

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6919 of 2007

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1. Gobind Jha son of Late Baldeo Jha
2. Mihir Kumar Jha son of Late Raghunandan Jha
3. Lalit Kumar Jha son of Late Narayan Jha
All are residents of Village Parwaha, Police Station Forbesganj, District Araria
.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Araria
3. The Additional Collector, Araria
4. The Sub-Divisional Officer-cum-Land Reforms Deputy Collector, Forbesganj within the district of Araria
5. The Anchal Adhikari at Narpatganj within the district of Araria
6. Bhuneshwar Bhagat son of Late Laxmi Bhagat
7. Sidhnath Bhagat son of Late Laxmi Bhagat
8. Naresh Bhagat son of Late Baijnath Bhagat
9. Ram Mandal son of Late Raghu Mandal
10. Jagdish Mandal son of Late Raghu Mandal
11. Baijnath Mandal son of Late Raghu Mandal
12. Nakchhedi Yadav son of Late Murt Lal Yadav
13. Kamleshwari Yadav son of Late Murat Lal Yadav
14. Budhu Prasad Yadav @ Bhupdeo Yadav son of Late Murat Lal Yadav
15. Pavitri Devi daughter of Late Satya Narayan Yadav
16. Pawan Devi son of Late Satya Narain Yadav
17. Anirudh Yadav son of Late Subhak Lal Yadav
18. Most. Dai Jee Devi widow of Late Mohan Sharma and daughter of Late Dhyani Sharma
19. Upendra Yadva son of Late Uttim Lal Yadav and grand son of Late Garbhu Yadav
20. Most. Darpi Devi widow of Late Kishori Mandal
21. Vidyanand Mandal son of Late Kishori Mandal
22. Udyanand Mandal son of Late Kishori Mandal
23. Jai Lal Mandal son of Late Dukhhi Mandal
24. Sukhdeo Mandal son of Late Saukhi Mandal
25. Ram Khelawan Mandal son of Late Saukhi Mandal
Respondent Nos. 6 to 25 are residents of Village Gorraha Bishanpur, Police Station Narpatganj, District Araria
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha, Advocate
For the Respondent Nos. 1 to 5 : Mr. Prabhakar Jha, GP 27
For the Respondent Nos. 6 to 25: Mr. Jagdish Prasad Bhagat, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 23-09-2016

Heard the parties.

2. The petitioners, who are either landholders or the



descendants of the original landholder, have filed the present writ petitioner under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 29.12.2001 passed in Misc. Case No. 13 of 1997-98 by the respondent Additional Collector, Araria, as contained in Annexure-5 to the writ petition, whereby, in the light of the judgment/order dated 25th September, 1997 passed in CWJC No. 807 of 1996 and 642 of 1996 by a Bench of this Court, as contained in Annexure-3 to the writ petition, while allowing the claims of the private respondent nos. 6 to 25 it was directed that the lands claimed by the aforesaid respondents shall be included in the admissible ceiling area of the landholder and equal area of lands shall be taken out for the purposes of acquisition under Section 15(1) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short “the Act”).

3. It is the common case of the parties that the land ceiling Case No. 83 of 1973-74 was started against the landholder Most. Sudama Devi widow of Late Baldeo Jha and her other family members including petitioner no.1 Govind Jha and the ancestors of petitioner nos. 2 and 3. In the aforesaid land ceiling case, final publication of draft statement under Section 11(1) of the Act was made, whereby 108.18 ½ acres of lands were declared surplus and accordingly gazette notification under Section 15(1) of the Act was issued on 30.04.1994 (Annexure-2), whereafter those surplus lands vested in the State of Bihar free from all incumbrances. It is also not in dispute that thereafter respondent nos.6 to 25 or their ancestors filed two separate writ petition before this Court giving rise to CWJC No. 807 of 1996 and CWJC No. 642 of 1996 raising a plea that they or their ancestors are bona fide purchasers from the landholder. According to them, some of the lands were purchased prior to 22.10.1959 and remaining other area of lands claimed by them were purchased between 22.10.1959 and 09.09.1970. Therefore, it was



pleaded by them that the lands purchased by them were wrongly included in the aforesaid land ceiling case started against the landholder and have wrongly been declared to be surplus. Both the above writ petitions were heard by a Bench of this court (Coram: B.N.Agrawal,J, as His Lordship then was) and by a common judgment and order dated 25th September, 1997, both the writ petitions were disposed of with directions as contained in paragraph 8 of the aforesaid judgment. For ready reference, paragraph 8 of the aforesaid judgment dated 25th September, 1997 (Annexure-3) is reproduced herein below:

“8- In view of the aforesaid facts, I give following directions to Additional Collector, Land Ceiling, Araria, respondent no.3:-

- (i) If the petitioners file a petition before respondent no.3 setting forth their aforesaid claims within a period of six weeks from today, they shall not be dispossessed from the lands claimed by them, so long the said petition is not disposed of by respondent no.3;
- (ii) with regard to the transfers made prior to 22.10.1959 the petitioners should along with the petition file photostat copy of the sale deed from its original and produce the original sale deed if required by the authority at the time of argument or they may file certified copy of such a sale deed, in case original has been lost or not available with the petitioners. If such deeds are produced the authority shall exclude those lands from the ceiling proceeding and make suitable amendment in the final publication made under Section 11(1) and gazette notification issued under Section 15(1) of the Act by deleting these lands therefrom;
- (iii) With regard to the transfers made after 22.10.1959 and before 9.9.1970 the petition filed by the petitioners, referred to above, shall be treated to be a show-cause in enquiry under Section 5(1)(iii) of the Act and the petitioners should state the petition as to why such transfers be not annulled. The authority is not required to issue notices to the petitioners in this regard. So far the land holders are concerned, the petitioners undertake to serve copy of the petition to be filed by them before respondent no.3 upon the land holders and take receipt from them, which shall be enclosed along with an affidavit to be filed before respondent no.3 within a period of one week from the date of filing of the petition before



respondent no.3. In case, it is not possible to effect personal service, then notice shall be served upon the land holder by publishing the same in one of the local newspapers circulated in the locality in which land holder is residing at the cost of the petitioners, as undertaken by them. All the parties shall be allowed to adduce evidence in support of their respective cases in the said enquiry. If the authority finds that it is a case for annulment, no further action is required to be taken in relation to such lands, and in that event, the authority will consider the case of the petitioners in terms of Section 9 of the Act whether it is possible to include such lands in the category of lands to be retained by the land-holder. If such direction is given in favour of the petitioners, then the final publication and gazette notification shall be, accordingly, amended. If, however, it is found that the transfers were genuine, then the said lands shall be excluded from the ceiling proceeding by making amendment in the final publication and gazette notification, from which these lands should be deleted;

(iv) with regard to the transfer made after 9.9.1970, as prayed for on behalf of the petitioners, it is directed that the authority shall consider case of the petitioners in terms of Section 9 (2) of the Act and if their claim is disallowed, no further steps should be taken, but, in case, the claim is allowed either wholly or partially by including those lands in the category of lands to be retained by the land-holder, suitable amendment shall be made in the final publication and gazette notification by deleting such lands therefrom; and

(v) the authority is directed to dispose of the petition filed before it within a period of four months from the date of its filing and all the parties shall cooperate the authority in disposal of the petition within the aforesaid time. In case, the petitioners do not cooperate in disposal of the petition within the aforesaid time, the authority concerned shall record an order to that effect and from the date of recording such an order, the interim order, referred to above, shall stand automatically vacated.”

4. The learned counsel appearing on behalf of the petitioners submits that in the light of the directions issued by this Court and on the basis of the petition filed by the private respondents or their ancestors Misc. Case No. 13 of 1997-98 was registered, but at

no point of time, either any opportunity of hearing was given to the petitioners or the other landholders, or they were served with a copy of the application filed by the private respondents. According to him, the impugned final order dated 29.12.2001 is in the teeth of directions issued by this Court and has been passed in complete violation of rules of natural justice. Therefore, according to him, the order impugned as also the consequential orders passed/steps taken by the authority concerned cannot be sustained in law.

5. In the present case, a counter affidavit has been filed on behalf of the respondent nos. 1 to 5 as also on behalf of the private respondents. The learned State counsel appearing on behalf of the respondent nos. 1 to 5 and the learned counsel appearing on behalf of the respondent nos. 6 to 25, though supported the impugned order, as contained in Annexure-5, but they fairly conceded that opportunity of hearing was not given to these petitioners or the other landholders. They also conceded that the rules of natural justice was not followed before passing the impugned order. They have not be able to dispute the assertions made in the writ petitioner in paragraph 19 that the impugned order was passed contrary to the directions issued by this Court.

6. After having heard the parties and taking into consideration the entire factual matrices of the present case as also the judgment and order dated 25th September, 1997 (Annexure-3) passed earlier by a Bench of this Court, which has attained its finality, this Court is of the opinion that the matter requires reconsideration and a fresh decision. Indisputably, as per earlier direction of this Court, the rules of natural justice was not followed and before passing impugned final order, opportunity of hearing was not given to the petitioners or the other landholders.

7. For the reasons recorded above, the impugned order dated 29.12.2001 passed in Misc. Case No. 13 of 1997-98 by the

respondent Additional Collector, Araria, as contained in Annexure-5 to this writ petition, is hereby set aside and quashed, and the matter is remitted back to him with a direction to decide the case afresh strictly in accordance with law and the order and direction issued earlier by a Bench of this Court in CWJC Nos. 807 of 1996 and 642 of 1996, operative portion of which has already been re-produced hereinabove.

8. In order to facilitate the early disposal of the matter, the petitioners as also the private respondent nos. 6 to 25 are hereby directed to appear before the respondent Additional Collector, Araria within a period of one month from today with a certified copy of the present order, whereafter the respondent Additional Collector shall proceed to decide the aforesaid case afresh strictly in accordance with law, but before passing any final order, reasonable opportunity of hearing must be given to the petitioners, respondent nos. 6 to 25, besides other including the parcha holders, if any.

9. Till the matter is finally decided by the respondent Additional Collector, Araria, all the consequential orders passed, notifications issued and action taken pursuant to the impugned order dated 29.12.2001 (Annexure-5), shall be kept in abeyance.

10. The writ petition stands finally disposed of with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.09.2016
Transmission Date	