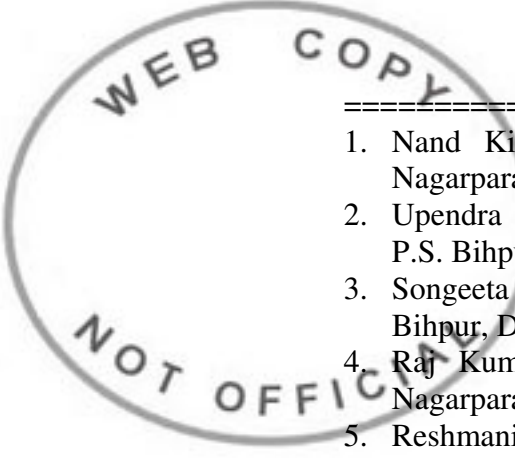


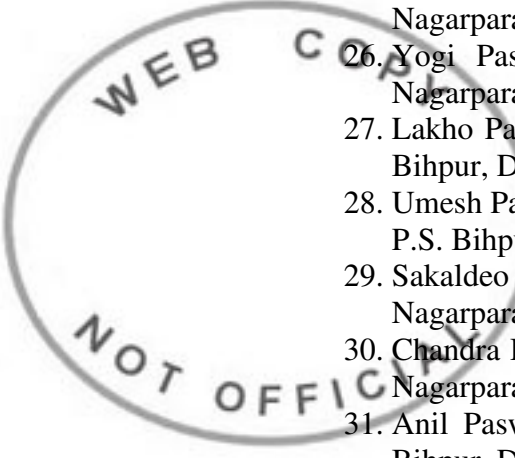
IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.329 of 2010

IN

Civil Writ Jurisdiction Case No. 14336 of 2009

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1. Nand Kishore Ram S/O Bindeshwari Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 2. Upendra Ram S/O Bindeshwari Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 3. Songeeta Devi W/O Dhurb Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 4. Raj Kumar Paswan S/O Ram Deo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 5. Reshmani Devi W/O Gopal Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 6. Azad Paswan S/O Arjun Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 7. Urmila Devi W/O Bachnashwari Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 8. Babulal Ram S/O Kamod Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 9. Chartira Ram S/O Kamod Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 10. Surendra Ram S/O Kamod Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 11. Ganesh Ram S/O Fathuni Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 12. Indedeo Ram S/O Sahadeo Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 13. Sahdeo Ram S/O Late Bachan Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 14. Bishundeo Ram S/O Late Bhochan Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 15. Murari Ram S/O Kamod Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 16. Sakendra Ram S/O Kamod Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 17. Nunnwati Devi W/O Late Ganga Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 18. Ashok Ram S/O Kamleshwari Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 19. Sarita Devi W/O Murari Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 20. Murari Paswan S/O Late Uago Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 21. Bhikhari Paswan S/O Late Uago Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 22. Bilash Paswan S/O Kunjo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 23. Kailash Paswan S/O Ram Ratan Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur

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24. Tango Paswan S/O Shivo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 25. Amrendra Paswan S/O Late Aaghanu Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 26. Yogi Paswan S/O Late Parmeshwar Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 27. Lakho Paswan S/O Kamo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 28. Umesh Paswan S/O Late Ganesh Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 29. Sakaldeo Paswan S/O Late Kamo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 30. Chandra Deo Paswan S/O Late Nankishore Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 31. Anil Paswan S/O Guna Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 32. Sunil Paswan S/O Guna Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 33. Ganki Devi W/O Basudeo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 34. Banke Paswan S/O Late Musho Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 35. Shatrughan Paswan S/O Late Kamo Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 36. Bilakshan Paswan S/O Khantar Paswan R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 37. Anandi Ram S/O Late Nirdhan Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 38. Sudho Ram S/O Late Nirdhan Ram R/O Vill.- Nagarpara, P.O. Nagarpara, P.S. Bihpur, Distt.- Bhagalpur
 39. Kailash Mehtar S/O Shoti Mehtar R/O Vill. And P.O. Bharmarpur, P.S. Bihpur, Distt.- Bhagalpur
 40. Sukdeo Rajak S/O Panchu Rajak R/O Vill. And P.O. Bharmarpur, P.S. Bihpur, Distt.- Bhagalpur
- Appellant/s

Versus

1. The State Of Bihar
 2. The Secretary And Commissioner, Land Reforms Deptt., Govt. Of Bihar, Patna
 3. The Collector, Bhagalpur
 4. The Addl. Collector, Bhagalpur
 5. The Dy. Collector, Land Reforms Bhagalpur
 6. Circle Officer, Narayanpur, Bhagalpur
 7. Circle Officer, Bihpur, Bhagalpur
 8. Nissar Ahmad Circle Officer, Narayanpur, Distt.- Bhagalpur
 9. Jagdish Prasad Singh S/O Dukhmohan Singh R/O Vill.- Bharamarpur, P.S. Bihour, Distt.- Bhagalpur
 10. Subhash Pasad Singh S/O Late Dukhmochan Singh R/O Vill. And P.O. Bharmarpur, P.S. Bihpur, Distt.- Bhagalpur
- Respondent/s

Appearance :

For the Appellant/s : Mr. Ashutosh Jha,
Mr. Narendra Pankaj
Mr. Bijoy Kr. Mishra,

Mr. Avinash Kumar, Advocates

For the Resp. No. 9 & 10: Mr. Yogendra Mishra
Mr. Ajatshatru

For the State : Mr. M.K.Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 23 -11-2016

Heard learned counsel for the appellants, learned
counsels for the State and for the writ petitioners-respondent
Nos. 9 and 10.

The present appeal has been filed challenging the
order dated 03.11.2009 passed by a learned Single Judge of this
Court in CWJC No. 14336 of 2009 by which the writ
application was disposed of and the respondent-District
Administration, Bhagalpur as also the Circle Officer,
Narayanpur, Bhagalpur were directed to ensure that the
possession of the petitioners over the lands retained by them in
ceiling proceeding under Section 9 of the Act is not disturbed in
the light of the order passed in the ceiling proceeding after
reopening.

The appellants before us are the purcha-holders to
whom purchas were distributed on 14.12.1998. Prior to the said
date, the writ petitioner-respondents being aggrieved by the



order dated 01.06.1982 of the Collector under the Act granting four units only and rejecting the claim for more units had moved this Court by filing CWJC No. 449/1983 which was disposed of by order dated 24.04.1991 with the liberty granted to file an application under Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred as “the Act”) in the year 1991. The petition accordingly filed by the land-holder was numbered as Petition No. 142 of 1991-92. The said petition was dismissed by order dated 27.10.1995 holding that the Collector had no authority to reopen the case under Section 45B of the Act, but in CWJC No. 10978 of 1995 assailing the said order, the same was set aside by order dated 29.02.1996 of this Court and the Collector was directed to dispose of the matter in accordance with law. It was during the pendency of the said proceeding under Section 45B of the Act that the purcha were distributed to the appellants and others. Ultimately, in the proceeding under Section 45B, the Collector granted two more units apart from four units earlier granted. While reopening the proceeding under Section 45B, the Collector had, by order dated 19.06.2007, granted stay of issuance of purcha which was reiterated by the Additional Collector by letter dated 25.10.2007



staying the distribution of the land to the purcha-holders holding that the earlier Gazette stood automatically repealed on account of the reopening of the ceiling proceeding. It was claimed by the writ petitioners that the land remained in their possession for which reference was made to various orders of different authorities directing the officials to take steps as per law with regard to disturbance being caused by the purcha-holders, whereas the stand of the appellants purcha-holders is that pursuant to the distribution of purcha, they have been put in possession and not only that, even rent receipts had been issued to the purcha-holders by the revenue authorities.

The order of the writ court impugned herein dated 03.11.2009 was also challenged by Nirdhan Das and several other purcha-holders in LPA No. 627 of 2010 which was dismissed by order dated 21.06.2011 by a Division Bench of this Court.

Learned counsel for the appellants submits that the case could not have been reopened under Section 45B of the Act and disposed of without issuing notice to the purcha-holders, who due to the distribution of purchas had a right to be heard in the matter, as they had in the meantime acquired vested rights in the land so distributed to them. In support of the said

proposition, learned counsel for the appellants relies upon a decision of the Supreme Court in the case of Dadan Ram & others Vs. State of Bihar & others: 2008 (1) PLJR (SC) 215 in paragraph 12 of which it has been held as follows:-

“In view of the same, we are unable to agree with the observation of the Division Bench since the appellants had the knowledge of the order of status quo passed by the District Collector on 24.8.2005, the rules of natural justice were substantially complied with. We have already held that prior to re-opening, notice to all the parties including person(s) in possession was mandatory. It is not in dispute that the case was reopened and earlier decision was reversed holding that there was no excess land without issuing notice to the appellants. Section 45-B empowers the State Government to re-open the case which was (sic) already been disposed of by the Collector under the Act. After re-opening the case, the State Government is to dispose of the matter afresh in accordance with law. It is, therefore, clear that before passing any order in a concluded issue, the authority is expected to satisfy the minimum requirement of principles of natural justice by issuance of notice and hearing. Further, the said power to re-open has to be exercised sparingly and for adequate reasons and the proceeding concluded earlier cannot be re-opened merely for verification



whether the orders were correctly passed. The order of re-opening should be passed after hearing the parties concerned and where an order of re-opening the case had been passed without hearing the party against whom it was passed, the order suffers with legal infirmity and liable to be quashed. The reason behind in issuing a show cause notice is precisely very clear in view of the fact that a proceeding once concluded after a regular hearing should not be ordered to be re-opened suo motu by the authorities concerned in a capricious manner and reasonableness requires that parties to be affected by the same should be heard.”

He further relies upon another decision of the Apex Court in the case of Ram Swarup and others Vs. S.N.Maira and others: AIR 1999 Supreme Court 941 in paragraph 3 of which it has been held as follows:-

“Having considered the rival submissions it appears to us that the High Court was not justified in interfering with the Revisional order both on the ground that the persons affected were not parties as well as on the ground that the provision of Section 12(3) of the Haryana Act has not been correctly interpreted. From the available records and the orders passed by the authorities it is crystal clear that the Collector declared surplus land in the hands of the original surplus land holder by his order dated 8-6-60. Thereafter such surplus lands



were allotted to different landless persons and possession thereof was given to them who have been continuously in possession of the same since 1976. By such allotment and delivery of possession in their favour, rights have been conferred on such allottees and, therefore, any order without impleading them as parties could not have been passed which has the effect of taking away their rights. These appellants-allottees were not parties to the writ petition and, therefore, the High Court was in error in snatching away their rights without hearing them and without impleading them as parties in the writ petition ”

It is also the contention of learned counsel for the appellants that the purchase issued to them have never been cancelled and thus, it was not open to the respondents to take action in the matter and the order of the writ court directing the District Administration and the Circle Officer for handing over the possession to the petitioners and not to disturb them ought not to have been passed without hearing them in the matter.

Learned counsel for the respondents, on the other hand, vehemently asserts that the decision relied upon by learned counsel for the appellants has no application to the facts of the present case. It is submitted by learned counsel that from



the facts of the case it is evident that when the application for reopening the proceeding under Section 45B of the Act had been filed by the petitioners in the year 1991, admittedly, the purchas had not been distributed to the appellants and others and, as a matter of fact, even when this Court had by its order dated 29.02.1996 set aside the order of the Collector dismissing the petition under Section 45B of the Act and directed to dispose of the matter in accordance with law, there was no distribution of purchas. In the circumstances, it is submitted by learned counsel that there was no occasion for issuance of notice and hearing the purcha-holders who had managed to get the purchas issued during the pendency of the proceeding under Section 45B and thus, could not claim any right to be noticed in the very proceeding.

It is also the submission of learned counsel for the writ petitioner-respondents that the distribution of purchas during the pendency of proceedings under Section 45 B is itself void and non est and no right of hearing can arise from such distribution. In support of the same, learned counsel relies upon a Division Bench decision of this Court in the case of Mahanth Daya Ram Das & others Vs. The State of Bihar & others: 1975 BBCJ 667, paragraphs 10 and 15 of which are quoted below:-



“10. It may some times happen that the appeal or revision is not preferred within the prescribed time. The Collector after having waited for the expiry of the period of limitation finally publishes the draft statement. Subsequently, an appeal or revision is filed, entertained and the delay condoned. The question arises whether in such a situation, the authorities will be incompetent to decide the appeal in view of the final publication. In my view, even in such cases the power of appellate or Revisional Court will not be affected. Once the appeal or revision is disposed of, if any alteration in the draft statement is required because of those decisions, they have to be made. The publication in section 11(1) must be held to be subject to the result of appeal or revision. If it were not so, the power given under the proviso to sections 30 and 32 of the Act, would become otiose. Not only in the general principle that any order of any inferior authority must be subject to the result of appeal or revision, but also in order to harmoniously construe the provisions of sections 30 and 32 of the Act with the provision of section 11 of the Act, it must be held that final publication of draft statement cannot defeat the effect of decision in appeal or revision. Final publication under section 11 and the publication in the official Gazette under section 15 (1) shall stand modified as a result of decision in appeal or revision.

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XXX

XXX

15. Having dealt with the relevant provisions of the Act, the impugned orders may now be examined. The learned Commissioner and the Additional Member, Board of Revenue were of the opinion that the appeal or revision filed by the petitioner have become infructuous because of the final publication under section 11(1) of the Act. For the reasons already discussed, it is clear that the view of law taken by the aforesaid authorities is not correct. The impugned orders ‘(Annexures “5” and “6”)’ are, therefore, fit to be quashed, suffering as they do from an error of law apparent on the face of the record.”

Learned counsel further contends that the State-respondents had shown completely unjustified haste in distributing the land while the proceeding under Section 45B of the Act was still pending and such action of the ceiling authorities has been deprecated by this Court in the case of Hricharan Chamar & others Vs. Kapilmuni Ojha & others: 2008(2) PLJR 495, in paragraph 10 of which it has been held as follows:-

“Learned counsel for the land-holders rightly submits that the respondent authorities had shown absolutely unjustified haste in distributing the land while the proceedings were mid-stream. It appears



on a perusal of the original records produced by the learned State Counsel that the lands were distributed in favour of the present appellants on 15.10.1983, and the notification in terms of Section 15(1) was issued later on 11.1.1984. In other words, the State Government distributed lands before it acquired title to the lands. The entire land proceedings abated in terms of Section 32A of the Act and a fresh proceeding in terms of Section 32B of the Act, were later commenced. The matter had travelled to the Board of Revenue which had set aside the earlier order and remitted the matter back to the Land Reforms Deputy Collector who concluded the second round of litigation. We are at present dealing with the third round of litigation. Law is well settled that once the land has been declared surplus and the requisite notification in terms of Section 15(1) of the Act has been issued, the lands shall vest in the State Government and remains Custodia Legis. The respondent authorities cannot distribute the lands until all prospects of litigation upto the Supreme Court come to an end. Reference may be made to the following reported judgments:

- 1) 1975 BBCJ 667 (paras 11 and 14); (Mahanth Daya Ram Das & Ors. Vs. The State of Bihar & Ors.)
- 2) AIR 1995 SC page 10 (paras 23 & 24); (Sh. Dewan Chand Bhalla Vs. Ashok Kumar Bhoil)

3) 2002(4) PLJR 622 (para 11); (Upendra Paswan vs. The State of Bihar & Ors.)

The unseemly haste shown by the respondent authorities in distributing the lands so prematurely has given rise to absolutely unwanted, and clearly avoidable litigations.”

Learned counsel also points out that the appellants are not correct to contend that the purchas had not been cancelled whereas it is evident from the letter dated 20.10.2007 of the Additional Collector (Ceiling), Bhagalpur written to the Circle Officer in which it was clearly stated that in view of the reopening of the proceeding earlier, allotment stands automatically cancelled. He further refers to the letter dated 27.03.2008 sent by the Additional Collector (Ceiling), Bhagalpur addressed to the writ petitioners and others, forwarding the same to the Circle Officer, in which it was clearly mentioned that in the light of the Gazette the purchas issued earlier were cancelled. It is, thus, contended by learned counsel for the writ petitioners-respondents that it is not open to the appellants to say that after reopening the proceeding purchas have been cancelled.

Learned counsel also heavily relies upon the fact that LPA No. 627 of 2010 filed by certain purcha-holders

challenging the very order under appeal in the present matter had been dismissed by a Division Bench of this Court by order dated 21.06.2011 and, thus, the present appeal must also meet the same fate.

In support of the aforesaid proposition, learned counsel relies upon a decision of the Supreme Court in the case of Badni (dead) by LR. And others Vs. Siri Chand (dead) by LR. & others: AIR 1999 Supreme Court 1077, in paragraphs 6,7 and 10 of which it has been held as follows:

“6. We have considered the rival submissions and we are of the view that the High Court was right in coming to the conclusion that the decree was based on a common issue against the appellants in all the six RSAs and the failure to bring the legal representatives of one of the deceased appellants in one RSA will result in abatement of other appeals. Otherwise, there will be conflicting decrees in the event of other RSAs being allowed on merits, which cannot be allowed.

7. We have noticed earlier that the common issue for consideration in all the appeals before the High Court was whether the claim of the plaintiff-respondents for possession of the suit land on the basis of adoption was sustainable. The courts below having found the adoption in

favour of the plaintiffs, the consequence will be that the issue of adoption in respect of Shiv Lal's appeal would become final in that RSA, resulting in the abatement of that RSA as well as other RS appeals to avoid conflicting decrees.

10. In the light of the decisions of this Court and in view of the facts of these cases, there cannot be any doubt that the High Court was perfectly right in dismissing all the appeals as abated."

It is also the stand of learned counsel for the writ petitioners-respondents that the order assailed is not a 'judgment' in terms of Clause 10 of the Letters Patent constituting this Court and, thus, it is not appealable in support of which he cites a decision of the Supreme Court in the case of Asrumati Debi Vs. Kumar Rupendra Deb Raikot and others: AIR 1953 Supreme Court 198, relying upon paragraph 10 of the said judgment which is in the following terms:

"10. Couch, C.J., as said already, defined "judgment" to be a decision which determines some right or liability affecting the merits of the controversy between the parties. It is true that according to the learned Chief Justice an adjudication, in order that it might rank as a "judgment", need not decide the case on its merits, but it must be the final pronouncement of the court making it, the effect of which is to dispose of or terminate the suit or proceeding. This will be

apparent from the following observations made by Couch, C.J. in the course of his judgment in the case referred to above:

“It is, however, said that this court has already put a wider construction upon the word “judgment” in clause 15 by entertaining appeals in cases where the plaint has been rejected as insufficient or as showing that the claim is barred by limitation, and also in cases where orders have been made in execution. These however are both within the above definition of a judgment, and it by no means follows that, because we hold the order in the present case not to be appealable, we should be bound to hold the same in the cases referred to. For example, there is an obvious difference between an order for the admission of a plaint and an order for its rejection. The former determines nothing, but is merely the first step towards putting the case in a shape for determination. The latter determines finally so far as the court which makes the order is concerned that the suit, as brought, will not lie. The decision, therefore, is a judgment in the proper sense of the term.”

Learned counsel further submits that neither the appellants nor the State have chosen to challenge the actual order dated 25.09.2007 granting two more units, total six units,



to the writ petitioners and in absence of such challenge the said order has acquired finality and it is not open to the respondents to claim any right in the face of the said order. It is submitted that the right of the purcha-holders is derived from the State which itself got divested of the same by virtue of the decision given in the proceeding under Section 45B and thus, appellants and other purcha-holders also cannot claim any right to retain the land. In support of the same, learned counsel relies upon a decision of a Division Bench of this Court in the case of Dharnidhar Thakur Vs. The State of Bihar and others: 1998 (1) PLJR 344 in para 7 of which the said proposition has been laid down in the following words:-

“Since declaration of surplus land and in pursuance thereof issuance of Notification was set aside by the Court and option was afforded to the appellant to give list of lands which he wanted to retain with him and the appellant complied with the same, therefore, the revenue authority committed an error of law in giving effect to the earlier Notification whereby the land of the appellant was declared surplus and allotment was made. Once the Notification declaring the appellant’s land surplus was set aside, automatically allotment of land in favour of the respondents came to an end and, therefore, rightly the learned single Judge came to



the conclusion that “the earlier notification was not valid notification the settlement of land to the settlees will not be treated as valid settlement and the land will never be vested to the State of Bihar”, since the same has been set aside. In our considered view the learned single Judge committed an error of law in holding that if option of 16 and odd acres of land has not been allowed which affects the interest of a small settlee to go out of the land after many years, the same appears to be not justified, being not in consonance with the provision of the Act and settled law. We may observe that the settlees acquire right by virtue of vesting of land with the State. Since vesting of the land with the State, as observed earlier, was set aside, the allotment automatically came to a end. This being so, the allottee do not get any right to retain the lands by virtue of earlier order whereby the land was declared surplus which is not in existence having been set aside or quashed by the revenue authority or by this Court in earlier writ petition.”

He further relies upon another Division Bench judgment of this Court in the case of Upendra Paswan Vs. The State of Bihar & others: 2002 (4) PLJR 622 to the similar effect. Learned counsel also refers to the fact that this Court by order dated 07.12.2011 in the present appeal itself has observed that



unless the appellants who claim to be purcha-holders over land earlier declared surplus can get rid of the order of the State Government and Ceiling Authorities enhancing further units of land in favour of the landholders, they cannot claim the land given to them through purchas. It was observed that the appellants may raise the said pleas about having remained in possession of the land and the ceiling proceeding having been decided without hearing them earlier only by challenging the order of the authorities under which the units allotted to the family of the land-holder has been enhanced and in order to enable them to take the required steps, the matter was adjourned for six weeks but despite the same, no writ petition challenging the original order was filed.

Learned counsel for the appellants in response to the aforesaid submissions contends that so far as dismissal of LPA No. 627 of 2010 is concerned, the same cannot affect the rights of these appellants as each of the purcha-holders had separate identity and dismissal of the appeal filed by some of the purcha-holders by non-speaking order cannot affect the right of others to maintain the appeal.

It is also urged by learned counsel for the appellants that after the order dated 07.12.2011 the appeal has

been admitted and status quo ordered and the earlier observation would therefore merge in the subsequent order of this Court.

We have considered the submissions of learned counsels for the parties and do not find any force in the submissions of learned counsel for the appellants. From the conspectus of facts stated above, it is evident that the crucial fact is that the direction to re-open the case after setting aside the earlier order of the Collector under Section 45B in CWJC No. 10978 of 1995 was made by this Court on 29.2.1996. Thus, Section 45B proceedings again became pending from the said date. Purchas have been distributed admittedly almost three years thereafter on 14.12.1998. Thus, on the date Section 45B proceedings were revived as a result of the decision of this Court, the appellants- purcha-holders were not at all in the picture. If that be so then the reliance by the appellants on Dadan Ram's case (supra) can be of no avail. In the said decision the Apex Court had merely held that the order of re-opening should be passed only after hearing the persons who have been distributed surplus lands and only in such cases not hearing a party against whose interest the order of reopening has been passed, would be said to be suffering from legal infirmity and liable to be quashed. Since the appellants-purcha-



holders were not in the picture at all when the earlier order of this Court had been passed, hence it could not be said that any right had accrued to them to be heard on the re-opening of the case; rather it has to be held that the issuance of purchas to them itself was an illegality committed by the authorities of the respondent-State in the teeth of what has been deprecated by this Court in the case of Haricharan Chamar (supra). It has therefore to be held that the issuance of purchas during the pendency of the proceedings under Section 45B was void, non est and no right, much less a right of hearing, would arise on such issuance in the face of the orders of this Court.

As a matter of fact, the State-respondents also accept their grave error in the matter and the letters dated 20.10.2007 and 27.3.2008 of the Additional Collector, Bhagalpur show the correct understanding.

In view of the aforesaid findings it is not necessary to decide as to whether the writ petitioners were required to challenge the order dated 25.9.2007 granting two more units or not. In our view, since no right could have accrued to them by distribution of purchas during the pendency of Section 45B proceedings, nothing would turn upon the challenge to the order dated 25.9.2007.

Lastly, much can be said against the appellants in view of the dismissal of LPA No. 627/2010 filed by a large number of purcha-holders against the very same order impugned in the present matter. This Court normally would have dismissed the appeal filed by the identically situated persons in the light of the dismissal of the appeal filed by the other similarly situated purcha-holders but we have considered in detail the submissions made by learned counsels for the parties for the sole reason that earlier the appeal was dismissed by merely stating that the court found no merit in the appeal.

Thus, in the light of the aforesaid discussions, we do not find any merit in the appeal. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Vikash Jain, J)

AFR/NAFR	
CAV DATE	
Uploading Date	24.11.2016
Transmission Date	