeo Thakur
  6. Mahendra Thakur, son of Late Brahamdeo Thakur
  7. Anun Kumar Thakur, son of Gandhi Thakur
  8. Sudhir Kumar Thakur, son of Chiranjib Thakur
- Sl. Nos.5 to 8 residents of village-Balaha Manorath, P.S. Bajpatti, District-Sitamarhi.

.... .... Petitioners

Versus

1. State of Bihar
2. Collector, Sitamarhi
3. Additional Collector, Sitamarhi
4. Additional Collecgtor, Madhubani.

.... .... Respondents

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#### Appearance :

For the Petitioner/s : Mr.Akshanch Ankit

For the Respondent/s : Mr. Rajiv Kumar Singh, G.P.2

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**

**ORAL JUDGMENT**

**Date: 09-04-2015**

Heard learned counsel for the petitioners and learned counsel for the State.

The petitioners seek quashing of the order dated 12.6.1995 passed by the Collector, Sitamarhi under the provisions of Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, by which he has reopened the Land Ceiling Case No.1 of 1973-74.

The short facts of the case are that Land Ceiling Case



No.1 of 1973-74 was initiated against the original land-holder, Brahmdeo Thakur, which was disposed of by the Additional Collector, Sitamarhi by order dated 26.6.1976. Four units were allowed in favour of the landholder. The said order was challenged in appeal before the Collector of the District by the land-holder who, however, died thereafter on 11.4.1973 resulting in abatement of the appeal. The land ceiling proceedings were revived by the respondent No.3 and thereafter on the basis of claim for two more units since petitioner Nos. 7 and 8 were major on 1970, by order dated 25.11.1981, six units were allowed to the land-holders. An appeal against the same was dismissed by order dated 28.2.1983 and a final draft notification thereafter made in the District Gazette on 20.2.1984 after a gap of more than eight years in August, 1992. Thereafter, notice for reopening the case under Section 45B of the Act with regard to both the sons of the original petitioner, Gandhi Thakur, was issued to him stating that he had obtained two units extra in the names of his sons on the basis of wrong age of his sons and the earlier report of the Circle Officer was based only upon estimation, whereas the age of petitioner No.8, Sudhir Kumar Thakur was less and he was wrongly shown as major. The petitioner filed reply to the show cause on 20.12.1992 stating that in the report submitted by the Anchal Adhikari, Bajpatti vide letter dated 21.2.1976 the age of petitioner No.7 was shown as 22 years and that of petitioner No.8 as 19 years on



9.9.1970. The further stand taken was that no evidence regarding minority of petitioner Nos. 7 and 8 was adduced by the State Government, rather it is evident from both the letters dated 21.2.1976 and 26.11.1980 sent by the Circle Officer, Bajpatti that both the petitioner Nos. 7 and 8 were major as on 9.9.1970 and therefore, they were rightly granted two units on the basis of the materials on the record.

However, by the impugned order dated 12.6.1995, the Collector of the District directed reopening of the land ceiling proceedings under Section 45B of the Act and transferred the matter to be heard along with the four miscellaneous cases, which were pending from before.

Learned counsel for the petitioners apart from making a preliminary submission regarding the order of the Collector showing non-application of mind, as nothing stated in the reply to the show cause notice filed by the petitioners has been considered, has sought to assail the order on the ground that the ceiling proceedings could not have been reopened by the Collector in exercise of power under Section 45B of the Act unless there was fresh material before the Collector which is not there in the present matter.

It is submitted by learned counsel for the petitioners that no reference is made in the order of the Collector regarding the reply to the show cause notice filed by the petitioners or any fresh

materials either obtained after the matter had become final or the materials available on the record which had been over-looked by the Collector under the Act while passing the order dated 25.11.1981.

Thus according to learned counsel for the petitioners there was no occasion for reopening the ceiling proceedings as has been done so lightly in the present matter.

In support of his aforesaid stand, learned counsel for the petitioners relies upon a decision of the Division Bench of this Court in the case of Yamuna Rai and others vs. The State of Bihar and others : 1984 PLJR 480, in paragraph No.7 of which it has been held as follows:

“7. To summarise the point raised in this case is as follows:

A case can be reopened on new materials of fact or law which has been laid down by the High Court or superior courts or there is any change in legislation. The State Government or the District Collector cannot reopen a case simply because the State Government or the District Collector cannot reopen a case for taking a different view or for changing opinion or for revising opinion on the existing materials on the record. A proceeding under Section 45B of the Act should not be



initiated for giving a second thought to the existing materials. Therefore, in order to reopen the case, the State Government or the District Collector must be in possession of new materials which were not available at the time of giving judgment. This material may be on the basis of the information received by the State Government or the District Collector or from the record as well. Suppose some information may be available to the Anchal Adhikari or the Collector, to which the Collector did not apply his mind while passing the order, that information to which mind was not applied by the earlier authority can be a source of information or material for reopening a case. Suppose in a case where there are three sons and a father and four units have been given to the three sons and their father. It was held that all the sons were major on the 9<sup>th</sup> September, 1970. If an information comes to the Collector that one son was not major on 9th September, 1970, the State Government or the District Collector cannot reopen the matter because on the earlier occasion the Collector had applied his mind on the point of minority or majority of the



son and that fact cannot be reopened subsequently for taking a different view of the same matter. The District Collector can reopen a case where the lands of another person have been included in the lands of the land-holder. Suppose A is the petitioner and in the notification under Section 15 (1) of the Act the lands of B have also been tagged with the land of 'A', 'B' can apply for quashing a notification under Section 15 (1) of the Act or for reopening a case under Section 45B of the Act. The Collector had no information as to the fact that B's lands have also been included in the land of the petitioner, then in such a circumstance, the case can be reopened."

The aforesaid decision was upheld by a Full Bench of this Court in the case of Praveen Shankar Singh and others vs. The State of Bihar and others :1987 PLJR 154, in paragraph No.17 of which it has been held as follows:-

"17. Now the question as to whether the authority can decide to reopen the proceeding on a re-consideration of the materials which had earlier been considered. In my view, it is not permissible to do so and this interpretation of the section would



be consistent with the age old principles mentioned above and would be reasonable, just and consistent with fair play. It will save not only the land-holder but also the State from a perpetual threat of uncertainty and consequent harassment; for, it is a power which the land-holder may also invite to be exercised in his favour and not only one but repeatedly. If the section is construed in its widest amplitude implying unbridled and unlimited power, the Collector when asked by an aggrieved land-holder to exercise the same, cannot, without applying his mind, refuse to entertain the prayer as that would amount to abdication of power. I, therefore, hold that if the material on the records of a case taken into consideration by the authorities concerned and a conclusion is reached which becomes final (on appeal and revision or in absence thereof), its finality has to be respected and the proceeding cannot be reopened for giving a second thought. If, however, any material or matter has been omitted from consideration which may be so substantial as to lead to a different conclusion, the power under the section may be exercised. As the

observations of Mr. Justice B.P. Jha in paragraph 7 of the judgment in Yamuna Rai v. The State of Bihar (supra) are consistent with this view, I hold that the case was correctly decided.”

Learned Government Pleader No.2 is unable to show that there was anything on the record of the case which has not been considered while passing the earlier order dated 25.11.1981 which could have led to reopening of the case and what fresh materials have been taken into account by the Collector, Sitamarhi while passing the impugned order.

In the aforesaid circumstances, the present case is squarely covered by the decision of this Court in the case of Yamuna Rai (supra) and the decision of the Full Bench in the case of Praveen Shankar Singh (supra). In fact in Yamuna Singh's case the Division Bench has specifically considered the point of minority and majority being considered by the Collector under the Act and an attempt to reopen the same without there being any fresh materials either on the record or available subsequently and had held that the same could not be done.

In the aforesaid view of the matter, the writ application is allowed and the impugned order dated 12.06.1995 is quashed.

V.P.Sinha/-

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**(Ramesh Kumar Datta, J)**