

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12879 of 2009

With
Interlocutory Application No.4846 of 2015

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1. Upendra Kumar Dubey
2. Umesh Kumar Dubey
Both sons of late Muni Dubey, resident of village-Chatayan Mishra Tola,
P.S.-Siwan, District-Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Minister, Department of Revenue and Land Reforms Government of Bihar, Patna.
3. Collector, Siwan.
4. Deputy Collector, Land Reforms (under Bihar Land Reforms Act), Siwan.
5. Circle Officer, Siswan, Circle Office, District-Siwan.
6. Mahanth Krishna Giri, Chela of late Mahanth Lal Mati Kuar, Badi Math Village-Geyaspur, P.S.-Siswan, District-Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birendra Nath Mishra
For the Respondent nos.1to5 : Mr. Ajay, GA-XII
Mr.Pratik Sinha, AC to GA-XII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

6 10-02-2016 Heard learned counsel for the petitioners as also the learned G.A.-XII appearing on behalf of the respondent nos.1 to 5. However, despite valid service of notice, none is appearing on behalf of the respondent no.6

The petitioners are aggrieved by the order dated 23.06.2009 passed in Misc.Case No.4 of 1995-96 by the Presiding Officer-cum-Minister, Revenue and Land Reforms, Government of Bihar, Patna (respondent no.2), as contained in Annexure-8 to the writ petition, whereby and whereunder the petition filed on behalf of the petitioners under Section 45-B of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'Land Ceiling Act') for reopening of the

Land Ceiling (Surplus) Case No.95 of 1973-74 (State Vs. Paramhans Giri & Lalmati Kuar) and for exclusion of the lands in question, fully detailed in paragraph 8 of the writ petition, has been rejected.

The learned counsel appearing on behalf of the petitioners submits that the lands in question was originally transferred in the year 1926 by one Laxman Giri in favour of one Bhikham Singh and subsequently heirs and legal representatives of aforesaid Bhikham Singh sold the lands in question in favour of one Sagar Yadav through registered deed of sale dated 23.03.1964 and finally in the year 1967, through a registered deed of exchange the lands in question was acquired by the father of the petitioners and since then he became rightful owner of the lands in question. According to him, in the Land Ceiling (Surplus) Case No.95 of 1973-74, the petitioners were not given any opportunity of hearing and the lands in question was treated to be of the land holder, the respondent no.6, and finally it was declared surplus in terms of Section 11(1) of the Land Ceiling Act and ultimately same was acquired under Section 15 (1) of the Land Ceiling Act.

It is the case of the petitioners that once they came to know about acquisition of the lands in question under Section 15(1) of the Land Ceiling Act, they filed a petition under Section 45-B of the Land Ceiling Act for reopening of the aforesaid land ceiling case and for exclusion of the lands in question claimed by them, which gave rise to Misc.Case No.4 of 1995-96. It is pointed out that the aforesaid Misc.Case was not being disposed of; therefore, the petitioners approached this Court in CWJC No.11643 of 1995, which was finally disposed of by an order dated 03.01.1996 (Annexure-7) with a direction to the Revenue



Minister, exercising powers on behalf of the State Government, to dispose of the aforesaid Misc.Case within a period of three weeks from the date of receipt/production of a copy the order. It is contended that, despite the aforesaid order dated 03.01.1996, the matter was not disposed of within the time prescribed by this Court and finally by the impugned order dated 23.06.2009 (Annexure-8) the petition filed on behalf of the petitioners under Section 45-B of the Land Ceiling Act has been rejected mechanically without considering the claim of the petitioners in its proper perspective. Therefore, according to the learned counsel, the impugned order cannot be sustained in law.

The matter has been contested by Mr.Ajay, the learned GA-12 appearing on behalf of the respondent nos.1 to 5. According to him, since the ceiling case was going on against the land holder right from 1973-74; therefore, it is not believable that the petitioners had no knowledge about the pendency of the aforesaid Land Ceiling (Surplus) Case. Therefore, according to him, the petitioners ought to have filed objection under Section 10(3) of the Land Ceiling Act, but that was not done. It is pointed out that the land holder at no point of time mentioned about transfer of the lands in question by the ex-mahanth. Therefore, according to him, the lands in question has rightly been treated to be the lands of the land holder and was subsequently declared surplus under Section 11(1) of the Land Ceiling Act and ultimately it was acquired by the State of Bihar. It is also pointed out that the acquisition of the lands in question had taken place in the year 1995 and the lands might have been distributed amongst the beneficiaries, but those beneficiaries/parcha holders have not been impleaded as party respondents. However, despite



repeated query, he has not been able to demonstrate from the impugned order that the claims made by the petitioners regarding transfer of the lands in question in the year 1926 has been taken into consideration by the respondent no.2 while passing the impugned order. He has fairly conceded that in the counter affidavit filed on behalf of the respondent State it has not been stated that the lands in question have been distributed among the parcha holders.

After having heard the parties and on consideration of the materials available on the record, this Court is the opinion that the matter requires reconsideration and fresh decisions. From the plain reading of the impugned order dated 23.06.2009, it appears that the petition filed on behalf of the petitioners for reopening of the original land ceiling case has been rejected merely on the ground that the petitioners did not file any objection on the earlier occasion. However, it has nowhere been mentioned that the petitioners were ever served notice in the original land ceiling case or they had knowledge and information about the pendency of the original land ceiling case. It further appears that the respondent no.2, while passing the impugned order, has not taken into consideration about the transfer made by the ex-mahanth in the year 1926 or thereafter. The respondent no.2 has not recorded any finding that the transfer made by the ex-mahanth was void or he was not the rightful owner to execute the transfer deed.

It is well settled that the transfer made by the ex-landlord prior to 22.10.1959 cannot be questioned by the Collector under the Land Ceiling Act or/and such land cannot be clubbed with the lands of the land holder. However, if the transfer was



made by the land holder after 22.10.1959 and prior to 09.09.1970 with a view to defeat the object of the Land Ceiling Act, then an enquiry is required to be made by the Collector under the Land Ceiling Act in terms of Section 5(1) (iii) of the Land Ceiling Act, but that has not been done in the present case. In fact, it appears that all these issues have not been gone into by the respondent no.2 while passing the impugned final order, as contained in Annexure-8.

For the reasons recorded above, the impugned order dated 23.06.2009 passed in Misc.Case No.4 of 1995-96 by the Presiding Officer-cum-Minister, Revenue and Land Reforms, Government of Bihar, Patna (respondent no.2), as contained in Annexure-8 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the respondent no.2 with a direction to decide the aforesaid case afresh strictly in accordance with law, but, before passing any final order, an opportunity of hearing must be given to the petitioners, the land holder and the parcha holders, if any.

The parties shall be at liberty to raise all the issues of facts and law before the respondent no.2, which may be available to them, with respect to the lands in question.

In order to expedite the matter, the petitioners are directed to appear before the respondent no.2 with a certified copy of the present order within a period of one month from today, whereafter the respondent no.2 shall proceed to decide the aforesaid Misc.Case No.4 of 1995-96 filed on behalf of the petitioners afresh strictly in accordance with law and as per the observations made above.

The writ petition stands allowed to the extent

indicated, but with the observations and directions made above.
However, the parties are left to bear their own costs.

I.A.No.4846 of 2015 also stands accordingly
disposed of.

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(Birendra Prasad Verma, J)