

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.500 of 2001

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Hira Kumar Singh, son of late Nagendra Narain Singh, resident of village-Tarapatti,
P.S.-Khajauli, District-Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Additional Member, Board of Revenue, Patna.
 2. The Collector of Madhubani District at Madhubani.
 3. The Additional Collector of Madhubani District, at Madhubani.
 4. The Deputy Collector, Land Reforms, Madhubani at Madhubani.
 5. Tirpit Mandal, son of Nanu Mandal
 6. Ram Bilash Mandal, son of Gopi Mandal
 7. Shibu Mandal, son of Domu Mandal
 8. Dhaneshwar Mandal, son of Manchan Mandal
 9. Buchan Mandal, son of Panchkauri Paswan
 10. Palat Mandal, son of Nikhe Mandal
- Respondent no.5 to 10 are village-Matkhudarkhala, P.S.&Anchal-Babubarhi,
District-Madhubani.
11. Thakan Mandal, son of Jasodhar Mandal, resident of village-Tarapatti Sarabe,
P.S. and Anchal-Khajauli, District-Madhubani.
 12. Narad Jha, son of Nathuni Jha of village-Satghara, P.S.-Babubarhi, District-
Madhubani.
 13. Shibsundar Mandal, son of Shree Subadh Mandal
 14. Bihari Mandal, son of Mithu Mandal
 15. Arjun Thakur, son of Chulhai Thakur
 16. Ajab Mandal, son of Chaudhary Mandal
 17. Tharu Mandal, son of late Khudi Mandal
- Respondent nos.13 to 17 are of village-Matkhudar Khala, P.S.-Babubarhi, District-
Madhubani.
18. Gujray Sahu, son of Dukhi Sahu
 19. Anand Narayan Jha, son of
- 18 and 19 are resident of village-Satghara, P.S.-Babubarhi, Anchal-Babubarhi,
District-Madhubani.
20. Kapleshwar Mahto, son of Rabi Mahto
 21. Dhanik Lal Mahto
 22. Naresh Mahto
- Respondent nos.21 and 22 are minor sons of Kapleshwar Mahto under the
guardianship of their father
23. Dukhi Mahto
 24. Suryadeo Mahto @ Suraj Mahto
- Respondent nos.23 and 24 are sons of Lakshman Mahto
25. Most. Ramsundari Devi, wife of Kari Das
 26. Ram Chalitar Yadav, son of late Subadh Yadav
 27. Jagdeo Sahu, son of late Chethru Sahu
 28. Most. Surati Devi, wife of Kishan Khatway
 29. Singheshwar Khatway, son of late Gyanchan Khatway
 30. Dukhi Khatway, son of late Janak Khatway
 31. Chandradeo Khatway, son of late Janak Khatway
 32. Sahadeo Yadav
 33. Ashok Kumar Yadav
 34. Rajdeo Yadav
- Minor sons of Sahdeo Yadav under the guardianship of their father
35. Rabindra Kumar Yadav, minor son of Rajdeo Yadav under the guardianship of

his father.

36. Rash Lal Khatway, son of Phushan Khatway

37. Gudari Yadav, son of late Mangal Yadav

38. Smt.Pabitari Devi, wife of Gudari Yadav

39. Jibachh Yadav, son of

40. Jai Kishore Yadav, minor son of Jibachh Yadav under the guardianship of his father.

41. Ramashish Yadav, son of Ram Kishun Yadav

42. Ram Udagar Yadav, son of Ram Kishun Yadav

43. Smt.Sagar Devi, wife of Niras Yadav

44. Kari Khatway, son of Rabbi Khatway

45. Jhari Khatway, son of Rabbi Khatway

46. Moti Khatway, son of Rabbi Khatway

Respondent nos.20 to 46 are all resident of village-Harishabara, P.S.-Khajauli, District-Madhubani.

47. Lakshmeshwar Yadav, son of late Govind Yadav

48. Bihari Mahto, son of Rameshwar Mahto

49. Gangai Yadav, son of late Bauelal Yadav

50. Rash Lal Yadav, son of late Ramchanni Yadav

Respondent nos.47 to 50 are all resident of village-Mokshbara, P.S.-Baboo Barhi, District-Madhubani.

51. Mahesh Thakur alias Maheshwar Thakur, son of Jagdeo Thakur

52. Ganesh Thakur, son of Jagdeo Thakur

Respondent 51 and 52 are resident of village-Patwara, Tole Gosaitole, P.S.-Rajnagar, District-Madhubani.

53. Most. Kashalya Devi, wife of Ram Khelawan Yadav, resident of village- Mahua Ekdara, P.S.-Khajauli, District-Madhubani.

54. Ram Chandra Yadav, son of Anup Lal Yadav.

55. Dukhi Yadav, son of Manroop Yadav

56. Ram Abtar Yadav, son of Pachu Yadav

Respondent nos.54 to 56 all are resident of village-Harisbara Tole Sarabe, P.S.-Khajauli, District-Madhubani.

57. Suresh Kumar Yadav, son of Ramabtar Yadav

58. Dinesh Kumar Yadav, son of Ramabtar Yadav

Respondent nos.57 and 58 both are resident of village-Biraul, P.S.-Khajauli, District-Madhubani.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar Ambastha, Adv.

For the Respondent nos.1to4 : Mr. Ajay, GA-XII

For the respondent nos.5to58: Mr. Bishwa Nath Choudhary, Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 07-01-2016

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 14.03.2000 passed in Revision Case



No.7 of 1997 by the respondent Additional Member, Board of Revenue, Bihar, Patna, as contained in Annexure-6, whereby the aforesaid revision case filed on behalf of the petitioner under Section 32 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'Act') has been dismissed and the order dated 08.10.1996 passed in Misc. Ceiling Case No.3 of 1990-91 by the respondent District Collector, Madhubani, as contained in Annexure-5, has been affirmed. The petitioner has also challenged the validity and correctness of the aforesaid order dated 08.10.1996 (Annexure-5) passed in the aforesaid Misc. Ceiling Case No.3 of 1990-91 by the respondent District Collector, Madhubani, whereby 7.71 acres of land situate at village-Harishbara in the district of Madhubani has been excluded/released from the acquired lands and the same has been allotted/included in the permissible ceiling unit of the land holder and in its place 7.71 acres of land of village-Sarabe, Anchal-Khajauli in the district of Madhubani have been acquired. The petitioner has further prayed for a direction for re-opening of the entire matter and for deciding the same afresh.

3. The relevant facts, for the purposes of disposal of the present writ petition, can be put in narrow compass. Admittedly, the Land Ceiling Case No.19 of 1975-76 was started under the provisions of the Act against the original land holder Nagendra Narain Singh, the father of the petitioner. On the basis of the verification report submitted by the concerned Anchal Adhikaris, the original land holder was found to be in possession of altogether 72.38 acres of land. Accordingly, draft statement under Section 10(2) of the Act was published showing him to be entitled to have one ceiling unit and rest of his lands were shown to be surplus. The objections were filed by the land holder under Section 10(3) of the Act claiming more units for his eldest son i.e. the petitioner, besides others. As per the verification



report, date of birth of the present petitioner was shown to be 15.01.1955; therefore, on the appointed date i.e. on 09.09.1970 he was minor, but the original land holder claimed that his eldest son i.e. the present petitioner was major on 09.09.1970. The objections filed by the land holder was considered by the respondent D.C.L.R., Sadar Madhubani, the Collector under the Act, and he passed the final order on 04.02.1977 in the aforesaid land ceiling case. On the basis of the physical appearance of the present petitioner, he was held to be major on 09.09.1970. Finally, by the aforesaid order dated 04.02.1977, the land holder was held to be entitled to retain two ceiling units i.e. one for himself, his spouse and his minor children and other for his eldest son i.e. the present petitioner. By the aforesaid order, all the lands belonging to the land holder were treated to be of class-IV category. Finally, by the said order, after allotting two ceiling units to the land holder, he was allowed to retain 60 acres of class-IV land for two permissible ceiling units and remaining 12.38 acres of land were declared surplus. The aforesaid facts can be borne out from the aforesaid order dated 04.02.1977/05.02.1977 passed by the respondent D.C.L.R., Sadar Madhubani, which has been brought on record as Annexure-1 to the writ petition. Thereafter, the original land holder was directed to exercise his option in terms of Section 9 of the Act for the purposes of retaining 60 acres of class-IV lands, so that rest lands could be acquired under Section 15(1) of the Act. Accordingly, the original land holder exercised his option for the purposes of retaining 60 acres of land and thereafter notification under Section 15(1) of the Act was issued for acquisition of remaining 12.38 acres of lands.

4. From the materials available on the record, it is apparent that while exercising option under Section 9 of the Act, the original land holder concealed the material facts about transfer made by him in favour of different persons after 09.09.1970, though all those transfers made by him without permission of the Collector

under the Act was in contravention of the provisions contained in Section 5(1)(ii) of the Act and, therefore, he was obliged to include those transferred lands within his permissible ceiling units in view of the provisions contained in Section 9 (2) of the Act.

5. It further appears that the different persons having purchased the lands from the original land holder after 09.09.1970 raised their claims before the Collector under the Act that their interest may be protected and the area of lands purchased by them may be included in the lands allowed to be retained by the land holder. In above background, the respondent D.C.L.R. made a proposal for taking appropriate steps for modification of the notification issued under Section 15(1) of the Act, so that interest of the purchasers from the land holder is protected. Thereafter, certain orders were passed by the competent authorities and a fresh notification was issued on 20.03.1990 under Section 15(1) of the Act, but again the grievances of the purchasers were not redressed. In that background, the purchasers, who are the private respondents in the present proceeding, filed Misc.Land Ceiling Case No.3 of 1990-91 under Section 37 read with Section 47 of the Act before the respondent District Collector, Madhubani with a prayer for release of their lands from acquisition and for including those lands in the permissible units of the land holder. The aforesaid facts can be borne out from the order dated 01.04.1992 passed by the respondent District Collector, Madhubani, which has been brought on record as part of Annexure-5 to the writ petition. By the aforesaid order dated 01.04.1992, the land holder was restrained from transferring any land till further order and the matter was adjourned for the next date. Finally, by the impugned order dated 08.10.1996 passed by the respondent District Collector, Madhubani, which is part of Annexure-5 to the writ petition, it was directed that 7.71 acres of lands of village-Harishbara, which were transferred by the land holder after



09.09.1970 in contravention of the provisions of the Act, shall be included in the lands allotted to the land holder for his permissible ceiling units and equal area of 7.71 acres of land of village Sarabe, which was earlier allowed to be retained by him, shall be acquired under Section 15(1) of the Act. Accordingly, a gazette notification under Section 15(1) of the Act was issued on 25.10.1996, which has been brought on record as Annexure-C to the counter affidavit filed on behalf of the respondent no.2. Against the aforesaid order dated 08.10.1996, the petitioner preferred aforesaid Revision Case No.7 of 1997 before the Board of Revenue, Bihar, Patna, as in the meantime, his father, the original land holder Nagendra Narain Singh, is said to have died sometime in the year 1996, as per the submission made by the learned counsel for the petitioner. The aforesaid revision case has been dismissed by the impugned order dated 14.03.2000(Annexure-6). Hence, the present writ petition.

6. The learned counsel appearing on behalf of the petitioner, while assailing the impugned orders, submitted that once a notification under Section 15(1) of the Act was issued on 01.09.1977, then the respondent D.C.L.R. could not have made a proposal for modification of the aforesaid notification by the order dated 14.01.1978 (Annexure-2) and, therefore, according to him, the respondent D.C.L.R. has practically re-opened the ceiling case. He further submitted that a fresh proceeding was required to be started in terms of Section 32-B of the Act and that has not been done. In that view of the matter, according to him, the entire land ceiling case is required to be decided afresh. It was also contended that an enquiry was required to be held under Section 5(1)(iii) of the Act and only thereafter direction could have been issued for inclusion of the aforesaid transferred lands made after 09.09.1970 in the units of the land holder. In support of his above contentions, he placed reliance on judgments of this Court in the case of **Deosagar Singh & Others Vs.**

The State of Bihar & Others (1979 BBCJ 589) as also **Shivashankar Prasad Jaiswal & Others Vs. The State of Bihar & Others (1980 BLJ 211)**.

7. Per contra, the learned G.A.-XII appearing on behalf of the official respondent nos.1 to 4 has submitted that the present writ petition is completely misconceived and is fit to be dismissed. According to him, so far the original land holder Nagendra Narain Singh is concerned, he accepted the finality of the orders passed in the ceiling case by the Collector under the Act that he is entitled to have only two ceiling units i.e. one for himself, his spouse and his minor children and other for his eldest son namely the present petitioner and his family. Therefore, he was allowed to retain only 60 acres of class-IV lands and remaining 12.38 acres of lands were declared surplus, but, while exercising his option, it is contended that the land holder committed fraud by giving those 12.38 acres of lands for the purposes of acquisition, which he had already sold in contravention of the provisions of the Act. According to him, since all those transfers were made by the land holder after 09.09.1970; therefore, those lands are required to be clubbed in the permissible units of the land holder, so that the interest of the purchasers is protected. He further contended that since all those transfers were made after 09.09.1970; therefore, enquiry under Section 5(1)(iii) of the Act was not required to be conducted, as has been held by a Division Bench of this Court in the case of **Sib Narain Roy Vs. The State of Bihar [1994(1) PLJR 294]**. He next contended that, so far allotment of two ceiling units to the land holder is concerned, that was never questioned either by the land holder or by the State of Bihar and its functionaries and that has attained its finality. The only issue before the District Collector was for inclusion of the transferred land in the permissible ceiling area allowed to be retained by the land holder. It was submitted that, in the given facts of the case, orders impugned are fit to be affirmed. In

support of his above contentions, he has further placed reliance on judgments of this Court in the case of **Arun Kumar @ Arun Kumar Singh Vs. State of Bihar & Ors. [1997(1) PLJR 657]** as also **Md.Salim Uddin & Ors. Vs. The State of Bihar & Ors. [1998(1) PLJR 38]**.

8. The learned counsel appearing on behalf of the private respondents has adopted the submissions made by the learned GA-12. He simply added that the lands purchased by the private respondents from the land holder are required to be included in the permissible ceiling area of the land holder, which according to him, has been done by the impugned order passed by the District Collector. In support of his above contentions, he has also placed reliance on a judgment of this Court in the case of **Dr. Sushil Kumar Verma & Ors. Vs. The State of Bihar & Ors. [2011(4) PLJR 575]**.

9. Before reverting to the rival submissions made by the learned counsel for the parties, it would be appropriate to reproduce Section 5(1)(ii) and Section 9(2) of the Act, which reads as follows:-

“5(1)(i)-----

5(1)(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 admissible to the land-holder:

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

“9(1)-----

9(2)- Where the land held by the land-holder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of sub-section(1) of Section 5, the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 shall to the extent of the ceiling area admissible to the land holder, be deemed to have been selected by him for retention within the ceiling area; and where the total area of such land is less than the ceiling area admissible to him, the land holders shall select the balance of ceiling area from his remaining land;

Provided that where the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 is equal to or more than the ceiling area admissible to him and if because of the selection under sub-section (2) of the land-holder's homestead cannot be retained within his ceiling area, the land-holder may be permitted to hold his homestead subject to a maximum limit of two acres only.”

10. From the conjoint reading of Section 5(1)(ii) and Section 9(2) of the Act, it is apparent that the transfer made by the land holder after 09.09.1970 without previous permission of the Collector under the Act shall be treated to have been made with an object to defeat the provisions of the Act; therefore, the same shall be held to be illegal. However, transfer made after 09.09.1970 either in accordance with the provisions of the Act or in contravention of the provisions of the Act is required to be treated to have been made from the permissible ceiling area of the land holder. In the present case, all the transfers made by the land holder in favour of the private respondents were made after 09.09.1970 without obtaining permission from the Collector under the Act. Therefore, the entire area of lands transferred by the land holder shall be deemed to have been selected by the land holder within the permissible ceiling area allowed to be retained by him. Unfortunately, the original land holder as also the present petitioner concealed the material facts about the transfers made by them in favour of the private respondents after 09.09.1970,



and by committing fraud they surrendered those lands for the purposes of acquisition, which they had already sold in favour of the private respondents. This Court further finds that the issue regarding allotment of two ceiling units to the land holder stand concluded and that issue was never questioned either by the land holder or by the State authorities. Therefore, this issue cannot be permitted to be re-opened/re-agitated at such a belated stage. Furthermore, the original land holder Nagendra Narain Singh, the father of the petitioner, as per the submissions made by the learned counsel for the petitioner, died sometime in the year 1996 and he did not challenge the final order passed by the Collector under the Act on 04.02.1977 (Annexure-1) allotting him two ceiling units and declaring 12.38 acres of land as surplus.

11. As per the case of the petitioner himself, notification under Section 15(1) of the Act was issued on 01.12.1977. By the order dated 14.01.1978, the respondent D.C.L.R. made a proposal for the purposes of correction of notification issued under Section 15(1) of the Act, so that the mandate of Section 9(2) of the Act is complied with and interest of the purchasers i.e. the private respondents is protected. The respondent D.C.L.R. has never re-opened the proceeding. The submission made by the learned counsel for the petitioner regarding re-opening as also non-compliance of the Section 32-B of the Act are not only misconceived, rather they are irrelevant submissions in the factual matrix of the case. Either before the District Collector or before the Board of Revenue such things were never raised. The judgments relied upon by the learned counsel for the petitioner have been held to have been passed sub-silentio and have been rendered per-incuriam and does not create any binding precedent by a subsequent Division Bench of this Court in the case of **Sib Narain Roy Vs. The State of Bihar (supra)**. Hence, the submissions made by the learned counsel for the petitioner by placing reliance on

two overruled judgments are misconceived and have to be rejected.

12. From the plain reading of the impugned orders, as contained in Annexure-5 and 6, it is apparent that while passing the aforesaid orders by the competent authorities the mandate of Section 9(2) read with Section 5(1)(ii) of the Act have been implemented for the purposes of protecting the interest of the purchasers, without disturbing the finding of fact that the land holder is entitled to have two ceiling units.

13. For the reasons recorded above, this Court does not find any good ground to interfere with the impugned orders, as contained in Annexure-5 and 6. The writ petition is devoid of merits and is, accordingly, dismissed, but without costs.

(Birendra Prasad Verma, J)

Arvind/-

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