

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3075 of 1997

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SMT. KAUSHALIYA DEVI, WIFE OF SRI RAJBANSHI SINGH, RESIDENT OF
VILLAGE DIGHA GHAT, POLICE STATION DIGHA, DISTRICT PATNA

.... Petitioner

with

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Civil Writ Jurisdiction Case No. 3076 of 1997

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SMT. DEVENTI DEVI, WIFE OF RAM BABU SINGH, RESIDENT OF VILLAGE
DIGHA GHAT POLICE STATION DIGHA, TOWN AND DISTRICT PATNA

.... Petitioner

Versus

- 1 THE STATE OF BIHAR
- 2 THE COMPETENT OFFICER UNDER URBAN LAND CEILING ACT, PATNA
- 3 COLLECTOR, PATNA
- 4 CIRCLE OFFICER, PATNA SADAR, PATNA
- 5 PATNA POLSON PRIVATE LIMITED SITUATED AT DIGHA, POLICE STATION
DIGHA, PATNA Respondents in both writ petitions

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Appearance : in both cases

For the Petitioner : Mr. ANIL KUMAR SINGH 1, Advocate

For the Respondents : Mr. H.P.SINGH (SC)

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 16-09-2015

Both the writ petitions are taken up together for hearing
and disposal as the issues involved are common to each other.

2. The writ petitions have been filed to restrain the
respondents from taking possession of the house under Urban
Land(Ceiling and Regulation) Act, Patna (herein after referred to as
the Act), situated on the part of Survey plot no.1570 under Khata
no. 829, Tauji no. 5174, Thana no.1 situated at village Digha,
Police Station Digha district Patna.

3. The facts, relevant for determination of the case, in brief, are as follows:-

(a) One Gauri Lal purchased an area of 1.13 ½ decimal vide three sale deeds dated 7.8.1954, 28.5.1954 and 25.5.1954 in Tauji no. 5174, Thana no. 1 in village Digha Police Station Digha, district Patna. Polson Modern Diary came to be established on the said land. After sometime, Polson Modern Diary discontinued its business and sold the land, building as well as machinery to Patna Polson Private Limited (respondent no.5), also a Company incorporated under the Companies Act. After purchase of the land, building and machinery, the Patna Polson Private Limited began to pay the rent to the State of Bihar. However, Patna Polson Private Limited failed to repay a loan of Rs.20 lacs advanced from Bihar Small Scale Industries Corporation Limited (herein after referred to as the BICICO), which took actions under sections 29 and 30 of the BSFC Act.

(b) Respondent no.5 as such negotiated to sell some land to pay the loan to the BICICO, a Government company. The petitioner Kaushaliya Devi purchased 2.5 kathas of land through registered sale deed on 20.6.1988, whereas petitioner Devanti Devi purchased 2 kathas of land on 7.9.1988 through another sale deed. The Patna Polson Private Limited (respondent no.5) filed

C.W.J.C.No. 8206 of 1988 and challenged the notice under sections 29 and 30 of the BSFC Act which was disposed of on 8.11.1988 by a consent order to repay the loan amount with interest in three installments, with permission of sale for further 3 bighas of land.

4. The petitioners submits that all of a sudden on 1.3.97 the Collector, Patna visited their house, asking them to vacate the premises as those were to be demolished for the reasons that the land in question has been declared surplus under the Ceiling Act, for which a notice was also published in one of the local Hindi newspapers "Hindustan" dated 14.12.1996. The petitioners enquired into the matter and was surprised to learn that the notice in fact was published on 14.12.1996 showing the land in question to be acquired under Urban Ceiling Act in a proceeding initiated against Polson Modern Dairy after sale of the properties to the respondent no.5. However, in spite of best efforts, they could not get the certified copy of the proceedings.

5. The petitioners have challenged the acquisition of purchased land on two grounds. Firstly, neither respondent no.5 who purchased the land in 1988 nor their vendors were either made parties or noticed in the proceedings. They next submit that at least till the date of filing of the writ petition, the State Government had not published any notification, declaring Digha Ghat as Municipal

area and hence the Urban Ceiling Act would not be applicable in respect of land situated in the area.

6. Counter affidavit has been filed on behalf of Respondents. In paragraph 12 they state that a proceeding under the Urban Ceiling Act was initiated against Sri B.P.Jain, the then Superintendent, Polson Modern Diary Pvt. Ltd. The said company in pursuance of notice under section 6(1) submitted its return on 8.10.1980 stated that it possessed 24,918 square meters of land. Mr. Jain in his return dated 8.1.1980 filed on behalf of Company, further stated that there are constructions on some of the lands in which the factory is also running. After enquiry, a draft statement under section 8(1) of the Act was published showing 10,400 square meter of vacant land in excess of ceiling area. The Company did not file any objection under section 8(3) of the Act against the draft statement made under section 8(1) of the Act. As such, a final statement under section 9 was made. Even then, no objections were made by any one and ultimately an order under section 10(1) was passed to acquire 10,460 square meters of land. In absence of any objection, the land vested under section 10(3) of the Act with the State Government. They further submit that the petitioners purchased the vacated land in 1988 much after the appointed date of the proceeding and after filing of return by original land holder in

1980. Besides this, the petitioners got the registration done in Calcutta in 1980 much after initiation of ceiling proceeding in 1986, though the land was situated in Digha, Patna too raised an eye brow.

7. In my view, the petitioner first ought to have approached the Collector, Patna, instead of approaching this Court straight away with their explanation. The writ petitions are accordingly disposed of with liberty to the petitioners to approach the collector, Patna within six weeks from the date of receipt of this order. In the meantime, no coercive steps would be taken against the petitioners.

(Samarendra Pratap Singh, J)

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