

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 948 of 1996

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Sia Saran Mahto, son of late Lakhan Mahto, resident of Village – Chanayan Bandh Tola Arnahwa, PO – Arnahwa, via – Manjhaulia, PS – Manjhaulia, District – West Champaran

.... Petitioner/s

Versus

- 1 State of Bihar
- 2 District Magistrate –cum- Collector, West Champaran at Bettiah
- 3 Additional Collector, West Champaran at Bettiah

.... Respondent/s

WITH

Civil Writ Jurisdiction Case No 949 of 1996

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- 1 Yogendra Sah, son of Bhikhari Sah (deceased) resident of Village – Arnahwar Chanain Bandh, PS – Manjhaulia, District – West Champaran
 - 2 Chaneshwar Prasad Sah, son of Shiv Kumar Sah
 - 3 Rajeshwar Prasad Sah, son of Shiv Kumar Sah
 - 4 Smt Sundari Devi, wife of Uday Bhan Mahto
 - 5 Uday Bhan Mahto, son of Tapeswar Bhagat, residents of Village – Arnahwa Chanain Bandh, PS – Manjhaulia, District – West Champaran
 - 6 Kamal Singh, son of late Hari Kanchan Singh of Village – Ratanmala Chhaurahia, PS – Manjhaulia, District – West Champaran

.... Petitioner/s

Versus

- 1 State of Bihar
- 2 District Magistrate –cum- Collector, West Champaran at Bettiah
- 3 Additional Collector, West Champaran at Bettiah
- 4 Sia Saran Mahto, son of late Lakhan Mahto, resident of Village – Chanayan Bandh Tola Arnahwa, PS – Manjhaulia, District – West Champaran

.... Respondent/s

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For the Petitioner/s : Mr Nirmal Kumar Sinha - 3

For the State : Mr Ajay, GA XXII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 30-07-2015

These two writ petitions ostensibly challenge the order passed by the Additional Collector, West Champaran dated 27.07.1995 in Land Ceiling Case No 8 of 1973-1974 by which the petitioner Sia Saran Mahto has been allotted only one unit of land and the consequential notification under Section 15 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for brevity, *the Act*) whereby substantial lands of the writ

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petitioner Sia Saran Mahto has been declared to be ceiling surplus and notified for acquisition and distribution.

2 CWJC No 948 of 1996 has been filed by Sia Saran Mahto, the landholder and CWJC No 949 of 1996 has been filed by Yogendra Sah & Others who are purchasers of some of the lands from Sia Saran Mahto and his different cousins which lands have also been included as land of Sia Saran Mahto and has been declared ceiling surplus. Hence, the second writ petition.

3 47.77 acres of land recorded in the name of Sia Saran Mahto, as per khatian, became subject matter of the aforesaid proceedings. The proceeding having been initiated and notice having been issued, Sia Saran Mahto appeared. He filed papers to show that these lands were recorded in the cadastral survey in the name of Bhola Mahto, Kishun Mahto and Manohar Mahto. Lakhan Mahto was the father of Sia Saran Mahto and he was the son of Manohar Mahto. There were three brothers that is Bhola Mahto, Kishun Mahto and Manohar Mahto who constituted a joint family and this entire 47.77 acres of land, as per cadastral survey, was recorded in the name of three brothers. The cadastral survey was of the year, 1906 or about. In due course of time, a single khatian was prepared and it was drawn in the name of Sia Saran Mahto but in fact the land belonged to larger family. He, thus, originally claimed six units but after

examining the facts, the Additional Collector found that there were two other adult members in the family, namely, Vishwanath Mahto and Mahadeo Mahto being the sons of Kari Mahto. He allotted four units and, thus, the lands being much less than the entitlement in terms of the Act, the ceiling proceedings were dropped. This order was passed on 21.08.1984 in Land Ceiling Case No 8 of 1973-1974. The matter having been thus dropped, it appears that the Collector of the district West Champaran exercised powers under Section 45B of the Act and set aside his order and directed for reconsideration of the matter holding that apparently the units were wrong calculated. Then the Additional Collector took up the matter once again and this time, by the impugned order, he held that petitioner Sia Saran Mahto was entitled to only one unit. This is challenged before this Court.

4 Firstly, Shri Ajay, learned counsel for the State raises an objection that the petitioners have alternative remedy by way of appeal and against the order of the Additional Collector, they ought to have filed an appeal. In my view, the objection is misconceived on two grounds. Firstly, the order of the Additional Collector was pursuant to the orders of the Collector who had already given a finding that the earlier order of Additional Collector was wrong. Filing an appeal before the Collector of the district would be of no avail. It would be an appeal from Caesar to Caesar. Secondly, it is

well established that objection as to alternative remedy has to be taken at the earliest that is at the time of admission. After twenty years of the case pending in this Court, such an objection cannot be entertained and should not be entertained. There are series of judgments of the Apex Court and this Court in this regard. One of them is in the case of *L Hirday Narain –Versus- Income Tax Officer, Bareilly, AIR 1971 Supreme Court 33*.

5 Now coming to the main controversy. The revenue has not denied or disputed the genealogy. Revenue has not disputed that this entire 47.77 acres of land stood recorded, as per cadastral survey, in the name of the two brothers and their nephew representing their brother. Thus, it is evident that the land was a joint family property belonging to the three branches. Merely because, in due course of time, there being no evidence of partition, it was recorded solely in the name of Sia Saran Mahto, does not mean that he was the sole owner of the said land. Further, if we look to the facts of the second writ petition, which has been filed by Yogendra Sah and others, the matter would be further clear. From the aforesaid 47.77 acres of land, they have purchased different portions of land from Sia Saran Mahto and his different cousins. This can only be possible when those cousins had a subsisting right in the land. This is consistent with the plea of Sia Saran Mahto regarding joint family properties belonging to

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three branches of the family. To counter this, the Additional Collector, in the second round, noted that there were some lands separately recorded in the name of Kari Mahto who was the uncle of Sia Saran Mahto. What the Additional Collector apparently sought to show was that there had been a partition in the family. What he forgot was that though people may have the lands in jointness, they can still have properties individually as well. That does not mitigate the facts of jointness. Moreover, the Additional Collector does not say that the Jamabandi in name of Kari Mahto was in respect of part of these lands itself.

6 Thus, the inferences sought to be drawn by the Additional Collector cannot be said to be legally correct. The facts are otherwise. Thus, the Additional Collector's first order being order dated 21.08.1984 was a correct order and needed no interference. Therefore, the impugned order of the Additional Collector dated 27.07.1995 and the consequential Gazette notification dated 14.09.1995 and notification dated 17.11.1995 issued by the Collector, West Champaran at Bettiah cannot be sustained. They are all set aside.

7 These two writ petitions are allowed in the aforesaid terms.

(Navaniti Prasad Singh, J)

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