

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6898 of 1993

=====

1. Madhav Roy, Son of Late Satya Naryana Roy, resident of Village-Chunapur, P.S.-Krityanand Nagar, District-Purnea, at present residing at Boring Canal Road, Patna-23, P.S.-S.K. Puri, District-Patna.

2. Shyam Roy, Son of Late Satya Narayan Roy, resident of Village-Chunapur, P.S.-Krityanand Nagar, District-Purnea.

..... Petitioner/s

Versus

1. The State of Bihar, through the Land Reform Commissioner, Old Secretariat Building, Patna.

2. The Additional Member, Board of Revenue, Old Secretariat Building, Patna.

3. The Collector, Purnea.

4. The Additional Collector, Ceiling, Purnea.

5. Sri Laxmi Narayan Jee and Sri Radha Krishan Jee, the deities of Chunapur Thakurbari, established by Late Bankhandi Roy, through their Savaits, Village-Chunapur, P.S.-Krityanand Nagar, District-Purnea.

6. Dr. Gobind Roy, Son of Late Satya Narayan Roy, resident of Village-Chunapur, P.S.-Krityanand Nagar, District-Purnea, presently posted as Medical Officer, Bochaha Block in the district of Muzaffarpur, residing at near Zero Mile Muzaffarpur.

7. Smt. Rohini Devi, Daughter of Late Satya Narayan Roy and Wife of Sri Umesh Chandra Jha, resident of Village-Birsair, P.S.-Pandaul, District-Madhubani.

8. Smt. Kamla Jha, Daughter of Late Satya Narayan Roy and Wife of Sri Vinayak Jha, resident of Village-Koriyahi, P.S.-Sursand, District-Sitamarhi.

9. Smt. Sabita Mishra, Daughter of Late Satya Narayan Roy and Wife of Sri Arunakar Mishra, at present system Audit Manager, Hindustan Aeronautics Limited, Bangalore (Karnataka).

10. Smt. Kavita Thakur, Daughter of Late Satya Narayan Roy and Wife of Prof. A.N. Thakur, quarter no. 10/3 University Colony Bariyatu, Ranchi.

11. Smt. Shobha Jha, Daughter of Late Satya Narayan Roy, Wife of Shree Bimal Kumar Jha, resident of Village-Bhittha, P.S.-Sursand, District-Sitamarhi.

12. Saket Kumar Roy, Son of Dr. Gobind Roy, resident of Village-Chunapur, P.S.-K.Nagar, District-Purnea.
13. Abhishek Thakur, Son of Sri Madhav Roy, Advocate, residing at Boring Canal Road, P.S.-S.K. Puri, District-Patna.
14. Satyakam, Son of Sri Shyam Roy, resident of Village-Chunapur, P.S.-K. Nagar, District-Purnea.
15. Kumari Jyotsna Roy, Daughter of Dr. Gobind Roy, residing of Village-Chunapur, P.S.-K. Nagar, resident of Village-Chunapur, P.S.-K. Nagar, District-Purnea.
16. Kumari Sweta Roy, Daughter of Sri Madhav Roy, Advocate, residing at Boring Canal Road, P.S.-S.K. Puri, District-Patna.
17. Kumari Swati Roy, Daughter of Sri Madhav Roy, Advocate, residing at Boring Canal Road, P.S.-S.K. Puri, District-Patna.
18. Kumari Komal Roy, Daughter of Sri Shyam Roy, resident of Village-Chunapur, P.S.-K. Nagar, District-Purnea.
- No. 13, 14 and 18 Minors under the guardianship of their respective fathers and their natural guardian.
19. Sri Anil Kumar Roy, Son of Uma Kant Roy, resident of Village-Chunapur, P.S.-K. Nagar, District-Purnea.

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha, Advocate
Mr. R. K. Chaudhary, Advocate
Mr. Binay Kumar Sinha, Advocate
Mr. Chandra Mauli Chaurasia, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 21-04-2015



This writ application has been filed under Article 226 of the Constitution of India seeking quashing of an order dated 12.10.1992 passed by learned Additional Member, Board of Revenue in Revision Case No. 32 of 1988, whereby, he has affirmed the order passed by the Collector, Purnea dated 25.01.1988 in Ceiling Appeal No. 314 of 1984-85 and the order dated 16.04.1984 passed by the Additional Collector (Ceiling) Purnea in Ceiling Case No. 48 of 1973-74. The petitioners have also sought for quashing of the Gazette Notification published under Section 11(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (**hereinafter referred to as the 'Act'**) as well as the Notification published under Section 15(1) of the Act.

2. The matter relates of acquisition of land of a land holder declared surplus under the Act after allowing him to retain the area of land fixed under Section 4 of the Act read with Section 5. Maximum area of land which a land holder can hold depends on the class of land as referred under Section 4 of Act. As would be evident from Section 4 of the Act, better the class/quality of the land, lower the area of such



land a holder can possess. Classification depends on agricultural productivity of the land and other ancillary factors. There are several grounds which have been taken in the writ application to challenge the orders passed by the Revenue Authorities as mentioned above. Learned counsel appearing on behalf of the petitioners, however, has not pressed other points and has confined his submission mainly to the issue that the classification of, lands for the purpose of determining the area of lands, which the petitioners to hold has not been done in accordance with law, mandatory requirements of the Act and they have been allotted less area of land by wrongly classifying the lands. He has placed reliance on a Division Bench decision of this Court in case of **“Sib Narain Roy Versus The State of Bihar & Others”**, reported in **“1994 (1) PLJR 294”**. Learned counsel for the petitioners has drawn my attention to the genealogy of the family as mentioned in the said Division Bench decision of this Court in case of Sib Narain Roy (*Supra*) and, the one, as mentioned in the present writ application in Paragraph No. 7 (II) in order to contend that both the cases arise out of the same family and the disputes involved in both the cases are identical.



3. Learned counsel for the petitioners has submitted that the classification of lands, as done by the respondents, is not in accordance with the mandatory provisions under Rule 8 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 (hereinafter referred to as the 'Rules'). He contends that there has been non-compliance of Rule 9 of the said Rules, inasmuch, as the petitioners were not given notice nor were allowed to adduce evidence before the Collector, as required under the Rules.

4. Rule 9 of the Rules reads as follows:-

“9. Declaration of the land exempted from the operation of Section 5.— [(1) After the information given by or on behalf of the landholder under Sections 6, 8 or 9, or the information obtained under Section 7 has been checked and verified in the manner prescribed in Rule 8, the Collector shall, after giving the parties a reasonable opportunity of being heard and adducing evidence hold enquiry regarding the land in respect of which exemption from the operation of Section 5 have been claimed under items (i), (iv), (v), (vi), (vii) or (viii) of clause (b) of sub-section (1) or under item (i) or (ii) of clause (a) of sub-section (2) of Section 29 and thereupon—

(i) in respect of exemption claimed under items (i), (vii) or (viii) of clause

(b) of sub-section (i) of Section 29, pass necessary orders, declaring the area and description of the land exempted under one or more of the said items;

(ii) in respect of exemptions claimed under items (iv), (v) and (vi) of clause (b) of sub-section (1) or item (i) or (ii) of clause (a) of sub-section (1) or item (i) or (ii) of clause (a) of sub-section (2) of Section 29 forward the evidence, if any, adduced before him and his enquiry report together with his recommendations in this regard to the Collector of the district who shall, after perusing the same and after giving the parties concerned a reasonable opportunity of being heard—

(a) determine the area and description of the land which should be exempted under item (ii) of clause (a) of sub-section (2) of Section 29 and forward his recommendation in this regard to State Government;

(b) forward his recommendation to the State Government in respect of exemption claimed under items (iv), (v) or (vi) of clause (b) of sub-section (1) or item (i) of clause (a) of

sub-section (2) of Section 29 :

Provided that in respect of item (i) of sub-section (2) of Section 29 of the Act Collector shall not recommend exemption at the rate exceeding one acre for every ten thousand quintals or part thereof the annual requirement of sugarcane of the factory concerned as determined by the Cane Commissioner under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1969 (Act VII of 1969) subject to maximum of one hundred acres.

(2) While forwarding his recommendations to the State Government, the Collector of the district shall also send the evidence, if any, adduced before the Collector and the enquiry report and the recommendation of the Collector.

[(3) On receipt of the recommendation from Collector of the district and the papers mentioned in sub-rule (2), and after considering the same, the State Government shall issue the necessary notification specifying the area and the description of the land exempted from the operation of Section 5 under items (iv), (v) or [(vi) of clause (b) of sub-section (1) or under item (i) or (ii) of clause (a) of sub-section (2) of Section 29, and the period for which such exemption shall continue].”

5. Learned counsel for the petitioners, referring to the



impugned orders passed by the Revenue Authorities, has submitted that the classification of land is based on some report of the Executive Engineer without giving opportunity to the petitioners to adduce evidences. Referring to the Division Bench decision of this Court in case of Sib Narain Roy (*Supra*), he has submitted that the onus of proof, so far as classification is concerned, is on the State, which the State has failed to discharge. I find substance in the submission made on behalf of the petitioners, following the Division Bench decision of this Court in case of Sib Narain Roy (*Supra*) that the petitioners were required to be given opportunity to adduce oral/documentary evidence before reaching to a final decision as regards classification of lands, in question, is concerned.

6. The orders impugned, dated 12.10.1992, 25.01.1988 and 16.04.1984, are, accordingly, quashed. The matter is remitted back to the Collector, Purnea to take decision afresh as regards classification of the lands, in question, is concerned. He will follow the directions issued in Paragraph Nos. 52 and 53 of the said Division Bench decision of this Court in case of Sib Narain Roy (*Supra*), which are being

quoted hereinbelow for quick reference:-

“52. In this view of the matter, the finding of the Collector under the Act, so far as classification of the land is concerned requires a fresh decision. For this purpose the Collector may himself hold a local inspection in presence of the petitioner on a specific date to be fixed in that regard. The Collector under the Act should also give an opportunity to the petitioner to adduce oral or documentary evidence and, thereafter, he shall consider the matter on the basis of materials brought on record.

53. In view of the fact that the matter is to be remanded back, in the peculiar facts and circumstances of the case, the petitioner may also exercise his option which may duly be considered by the Collector under the Act.”

7. This application is, accordingly, allowed in terms of the Division Bench decision of this Court in case of Sib Narain Roy (*Supra*).

(Chakradhari Sharan Singh, J)

Praveen-II/-

U			
---	--	--	--