

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No. 410 of 2016

IN

Civil Writ Jurisdiction Case No. 1436 of 1986

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Ramacast Limited, 3 Pretoria Street, 4th Floor Kolkata, 700071, through
it Floor Director Naw Ratan Sewak, Son of Bhawarlall Sewak, 3
Pretoria Street, 4th Floor, P.S.-Shakespeare Sarani Kolkatta-700071.

.... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Revenue and
Land Reform Department, Government of Bihar, Patna.
2. The Secretary, Member Board of Revenue, Revenue and Land
Reform Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Muzaffarpur.
4. The District Magistrate, Motihari.
5. The Additional Collector (Ceiling), East Champaran, Motihari.

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Adv.
: Mr. Ranjeet Kumar, Adv.
: Mr. Kundan Kumar, Adv.
: Mr. B.U. Barqi, Adv.

For the Opposite Parties: Mr. Anjani Kumar, Sr. Adv. AAG 4.
: Mr. Shailendra Kumar Sinha, AC to AAG-4.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 27-10-2016

The petitioner has filed this review application seeking
review of the order dated 29.01.1997 passed by a Division Bench
of this Court in C.W.J.C. No. 1436 of 1986 and other analogous
matters. The relevant/operative part of it reads as under:-

“30 In the result, the order of the



Additional Collector dated 15.1.1995, the order of the Collector dated 17.6.1985 as well as the order of the Additional Member, Board of Revenue dated 6.7.1985 as also the findings of the Additional Collector under section 5(1)(iii) of the Act regarding transfers of the land and the consequential notifications including under section 11(1) or 15 of the Act are hereby quashed. The Additional Collector, Ceiling, is directed to conduct a fresh inquiry under section 5(1)(iii) of the Amended Act and publish a fresh draft statement as required under section 10(1) of the Act.

As these cases have been disposed of in presence of the learned Advocates, therefore, in order to avoid unnecessary delay, all the concerned parties are directed to appear in the Court of Additional Collector, Motihari, East Champaran (respondent no. 4) or the Additional Collector, Ceiling, as the case may be, on or before 23rd of February, 1997 so that a firm date can be fixed for hearing and inquiry etc.

But until, final disposal of the matter, all the parties to the proceeding are refrained from transferring or disposing of any land, which was declared surplus by virtue of the impugned orders.”

The case of writ petitioner is as follows:-



Shree Hanuman Sugar Industries Ltd., the petitioner of C.W.J.C. No. 1436 of 1986, being land-holder of land measuring about 1467 acres of different categories, filed a return after commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as “the Act” for the sake of brevity) before the ceiling authorities. Verification was carried out under Rule 8 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 but without proper notice to the parties, therefore, by order dated 30th September, 1976 passed in CWJC No. 1312 of 1985, the ceiling authority was directed to make fresh verification in the presence of the petitioner after granting reasonable opportunity to the parties, as required under Section 9 of the Act. After verification, in terms of the direction of the High Court, the Additional Collector also conducted inquiry under Section 5 (1)(iii) of the Act regarding several sale deeds executed by the original land holder. The proceeding also included two sale deeds executed by the land-holder in favour of this petitioner on 07.09.1970, i.e., just two days before the appointed day fixed under Section 2(a) of the Act, i.e., the 9th day of September, 1970. The land-holder was also pursuing an exemption under Section 29 of the Act on several grounds. However, the Additional Collector, on

15.01.1983, annulled several sale deeds executed by Shree Hanuman Sugar Industries Ltd., the land-holder, including the two in favour of the petitioner, under Section 5(1)(iii) of the Act.

The petitioner preferred appeal before the Collector, East Champaran, Motihari, which was dismissed by order dated 17.06.1985.

Thereafter, the petitioner and others filed revision before the Board of Revenue, Bihar, Patna which was also dismissed by order dated 06.07.1985.

The land-holder, being aggrieved by the order which was passed against it, refusing exemption under Section 29 of the Act, preferred C.W.J.C. No. 2976 of 1985 and several other aggrieved persons, including the petitioner, also filed their respective writ petitions against the orders passed against them. This petitioner's writ petition was C.W.J.C. No. 1436 of 1986.

All the writ petitions were tagged and heard together by a Division Bench of this Court and were disposed of by the order under review, quashing the orders passed by the Additional Collector as well as the appellate order of the Collector and, the revisional order passed by the Board of Revenue. The findings of the Additional Collector, made under Section 5(1)(iii) of the Act, regarding transfer of the land in favour of several persons,



including the petitioner, and the consequential notifications under Sections 11(1) and 15 of the Act were also quashed. The Additional Collector (Ceiling) was directed to conduct a fresh inquiry under Section 5(1)(iii) of the Amended Act and, thereafter, to publish a fresh draft statement, as required under Section 10(1) of the Act. To avoid unnecessary delay in the matter, the parties were directed to appear before the Additional Collector (Ceiling), East Champaran on or before 23rd February, 1997 so that a firm date could be fixed for inquiry and hearing etc. It was directed that until final disposal of the matter, all the parties were refrained from transferring or disposing of any land, which was declared surplus by virtue of the impugned orders.

It is the part of the aforesaid order and direction by which the parties were refrained from transferring the land till the final disposal of the matter, which is sought to be clarified by the petitioner, by filing the present review application.

It is contended that the Additional Collector (Ceiling), in compliance of the direction of this Court as aforesaid, had proceeded to make an inquiry and passed final order on 28.06.1999 (copy of which has been appended as Annexure-2 for reference), holding that transfers made in favour of several persons by the land-holder, prior to the appointed date, including the transfers in



favour of the petitioner, were valid, as were made after receiving valuable consideration and the transferees were put to possession of their respective purchased lands. A direction was given to exclude those lands from the surplus land as the transactions were neither found “farzi” nor “benami” of the land-holder. After the aforesaid order having been passed on 28.06.1999, there is no progress till date as even draft publication under Section 10(2) is yet to be made.

The petitioner executed five sale deeds, transferring the lands which were purchased by it on 07.09.1970. The sale deeds were presented for registration on 31.05.2016. However, the authorities kept mum and did not register the sale deed though, it was presented for registration within time and the purchasers also filed application for its registration as well. When nothing was communicated either to the petitioner or the purchasers by the District Sub-Registrar then the Additional Collector (Ceiling) was approached, who had orally stated that restriction has been imposed on transfer of land, as the restraining order passed by a Division Bench of this Court by the order under review is still operating.

Aforesaid stand of the respondent has prompted the petitioner to file this review application for clarification of the part

of the order by which restriction was imposed by this Court from transferring the land till a final decision is taken.

The petitioner's sale deed has been found in order and legal by the Additional Collector (Ceiling) which has attained finality. The ceiling proceeding may continue against the land-holder but, so far as the petitioner is concerned, it is now over as it has been declared by a competent authority to be a *bona fide* purchaser from the land-holder before the appointed date, i.e., 09.09.1970.

The order was passed by the Additional Collector (Ceiling) on 28.06.1999 itself, however, after expiry of about 16-17 years, even the draft publication has not been made under Section 10(2) of the Act, what to talk about final publication under Section 11(1) or the final notification under Section 15 of the Act.

The Division Bench of this Court has refrained the parties from transferring the land till the final disposal of the matter which would necessarily mean that the matter which was pending before the Additional Collector (Ceiling), for taking a decision after proper inquiry under Section 5(1)(iii) of the Act, and not till the draft publication under Section 10(2) or final publication under Section 11(1) or any notification under Section 15 of the Act showing acquisition of surplus land finally by the

State Government.

The petitioner cannot be restrained from enjoying or transferring the property purchased by him even after the declaration that the sale deeds were valid and in order.

The registering authority, under the cover of the aforesaid direction, is not registering the sale deed, which was validly executed by the petitioner after the decision as aforesaid having been taken by the Additional Collector (Ceiling) in the year 1999 itself, in compliance of the direction of this Court.

Per contra, counter-affidavits filed on behalf of the Sub-Registrar discloses that though decision has been taken in favour of the petitioner by the Additional Collector (Ceiling) but, the decision is subject to any appeal filed by the State Government and the appeal cannot be filed before a publication is made under Section 11(1) and even the restraintment order of the High Court was till the publication of the draft statement under Section 10(2) of the Act. The State may opt to file appeal at the proper stage and, since the Additional Collector has communicated that the ceiling proceeding is still pending against the concerned plots, therefore, restriction has to be imposed on transfer of the land even in terms of the direction of the Division Bench of this Court given under the order under review.

In the aforesaid background of the factual matrix, we have heard the parties and have perused the records of the case.

The object of the Act is fixation of ceiling area of the land, which is being used or is capable of being used for agriculture or horticulture purposes, a land-holder can retain land up to the maximum prescribed limit and, further for acquisition, the surplus land found in possession of the land-holder, in accordance with the procedures laid down thereunder. The appointed date, as fixed under Section 2(a) of the Act, is 09.09.1970. Section 5(1) of the Act lays down that it shall not be lawful for any family to hold, except otherwise provided under the Act, land in excess of the ceiling area. The ceiling area stands stated and described under Section 4 as on the appointed day. Word “family” has been described, under Section 2(ee), which includes a person, his or her spouse and minor children. Explanation I thereof lays down that the word person would include any company, institution, trust association or body of individuals whether incorporated or not. Thus, in terms thereof, the land-holder was required to file a written statement showing as to whether, on the appointed day, he is holding surplus land or not.

So far the transfer of land by the land-holder is

concerned, for better appreciation, the relevant provisions, i.e.,
Section 5(1)(i) to (iii) are extracted and quoted as under:-

“5 (1)(i) It shall not be lawful for any family to hold, except otherwise provided under this Act, land in excess of the ceiling area.

Explanation:-All lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family.

(ii) No land holder holding land in excess of the ceiling area shall from the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 and till the publication of notification under Section 15, transfer any land held by him except with the previous permission in writing of the Collector, who may refuse to give such permission if he is satisfied for the reasons to be recorded in writing that the transfer is proposed to be made with a malafide intention of defeating the object of this Act:

Provided that the transfer of any land made, with the previous permission of the Collector, shall be deemed to have been made from within the ceiling area permissible to the

land-holder:

Provided also that the transfer of any land beyond the ceiling area admissible to the land hold shall be deemed to have been made with the object of defeating the provisions of the Act.

(iii) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority the Collector shall have power to, make enquiries in respect of any transfer of land by a land-holder whether by a registered instrument or otherwise made after the 22nd day of October, 1959, and if he is satisfied that such transfer was made with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi land in excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this section.”

(iv) xxx xxx xxx”

As would be evident from the perusal of the aforesaid provisions, from the appointed day, i.e., 09.09.1970, no landowner holding land in excess of ceiling area, from the date of



commencement of the Act and till the publication of notification under Section 15 of the Act, can transfer any land held by him except with the previous permission, given in writing, by the Collector who may refuse to give such permission. The Act, 1972 further lays down that, after final publication under Section 11 (1) and subject to appeal or revision, if any, the State can acquire surplus land by publishing a notification under Section 15, in the official gazette of the District, which shall be conclusive evidence of notice of acquisition with respect to the land concerned.

The second situation, as contemplated under Section 5(1)(ii) of the Act is that, in case transfer has been made between 22nd day of October, 1959 and the appointed day, i.e., 09.09.1970 by a registered instrument or otherwise, the Collector may hold an inquiry to satisfy him as to whether such transaction has been made with an object of defeating or contravention of the provisions of the Act. For that purpose, inquiry has to be made after granting the reasonable opportunity of hearing to the parties concerned and his decision would be final subject to appeal or revision as provided under Section 30 or Section 32 of the Act.

However, the Collector does not have any power to make any enquiry with respect to the transfers made before 22.10.1959.



The present case would fall in the second category as the transactions were made on 07.09.1970, i.e., just before the appointed day. Thus, Collector was fully empowered to make inquiry and annul the sale deeds.

In the two counter-affidavits on behalf of respondents, it stands stated, *inter alia*, that restriction has been imposed upon registering any transfer in view of the direction of this Court and intimation made by the Additional Collector (Ceiling) that the ceiling proceeding is still going on. It is also stated that, since no appeal would lie against the order passed under Section 5 or Section 29 of the Act, before final publication under sub-section (1) of Section 11 of the Act, the State of Bihar is helpless and cannot prefer appeal against the order of Additional Collector (Ceiling) and, as such, since the appeal is still to be preferred, and the same has not been filed due to non-completion of the proceeding, the registration cannot be allowed, as appeal is not a matter of procedure but is a substantive right of the parties.

In response to the counter affidavits, the petitioner filed a supplementary affidavit bringing on record several documents which were registered by the Sub-Registrar of the same district and which were also subject matters of the same ceiling proceeding and same decision taken by the Additional Collector



(Ceiling), holding the transactions to be valid. About sixteen such transactions have been pointed out by the petitioner. Thereafter, again a counter-affidavit was filed on behalf of the respondent no. 4, i.e., the District Magistrate, Motihari stating that in fourteen out of sixteen transactions, there was no intimation from the end of the Additional Collector.

However, regarding remaining two sale deeds, it is now an admitted position that despite such intimation by the Additional Collector, that ceiling proceeding is still going on, transactions have been registered by the District Sub-Registrar, it is admitted even though they were already there in the list of restriction entered in the computer. For this the Computer Operator is being made an escape-goat.

Question would arise, when in the eyes of the State authorities, the ceiling proceeding was still pending and no transfer could have been made, in view of the direction of this Court given in the order under review, how sixteen such transfers could have been registered and why objection is being made only with respect to five sale deeds executed by the petitioner? There is no answer save and except that proper action would be taken against the erring persons. Admittedly, the transaction for publishing the draft statement under Section 10(2), a

recommendation was sent to the State Government in the year 1999 but it is still awaited in the year 2016. About 16-17 years have lapsed in between.

Be that as it may, in our considered view, so far as the petitioner is concerned, the ceiling proceeding is pending against him. It is also nobody's case that the petitioner has purchased the lands in excess to the ceiling area fixed under Section 4 of the Act. It is also not the case that the concerned transaction was made after the appointed day, i.e., 09.09.1970. The Collector, while holding inquiry under Section 5(1)(iii) of the Act, with respect to the transaction made after 22nd of September, 1959, has to see as to whether such transaction has been made for the purpose of defeating the provisions of the Act, as a land-holder may resort to opt to "Farzi" transaction or "Benami" transaction in favour of one of his own near and dear with a purpose to defeat the purpose of the Act, and as such the onus would be on the land-holder to prove before the Collector that the transfer made by him was in good faith. If it is established that the transaction in question was made in course of regular management of the affairs and was made for adequate consideration and the transferee was genuinely, absolutely and irrevocably vested with all right, title and interest in the land in his favour, then he may not be required



to further establish that such transfer was made under pressing legal necessity. Reference in this regard is made to a decision of the Apex Court, though considering the Ceiling Act of Uttar Pradesh, rendered in **Bhupendra Singh vs. State of U.P. (AIR 1981 SC 1157)**. However, at the same time, the Collector also cannot, in exercise of power conferred under Section 5(1) of the Act, can annul the sale deeds executed by the land-holder between 22.10.1959 to 09.09.1970, i.e., the appointed day on the basis of sketchy evidence and surmises and conjectures. Thus, so far the petitioner is concerned, his case was finally decided by the Collector under Section 5(1)(iii) of the Act, holding that the sale deeds cannot be held to be “farzi” or “benami”, or for the purpose of defeating the purpose of the Act. Once, it is held, the land transferred through a sale deed under the provisions of the Transfer of Property Act, for valuable consideration paid by the transferee, the transferee becomes the land owner and, thereafter, he has every right to enjoy his purchased land. Enjoyment necessarily means that he can even re-transfer such land in favour of anybody through a mode provided under the Transfer of Property Act. Thus, in our view, the Court while dealing with the matter directed the Additional Collector to re-enquire the matter and pass necessary order for draft publication for the only purpose



that before publication of a draft publication, the Additional Collector (Ceiling) was required to take a final decision with respect to the questioned transfer in favour of the petitioner and other similarly situated persons because, publication of draft statement is not the end of the matter in a ceiling proceeding, as the order passed is also subject to appeal and revision and the ceiling proceeding ends when the surplus land is acquired by publication in District Gazette under Section 15 of the Act, but, no such direction was given rather, the direction was only to the extent that draft publication under Section 10(2) of the Act would follow after such order having been passed. After the objections are raised and disposed of, final publication is made under Section 11(1) of the Act. The Division Bench of this Court passed order restraining the transferees to alienate the transferred land till the final disposal of the matter and not till publication of a draft statement as required under Section 10(2) of the Act, as stated earlier in the order or till finalization of the ceiling proceeding against the land holder. Of course, there is a substantive right of appeal but that can only be availed after final publication under Section 11(1) of the Act, as per Section 30 of the Act is made, therefore, even if such stand of the State is accepted that the restraintment was till the draft publication under Section 10(2),

which is still awaited, that would not serve any purpose as even after publication of draft under Section 10(2), the State Government cannot avail the provision of appeal.

Thus, in our opinion it has to be held that restraintment was only till a final decision is taken in this regard by the Additional Collector under Section 5(1)(iii) of the Act.

That apart, even if it is assumed that the State has a right to appeal, a *bona fide* transferee cannot be restrained for time immemorial so that a final publication is made and State could prefer appeal. In case, a final publication is made under Section 11(1) of the Act and State is aggrieved by the order of the Collector, an appeal can be filed even after such transfer having been made by the petitioner.

Let us consider the situation in which any order of Court is not there and transfer was made prior to 09.09.1970, i.e., the appointed day. If the Collector makes an inquiry and finds that the sale deed has not been executed for defeating the purpose of the Act, then a question would arise as to whether in that case also the transferee, even though he has nothing to do with the ceiling case which is pending against the land-holder, and land-holder had *bona fide* transferred the land in question in his favour through a vehicle of transfer, as envisaged under the Transfer of Property



Act, cannot transfer his purchased land? The answer has to be negative as Ceiling Law does not enforce such restraint even after order having been passed under Section 5(1)(iii) in favour of transfer and, if it is so, then whether it can be assumed that the Division Bench of this Court has gone further to restrain the petitioner which could not have been done ordinarily under the Act and, whether any such extraordinary situation was there? Answer has to be again in negative.

Thus, in our opinion, it has to be held that Division Bench, while passing the restraint order and choosing the expression 'till the disposal of the matter', had in its mind the disposal of the enquiry and a decision by the Additional Collector (Ceiling).

It has been pointed out by learned AAG 4 that the petitioner has also filed a writ petition for seeking a direction for registering the sale deeds. However, learned counsel for the petitioner has informed that the said writ petition has already been withdrawn in view of pendency of the present review application before a Division Bench.

That apart, since stand has been taken by the Respondents that approval of the State Government has been sought for publishing draft statement, the question is whether, for

the lands which were the subject matter of inquiry under Section 5(1)(iii) of the Act, such approval was required to be sought from the State Government?

Learned counsel for the State has not been able to show any provision of law under which such requirement is there though, while dealing with the issue of exemption under Section 29 of the Act, the ceiling authorities are required to make a recommendation for exemption to be granted to the applicant and, as such, recommendations are to be sent to the State Government as exemption has to be granted by the State Government under Section 29(2) of the Act. Whether, so far as the inquiry and decision under Section 5(1)(iii) of the Act are concerned, the final authority is the Collector under the Act? If the Collector chooses not to annul the transfer, the State Government cannot take a decision otherwise. It can only move in appeal against the order.

Thus, in view of the aforesaid discussion and also the admitted fact that about sixteen other similarly situated persons have been allowed registration, it is held that the pendency of ceiling proceeding against the land-holder would not be an impediment in registering the land transferred by the petitioner as he cannot be allowed to wait till eternity. However, at the same time, it is also held that, even such registration is made, the State

Government would be at liberty to assail such order passed by the Additional Collector (Ceiling) before the competent authority and take other remedial steps if it finally succeeds.

Accordingly, this review application is disposed of with the aforesaid observation and liberty to the State and clarification of the order dated 29.01.1997 passed by the Division Bench of this Court in C.W.J.C. No. 1436 of 1986 and other analogous matters.

(Dr. Ravi Ranjan, J)

I. A. Ansari, CJ: I agree,

(I. A. Ansari, CJ)

Vikash/-

AFR/NAFR	AFR
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