

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8796 of 2004

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1. Ramesh Prasad Mandal son of Sri Bishundeo Mandal
 2. Navin Kumar, son of Sri Lakshman Prasad Yadav
 3. Smt. Renu Devi wife of Sri Arvind Kumar Rajak
 4. Tuntun Rajak son of Sri Bhagwan Rajak
- No.1,3 & 4 are resident of village- Panchgachia & No. 2, resident of village-
Latra Police Station- Gopalpur, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Bhagalpur.
3. The Sub-Divisional Officer, Naugachia, District- Bhagalpur.
4. The Dy. Collector, Land Reforms, Naugachia, (Bhagalpur)
5. The Anchal Adhikari, Gopalpur Anchal, Dist.- Bhagalpur.
6. Ramdhari Mandal son of Late Bhagwat Mandal (expunged vide order dated
07.04.2014 and substituted by his following heirs)
- 6 (i) Mostt. Phulwati Devi wife of Late Ramdhari Mandal
- 6 (ii) Anil Mandal
- 6(iii) Ashok Mandal
- 6(iv) Awadhesh Mandal sons of late Ramdhari Mandal
- 6(v) Kiran Devi
- 6(vi) Vinita Devi, both daughters of late Ramdhari Mandal, all residents of village
Abhiya, P.S. Gopalpur, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha
For the Respondent No.1 to 5: Ms. Kumari Amarita, G.P.-10
Mr. Mithilesh Kr. Upadhyay, AC to G.P. 10
For the Respondent No.6(i) to 6(iv) M/S Sushanta Kr. Das
Ranjan Kr. Jha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 03-11-2015

Heard the parties.

2. The petitioners have approached this Court in the present proceeding filed under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 15.03.2004 passed in L.C. Case No. 87 of 2001-02 by the respondent District Collector, Bhagalpur, as contained in Annexure-8, whereby, parwana, as contained in Annexure-4 series, issued in favour of the petitioners have been set aside and cancelled, and the claim of the original

respondent no. 6 Ramdhari Mandal with respect to the lands under dispute has been allowed purportedly under Section 22 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'the Land Ceiling Act').

3. It is the common case of the parties that Land Ceiling (Surplus) Case No. 339 to 343 of 1973 was started against the original landholder Diwkar Chaudhary and his other family members. However, none of them have been impleaded as party respondent in the present proceeding. After conclusion of the aforesaid land ceiling proceedings, certain area of lands were declared surplus under Section 11(1) of the Land Ceiling Act and finally by a gazette notification dated 26.09.1996 (Annexure-1) issued by the respondent District Collector, Bhagalpur, surplus lands, so declared, were acquired under Section 15(1) of the Land Ceiling Act, which includes the lands in question, which is the subject matter of controversy between the parties.

4. Learned counsel appearing on behalf of the petitioners submits that in view of the acquisition of the lands in question under Section 15(1) of the Land Ceiling Act vide gazette notification as contained in Annexure-1, it vested in the State of Bihar free from all encumbrances; subsequently, parwanas were issued separately in favour of the petitioner no. 1 to 4 allotting them certain area of lands, mentioned in those parwanas, in terms of Section 27 of the Land Ceiling Act. It is the case of the petitioners that thereafter lands in question were mutated in their favour and they were paying rent to the State of Bihar and the rent receipts were being issued to them. The grievance of the petitioners is that by the impugned order dated 15.03.2004 (Annexure-8), parwanas issued in favour of the petitioners have been set aside/ cancelled on the basis of a petition filed by the

original respondent no. 6 Ramdhari Mandal, but without giving them any opportunity of hearing and in complete violation of rules of natural justice. Therefore, it is pleaded that the impugned order is liable to be set aside by this Court.

5. The matter has been contested by the respondents by filing their separate counter-affidavits. Learned G.P.-10 appearing on behalf of the respondent no. 1 to 5, by referring to the averments made in the counter-affidavit filed on behalf of the respondent no. 2 to 5, submitted that original respondent no. 6 had earlier moved this Court in CWJC No. 7157 of 1997, whereafter he was directed to approach the Collector under Section 22 of the Land Ceiling Act and, accordingly, claim of the original respondent no. 6 has been allowed by the impugned order. However, in the whole counter-affidavit it has nowhere been stated that reasonable opportunity of hearing was given to the petitioners before passing the impugned final order and the procedure prescribed under Section 22 of the Land Ceiling Act was strictly followed.

6. Learned counsel appearing on behalf of the substituted respondent no. 6(i) to 6(vi) submits that, in fact, the claim of the respondents was allowed in terms of Section 21 of the land ceiling Act. However, he has not been able to satisfy that if that was the claim of the original respondent no.6, then why respondent District Collector has allowed the claim of the original respondent no.6 under Section 22 of the Land Ceiling Act. Furthermore, the learned counsel appearing on behalf of the private respondents has not been able to show that when a petition under Section 22 of the Land Ceiling Act was filed and whether procedure prescribed under the law was followed.

7. It is true that Section 22 of the Land Ceiling Act



provides for granting certain protection to the under-raiyat(s) on surplus land of a landholder. If somebody claims to be under-raiyat of the land holder, then such under-raiyat is required to make an application in the prescribed manner for being allowed to retain as under occupancy raiyat over the surplus land on the date it vests in the State, subject to payment of the specified amount in the prescribed manner. In the present case it is true that the lands in question were acquired by the State by issuance of a gazette notification under Section 15(1) of the Land Ceiling Act on 26.09.1996 (Annexure-1), therefore as per the mandate of law, if the original respondent no. 6 was declared under-raiyat by virtue of order dated 18.04.1995 (Annexure-6), he was required to file a petition under Section 22 of the Land Ceiling Act for giving him raiyati right over the lands in question, but no such petition appears to have been filed by him, yet his claim has been allowed by the respondent District Collector by the impugned order dated 15.03.2004 (Annexure-8). It further appears that before passing the impugned order, parwana was issued to the petitioners vide Annexure-4 series under Section 27 of the Land Ceiling Act. If that was the situation, then they were required to be given reasonable opportunity of hearing before passing the impugned final order, but that does not appear to have been done in the present case.

8. For the reasons recorded above, this Court is of the opinion that the matter requires reconsideration and fresh decision by the respondent District Collector, Bhagalpur. Accordingly, the impugned order dated 15.03.2004 passed in L.C. Case No. 87 of 2001-02 by the respondent District Collector, Bhagalpur, as contained in Annexure-8, is hereby set aside and quashed, and the matter is remitted back to the respondent District Collector, Bhagalpur with a

direction to decide the claim of the parties afresh strictly in accordance with law.

9. It is clarified that if the original respondent no.6, who is now dead and has been substituted by his heirs, was under raiyat over the lands in question, when it vested in the State of Bihar under the provisions of the land ceiling Act, then there must be a petition filed under prescribed manner under Section 22 of the Land Ceiling Act and only after disposal of his claims, the lands in question could have been distributed amongst the petitioners or any other eligible persons. However, this Court has left all these issues to be decided by the respondent District Collector strictly in accordance with law.

10. In order to expedite the matter, the petitioners as also the substituted respondent no. 6(i) to 6(vi) are hereby directed to appear before the respondent District Collector, Bhagalpur within a period of two months from today with a certified copy of the present order, whereafter the matter shall be decided afresh in accordance with law.

11. The writ petition stands allowed to the extent indicated above, as also with the directions and observations made above, but without costs.

(Birendra Prasad Verma, J)

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