

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2899 of 2006

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1(i) Md. Quashim
1(ii) Md. Wasique
Both sons of late Md. Taslimuddin
1(iii) Bibi Wasila Khatoon
1(iv) Bibi Sunjida Khatoon
Both D/o late Md. Taslimuddin
All residents of village Matiari, P.S. Jokihat, District Araria
.... Petitioners

Versus

1. The State of Bihar
2. The Collector, Araria
3. The Additional Collector, Ceiling, Araria
4. The D.C.L.R. Araria, District Araria
5. The Anchaladhikari, Jokihat, District Araria
6. Shri Chint Ram Sah, son of Shri Andu Lal Sah
Resident of village Matiari, P.S. Jokihat, District Araria
7. Nitya Nand Tatma, son of Sanup Lal Tatma
8. Tauhid Mian, son of Khaiyan Mian
9. Domi Rishidev, son of Bateshwar Rishidev
10. Pirthavi Rishidev, son of Manikchand Rishidev
11. Chamru Rishidev, son of Jiya Lal Rishidev
12. Kamlu Rishidev, son of Dukha Rishidev
13. Karku Rishidev, son of Bhuni Rishidev
14. Chaiti Rishidev, son of Aklu Rishidev
15. Sarswar Rishidev, son of Ghotak Rishidev
16. Misran Rishidev, son of Chhedi Rishidev
17. Girdhu Rishidev, son of kallu Rishidev
18. Phani Rishidev, son of Dukha Rishidev
19. Hakru Rishidev, so of Chhedi Rishidev
20. Thegar Rishidev, so nof Latru Rishidev
21. Lakhan Rishidev, son of Ram Kumar Rishidev
All resident of village Chakai, P.S. Jokihat, District Araria
.... Respondents

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Appearance :

For the Petitioner/s : Mr. J.S.Arora, Adv.
For the Respondent/s : Mr. Dinu Kumar (Sc(C)1)
Mr. Pramod Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

11 07-09-2015 Heard learned counsel for the parties.

Admittedly a land ceiling proceeding under the Bihar
Land Reforms (Fixation of Ceiling Area and Acquisition of



Surplus Land) Act, 1961 being Land Ceiling Case No. 126/1973-74 was initiated against one Chint Ram Sah (respondent no.6) and that the proceeding came to an end by way of publication of gazette notification under section 15(1) of the Act way back in the year 1980 by which the notification was made by the State Government of acquiring 16.57 1/4 acres of land.

It is after 26 years that the petitioner claims that he could get the knowledge that even a piece of his land measuring 1 acre 51 dhurs was made part of that land ceiling case decided against respondent no.6, Chint Ram Sah and therefore, the petitioner had moved this Court by filing this writ application on 1.3.2006 and to that extent it would be relevant to quote paragraph 1 of the writ petition filed by the petitioner on 1.3.2006 which reads as follows:

“That this application is being filed for quashing gazette notification no. 2105 dated 5.2.1980 made under section 15(i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, so far as the land of khata no. 31, 34 and 35 of village Rahikpur, Thana no. 265 P.S. Jokihat District Araria is concerned as well as the distribution made in favour of respondent no.7 to 21 with respect to land of aforesaid khata through red-cards and restraining the respondents from interfering with the right, title, interest and possession of the petitioner over the land in question.”

Let it be noted that this Court by an order dated 5.12.2007

had passed a detailed interim order which for the sake of clarity and convenience is also quoted hereinbelow:

“ Learned counsel for the petitioner, from the recitals in the registered deed at Annexure-1, submits that reference to khata no.36 has been inadvertently left out in the description of the lands at paragraphs-4, 10 and the prayer portion of the writ application. Permission is granted to correct the typographical omission in the pleadings.

Learned counsel for the State raises a preliminary objection to the maintainability of the writ application on the ground of inordinate delay. The writ petition has been filed in the year 2006 when the final notification for declaration of lands in question as surplus under section 15 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act has been made as far back as in the month of February, 1980. Learned counsel for the petitioner submits that the lands situated in Khata nos. 31, 34, 35 and 36 in village Rahikpur, Thana no. 265, P.S. and Anchal Jokihat, District Araria originally belonged to the ancestor of the petitioner. During the revisional survey operation the aforesaid Khata was wrongly recorded in the name of one Andulal Sah, father of the present respondent no.6, even though exclusive physical possession of the lands remained with the petitioner. On 15.3.1965 a registered deed of disclaimer was then executed by Andulal Sah in favour of the petitioner disclaiming any right, title, interest and possession of his over the said lands. Jamabandi was then created in the name of the petitioner in 1975. He has been



paying rent to the State Government. Land ceiling proceedings case no. 126/1973-74 were initiated against Chint Ram Sah (respondent no.6) son of the aforesaid Andulal Sah. This proceedings included the lands of the petitioner to which respondent no.6 had no right, title or possession. No land ceiling proceedings were initiated against the petitioner and he, therefore, remained blissfully unaware of the same.

Learned counsel for the State from the counter affidavit submits that the original land holder (respondent no.6) in his objection in the land ceiling proceedings never mentioned the fact of the registered deed of disclaimer and only averred that he had sold an area of 1.01 acres of land of khata no. 505 in favour of the father of the petitioner by a registered deed dated 16.12.1965, which was, accordingly, excluded from the ceiling proceedings.

Issue notice to respondents no. 6 to 21 by ordinary process. Requisite etc. be filed within a week, failing which the application against them shall stand rejected without further reference to a Bench.

The question of delay in institution of the writ application shall be considered more appropriately after the court has benefit of appearance of all the contesting parties and their affidavits.”

Thereafter as the records would bear it out that this writ application on account of non-compliance of per-emptory order has stood dismissed against respondent no.7, 9to 18, 20 and 21 and a question has arisen with regard to competence of the writ

application. It is for this issue that the matter has been referred to this Court because of the earlier order passed on 7.2.2008 by this Court.

There are many snags in the case of the petitioner, especially when the respondent State in paragraph no.10 of the counter affidavit has made the following averments:

“10. That, the statements made in paragraph no.12 of the writ application it is submitted that the respondents no. 7 to 21 the settles by means of Red Cards are in possession of the land in question.”

Since this statement has not been controverted but Mr. J.S.Arora, learned counsel for the petitioner, would like to stick to the petitioner's case in the writ application that the petitioners still are in possession of the land, this Court would find that the petitioners instead of rushing to this Court ought to have availed the statutory alternative remedy by way of approaching the State Government under section 45(b) of the Act, inasmuch as if the petitioners were not made party to the proceeding and their land has been somehow included in the land ceiling proceeding of respondent no.6, they could always have asked the State Government to reopen the proceeding and the State Government upon examining the records could have taken appropriate decision.

In that view of the matter, when now Mr. Arora wants to

withdraw this application to avail statutory alternative remedy, this Court would allow the petitioners to withdraw this application by making it clear that right, inter party and inter se between the petitioner and the private respondents shall always be gone into by any authority while deciding the case of the petitioners, inasmuch as the State has come out to say that the lands have already been distributed pursuant to the impugned notification under section 15 of the Act.

(Mihir Kumar Jha, J)

surendra/-

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