

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.1355 of 1994

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- 1(a) Kamal Kant Mishra , son of late Arjun Mishra, resident of village Parsauni, P.S. Dumra, District Sitamarhi
- 1(b) Nirmala Devi, wife of Rameshwar Thakur, resident of village Harinagar, P.S. Nanpur, District Sitamarhi
2. Godawari Devi wife of Tej Narain Jha
3. Lilawati Ojhain wife of Kamdeo Jha
4. Sujata Devi wife of Chhotelal Jha
5. Sunaina Devi wife of Jai Kishore Jha
6. Jai Bhadra Thakur son of Raghuvar Thakur
7. Bandhana Devi wife of Sahdeo Jha
8. Yog Narain Jha
9. Shubh Narain Jha
10. Satya Narain Jha
11. Bishambhar Jha, all sons of Ramdeo Jha, deceased.
12. Hari Shankar Jha
13. Damodar Jha
14. Gopal Jha, all sons of Raghubansh Jha
- 15(a) Raj Kishore Jha
- 15(b) Dilip Kumar Jha
- 15 ( c) Sunil Kumar Jha
- 15 (d) Manoj Kumar Jha, 15 (b) to 15 (d) are sons of Gayatri Devi, all resident of village Parsauni, P.S. Dumra, District Sitamarhi
- 15(e) Parmila Devi, wife of Achuta Nand Thakur, resident of village Dharkha, P.O. Dharkha, P.S. Dharkha, District Sitamarhi
- 15(f) Poonam Devi, wife of Surendra Jha, resident of village Kadariya, P.O. Kadariya, District Sitamarhi
16. Lal Bahadur Jha, S/o Lakshmi Kant Jha, deceased
17. Baby Kumari, Minor
18. Madhuri Kumari, minor, both minor daughter of Lal Bahadur Jha, minors under the guardianship of his father Lal Bahadur Jha.
19. Nunu Kumar Jha
20. Sudhir Kumar Jha
21. Umesh Kumar Jha, all sons of Lal Bahadur Jha
22. Kamlesh Kumar Jha, minor son of Nawal Kishore Jha, minor guardianship of his father
23. Shanti Devi wife of Nawal Kishore Jha
24. Bimalesh Jha, minor son of Nawal Kishore Jha, minor under the guardianship of his father
- 25(a) Harikeshwar Mishra, S/o Bigan Mishra
- 25(b) Pramod Kumar Mishra, both resident of village Parsauni, P.S. Dumra, District Sitamarhi
- 25(c ) Bina Devi, wife of Gopal Jha, resident of village Chandauli, P.S. Belsand, District Sitamarhi
- 25(d ) Dina Devi wife of Yogesh Thakur, resident of village Katsari P.S. Sheohar, District Sheohar
- 25(e) Meera Mishra
- 25(f) Nikhil Kumar, minor
- 25(g) Vinit Kumar, Minor, both sons of Late Binod Kumar Mishra Minors under

the guardianship of their mother Meera Mishra. All resident of village Parsauni, P.S. Dumara, District Sitamarhi

25(h) Asha Thakur, wife of Ajay Thakur, resident of village Narsama, P.S. Riga, District Sitamarhi

25(i) Kajal Kumari minor, daughter of Late Binod Kumar Mishra, Minor under the guardianship of her mother Meera Mishra. All resident of village Parsauni, P.S. Dumara, District Sitamarhi

.... .... Petitioners

Versus

1. The State of Bihar

2. The District Collector, Sitamarhi

3. The Additional Collector, Sitamarhi

4. The Circle Officer, Dumara, Police Station, Dumara, District Dumara

5. Krishna Kumar Sharma son of Ram Chandra Sharma deceased

6. Smt. Shanti Sharma wife of Sri Krishna Kumar Sharma, both residents of Mohalla Talkhapur, Dumara, Police Station Dumara, District Sitamarhi

7(a) Nandan Kumar

7(b) Dhannu Kumar both are sons of Ram Sakal Singh resident of Ward No. 2, Nagar Panchayat Dumra, P.S. – Dumra, District Sitamarhi

7( c) Babli Devi wife of Rudeshwar Singh, resident of village Manjhoulia, Estate, P.S. Bathnaha, District Sitamarhi

.... .... Respondent/s

**Appearance :**

For the Petitioners : Mr. Bhupendra Narain Sinha, Advocate

Mr. Shailendra Kumar, Advocate

For the State : Mr. Rajeev Kumar Singh, G.P.-2

**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA**

**ORAL JUDGMENT**

**Date: 23-04-2015**

Heard learned counsel for the petitioners, Sri Rajeev Kumar Singh for the State and Sri Yogendra Prasad Sinha for the intervenors.

2. Petitioners are the purchaser of the lands in different plots appertaining to Khata No. 159 of village – Dharampur within Dumra Circle of Sitamarhi district which initially belonged to landlord Ram Sewak Singh and his family deity. Aforesaid lands became subject matter of Land Ceiling Case No. 1 of 1973-74



initiated in terms of the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 (hereinafter referred to as the Act). During the pendency of the aforesaid ceiling proceedings the lands in question were sold by his son, Respondent no.7, Ram Sakal Singh in favour of Krishna Kumar Sharma and his wife Smt. Shanti Sharma, Respondent nos. 5 and 6 herein vide registered sale deed dated 13.05.1974. In the ceiling case initially Ram Sewak Singh was allowed one unit and the lands in question along with other lands were notified as his surplus lands vide notification issued under sub-section (1) of Section 15 of the Act. Ram Sewak Singh did not accept one unit and assailed the order passed by the Collector under the Act including notification declaring the lands in question as surplus land. The contest was upheld by the Board of Revenue under order dated 31.01.1977 and he was allowed one more unit for the deity. In the light of orders granting two units to the family of Ram Sewak Singh, Ram Sewak Singh filed a petition before the Collector, Sitamarhi asking the Collector to let him exercise right of choice for his two units allowed by the Collector and Member, Board of Revenue. Request of the landlord for exercising right of choice was considered by the Collector, Sitamarhi under order dated 11.04.1980, Anneuxre-4 and allowed, pursuant whereto the lands in question including the other lands which were within the

aforesaid two units were required to have been denotified from the earlier notification dated 12.06.1976 issued under sub-section (1) of Section 15 of the Act.

3. From the writ petition and the counter affidavit filed in the present matter, it does not appear that any such notification has been issued so far. In the writ petition, one order of the High Court dated 12.05.1982 has been annexed as Annexure-5 wherefrom it appears that Respondent nos. 5 and 6 wanted to sell the lands in question and Additional Collector, Sitamarhi has restrained them from doing so by passing an order which was assailed in the said writ petition as Annexure-3. The High Court set aside the restraint order holding that the same has been passed under some misconception. In the light of order dated 12.05.1982, Annexure-5, the impugned sale deed dated 10.08.1982 and other subsequent sale deeds have been executed by Respondent nos. 5 and 6. In the light of the sale deed dated 10.08.1982 and the subsequent sale deeds, petitioners-purchaser have claimed that they are not only in possession of the lands in question but have also been mutated in the records of the State and such statement has been made in paragraph 11 of the writ petition, which has not been disputed in the counter affidavit. The counter affidavit, however, refers to a subsequent order passed by another Division Bench of the High Court in CWJC No. 3577 of 1984 filed by

Respondent nos. 5 and 6 praying inter alia to denotify the lands sold to them, but such prayer of Respondent nos. 5 and 6 was rejected by the High Court.

4. It is submitted by the learned counsel for the State that as the prayer of Respondent nos. 5 and 6, the vendors of the petitioners, to denotify the lands sold to them has been rejected by the High Court under order dated 30.06.1987 passed in CWJC No. 3577 of 1984, Annexure-A to the counter affidavit similar prayer of the vendee of Respondent nos. 5 and 6 should not be allowed.

5. I regret not to accept such submission for the reason that the petitioners herein are not only the purchasers from Respondent nos. 5 and 6 but they made their purchase much before the order dated 30.06.1987 was passed that too pursuant to the order of the earlier Division Bench dated 12.05.1982. In this connection, it is also relevant to note that in the light of the order passed by the Board of Revenue granting one more unit to the family of Ram Sewak Singh, the gazette notification issued under sub-section (1) of Section 15 of the Act dated 12.06.1976 was required to have been modified and had such exercise been done pursuant to the order dated 11.04.1980, the occasion for filing of the two subsequent writ petitions, one in the year 1982 and the other in the year 1987 was not required to have been undertaken by Respondent nos. 5, 6.

6. There is yet another aspect of the matter that after Section 32-A was inserted in the Act by Act 52 of 1982 with effect from 12.04.1982, the proceeding initiated under the Act was required to have been abated and pursuant to such abatement also the gazette notification dated 12.06.1976 was required to have been annulled and proceedings taken afresh.

7. Taking into account all the aforesaid aspect of the matter, I direct that the lands in question which have been sold to the petitioners-vendee under registered sale deed dated 10.08.1982 and subsequent sale deeds as also mutated in their name be denotified from the surplus land of Ram Sewak Singh notified under gazette notification dated 12.06.1976.

8. The writ petition stands allowed.

**(V.N. Sinha, J.)**

Arjun/-

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