

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14846 of 2014

Abdul Wahid, son of late Haji Sheikh Chamruddin, resident of village - Bhamraili,
Police Station - Dandkhora, District – Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary to the Government,
Department of Land Reforms & Revenue, Government of Bihar, Patna.
2. The District Magistrate -cum- Collector, Katihar.
3. The Sub Divisional Officer, Katihar.
4. The Circle Officer, Dandkhora, District – Katihar.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 15941 of 2014

1. Bimla Devi, W/o Late Kesho Prasad Gupta.
2. Rishideo Poddar, S/o Late Baleshwar Poddar.
3. Bhima Nand Sah, S/o Late Bal Gobind Sah.

All are residents of village- Bhamraili, P.S. Dandkhora, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar, through the Collector -cum- District Magistrate, Katihar.
2. The Collector -cum- District Magistrate, Katihar.
3. The Circle Officer (Anchal Adhikari), Dandkhora Anchal, Dandkhora, Katihar.

.... Respondent/s

Appearance :

(In CWJC No. 14846 of 2014)

For the Petitioner/s : Mr. Rajeeva Roy
For the Respondent/s : Mr. Sanjeev Kumar Singh, AC to SC-12

(In CWJC No. 15941 of 2014)

For the Petitioner/s : Mr. Sanjeev Kumar
For the Respondent/s : Mr. Harish Kumar, GP-32

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-02-2015

Heard Mr. Rajeeva Roy for the petitioner in CWJC

No.14846 of 2014 and Mr. Sanjeev Kumar in CWJC No.15941 of

2014, Mr. Sanjeev Kumar Singh, learned Assisting Counsel to

Standing Counsel No.12 for the State in CWJC No.14846 of 2014

and learned Government Pleader No.32 for the State in the other writ petition.

Since the two writ petitions raise identical issues hence they have been taken up together and have been heard with a view to their final disposal by way of this judgment.

The petitioners in the two writ petitions are aggrieved by initiation of proceedings under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') giving rise to Encroachment case No.1 of 2013-14. The proceedings in question has been initiated by the Circle Officer, Dandkhora in the district of Katihar for removal of encroachment from a plot bearing khata no.94, khesra no.963 admeasuring 2.95 acres situated Mauza Bhamraily in the district of Katihar. It is an admitted position the petitioner Abdul Wahid is the land owner and the petitioners in CWJC No.15941 of 2014 are the purchasers from Abdul Wahid.

Mr. Rajeeva Roy, learned counsel appearing for the petitioner Abdul Wahid has submitted that the land in question along with some other lands were the subject-matter of ceiling proceedings arising from Ceiling Case No.34 of 1973-74 and in which upon issuance of draft publication under section 10(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of



Surplus Land) Act, 1961 (hereinafter referred to as ‘the Ceiling Act’) the petitioner filed his objection, a copy of which is placed at Annexure-C to the counter affidavit filed on behalf of respondent nos.2 to 4 and in which at paragraph 7 it was specifically stated by the petitioner that he had donated the plot in question admeasuring 2.95 acres for the purpose of Community Hall and Hospital. He submits that the statutory authority upon consideration of the objection rejected the plea of the petitioner vide order passed on 18.11.1976, a copy of which is placed at Annexure-9 to the writ petition and the statutory authority while rejecting this plea, declared the plot in question as surplus land. It is submitted that by virtue of an amendment to ‘the Ceiling Act’ all pending proceedings abated with effect from 9.4.1981 and whereafter the ceiling proceedings were initiated *de novo* and whereafter the petitioner again filed a fresh objection under section 10(2) of ‘the Ceiling Act’ which was disposed of on 12.5.1993 and a final publication took place under section 11(1) of ‘the Ceiling Act’ on 1.12.1993, a copy of which is placed at Annexure-10, whereby this particular piece of land was not declared as surplus rather was added to the unit of the petitioner. It is stated that thereafter a final publication under section 15(1) of the Act has taken place and the plot in question continues to be under the title and possession of



the petitioner. It is contended by Mr. Roy that the petitioner questioned the acquisition before the Member, Board of Revenue who by the order dated 5.11.2003 while disposing of the matter has remitted the matter back to the District Magistrate for consideration of the same in the light of the stipulations made in the order, a copy of which is placed at Annexure-12.

This matter was heard on several occasions and when the counsel for the State was granted an opportunity inform as to whether the ceiling proceedings after remand has reached to its logical conclusion and whether the land in question has been declared surplus or continues to remain within the unit allowed to the petitioner. The matter has thereafter been taken up today when Mr. Sanjeev Kumar Singh, learned counsel appearing for the State admits to absence of instruction from the authorities.

Having heard learned counsel for the parties and taking note of the circumstances existing in the present case it is apparent from the records that this particular plot was allotted to the unit of the petitioner in the ceiling proceeding. A mere remand of the matter by the Member, Board of Revenue would not alter the circumstances until such time that any order is passed whereby this plot of land is declared surplus. It is thus manifest that initiation of the proceedings by the Circle Officer, Dandkhora, District- Katihar

in the aforementioned circumstances where the plot in question remains the raiyati land of petitioner Abdul Wahid, is wholly without jurisdiction for it cannot be held to be a public land unless declared surplus in the ceiling proceedings under the Ceiling Act and acquired by the State.

For the reasons aforementioned the entire proceedings arising from Encroachment Case No.1 of 1913-14 cannot be upheld and is accordingly quashed.

The two writ petitions are allowed.

(Jyoti Saran, J)

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