

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.1040 of 2005**

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1. Raj Kumar Jha  
2. Arun Kumar Jha  
3. Ratan Kumar Jha  
4. Pramod Kumar Bhashkar  
5. Subhash Chandra Jha  
6. Pradeep Kumar Jha  
All sons of Shri Bishwanath Jha  
7. Smt. Anju Devi, wife of Pramod Kumar Bhashkar  
8. Binod Kumar Jha  
9. Mithilesh Kumar Jha  
10. Manohar Kumar Jha  
11. Gopal Kumar Jha  
All sons of Shri Ganesh Jha  
12. Smt. Gayatri Devi, wife of Shri Ganesh Jha  
All resident of village-Ram Nagar, P.S.-Janki Nagar, District-Purnea.

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. The Collector, Purnea  
3. The Additional Collector, Ceiling Purnea.  
4. Randhir Mandal  
5. Munna Mandal  
Both sons of late Harihar Mandal, resident of village-Harpatti, P.S.-Banmankhi,  
District-Purnea.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Kamal Nayan Choubey, Sr.Adv.  
Mr.B.N. Thakur, Adv.  
Mr.S.K. Choudhary, Adv.  
Mr.Amish Kumar Jha, Adv.  
For the Respondent nos.1to3 : Mrs. Kumari Amrita, GP-3  
For the Respondent nos.4&5 : None

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA**

**ORAL JUDGMENT**

**Date: 05-08-2016**

Heard the learned senior counsel appearing on behalf of the petitioners and the learned GP-3 appearing on behalf of the respondent nos.1 to 3. However, despite valid service of notice, none is appearing on behalf of the respondent nos.4 and 5.

The petitioners, 12 in number, claiming to be the



purchasers of the lands in question, fully detailed in paragraph 4 of the writ petition, from the respondent nos.4 and 5, have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the orders passed and Gazette notifications issued in the Land Ceiling Case No.1080 of 1973-74 (State Vs. Deo Narayan Mandal and Ors.) by the respondent Additional Collector, Ceiling, Purnea (respondent no.3). They have specifically prayed for quashing of the order dated 16.11.1990 passed by the respondent no.3 in the aforesaid Land Ceiling Case No.1080 of 1973-74, whereby draft statement under Section 10(2) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'Act') was allegedly published showing 10.28 acres of lands purchased by the petitioners, besides other areas of lands, to be surplus of the land holders. They have also prayed for quashing of the order dated 23.08.1993 passed by the respondent no.3, whereby final publication of the draft statement under Section 11(1) of the Act has been directed to be made declaring altogether 49.80 acres of lands of the land holders to be surplus, which includes the lands in question claimed by these petitioners. Besides that, the petitioners are also aggrieved by the Gazette notification dated 14.11.2004 issued by the District Collector, Purnea, as contained in Annexure-2 to the writ petition, whereby altogether 49.80 acres of surplus lands of the land holders viz Deo Narayan Mandal and Harihar Mandal, which includes the lands claimed by the petitioners, have been acquired under Section 15(1) of the Act.

The learned senior counsel appearing on behalf of the petitioners submitted that in the aforesaid Land Ceiling Case No.1080 of 1973-74, at no point of time, any opportunity of hearing was given to these petitioners, though these petitioners purchased the lands in



question during 1987 to 1998 from the respondent nos.4 and 5, who are the sons of late Harihar Mandal, one of the land holders, against whom the aforesaid Land Ceiling Case was started and finally concluded. He further submitted that the purchases made by these petitioners were on payment of valid consideration amount; therefore, these lands are required to be clubbed in terms of Section 9(2) of the Act with the lands allowed to be retained by the land holder within his permissible ceiling unit, allotted in the aforesaid land ceiling case. In support of his above contentions, he has placed heavy reliance on the two judgments of this Court in the cases of *Md. Salim Uddin Vs. The State of Bihar [1998(1) PLJR 38]* and *Rajdeo Bhagat Vs. The State of Bihar [2007 (Supp.) PLJR 86]*. It is lastly submitted that the present writ petition may also be disposed of in terms of the directions issued in the aforesaid two judgments of this Court.

The learned GP-3 appearing on behalf of the respondent nos.1 to 3, on the other hand, by referring to the averments made in the counter affidavit filed on behalf of the aforesaid respondents, submitted that though the petitioners claim to be the purchasers of the lands in question during the year 1987 to 1998 from the respondent nos.4 and 5, the sons of the land holder Harihar Mandal, but, at no stage of the ceiling proceeding, the factum of transfer made in favour of the petitioners was brought to the notice of the Collector under the Act as also before the appellate authority and revisional authority. Therefore, the order passed by the Collector under the Act declaring the lands in question, besides other plots of lands, as surplus land of the land holder and subsequently acquiring the same under Section 15(1) of the Act cannot be legally faulted. It is next contended that, admittedly, purchases by these petitioners were made after 09.09.1970, the appointed day, without obtaining permission from the

Collector under the Act. Therefore, it shall be deemed that these transfers were made with an object to defeat the provisions of the Act.

In the present case, as noticed above, despite valid service of notice, the respondent nos. 4 and 5 have chosen not to appear and contest the matter. Furthermore, in the whole writ petition as also the supplementary affidavit filed on behalf of the petitioners, none of the sale deeds executed in their favour by the respondent nos.4 and 5 have been brought on the record.

From the pleadings of the parties available on the record, it is apparent that the Land Ceiling Case No.1080 of 1973-74 was started against the land holder Deo Narayan Mandal and his other family members/co-sharers by an order dated 29.12.1973. On the basis of the different verification reports submitted by the concerned Anchal Adhikaris and on the basis of the return filed by the land holders, draft statement under Section 10(2) of the Act was published on 16.02.1992 against land holder Deo Narayan Mandal and Harihar Mandal in the light of order dated 07.02.1992, and not on 16.11.1990, as has been claimed by these petitioners. The land holder Deo Narayan Mandal was found in possession of 52.21 acres of lands and land holder Harihar Mandal was found in possession of 53.01 acres of lands. After disposal of the objections filed under Section 10(3) of the Act, final order was passed on 23.08.1993 by the respondent no.3, whereby the land holder Deo Narayan Mandal was allowed to retain 30.40 acres of different categories of lands within his permissible ceiling unit and 21.81 acres of lands were declared surplus. Similarly, the land holder Harihar Mandal was allowed to retain 25.02 acres of different categories of lands within his permissible one ceiling unit and 27.99 acres of lands were declared surplus. After clubbing surplus lands of land holder Deo Narayan Mandal and that of land holder

Harihar Mandal, altogether 49.80 acres of lands were declared surplus of both the land holders. Accordingly, final publication of draft statement under Section 11(1) of the Act was made on 05.11.1993. Subsequently, the land holders filed Ceiling Appeal Case No.57 of 1994 before the District Collector, Purnea, which was finally dismissed. Thereafter, Ceiling Revision Case Nos.30 of 2004 and 31 of 2004 were filed by the land holders before the Board of Revenue, Bihar, Patna, which was finally dismissed by an order dated 13.10.2004. In view of the aforesaid orders, Gazette notification dated 14.11.2004 was issued acquiring 49.80 acres of surplus lands of the aforesaid land holders Deo Narayan Mandal and Harihar Mandal. The entire order-sheet of the aforesaid Land Ceiling Case has been brought on record as Annexure-5 and 6 and Gazette notification dated 14.11.2004 has been brought on record as Annexure-7 with the supplementary affidavit filed on behalf of the petitioners.

Before reverting to the rival submissions raised on behalf of the parties, it would be relevant to examine the provisions contained in Section 5(1)(ii)(iii) and Section 9 (1)(2) of the Act, which are reproduced herein below:-

**“5. No person to hold land in excess of the ceiling area. –**

(1)(i).....

(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.

(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 22<sup>nd</sup> 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.

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**9. Option of family to select its ceiling area. – (1)**

Where the area of land held by a family exceeds the ceiling area it shall have, subject to the provisions of Sub-Sections (2), (3) and (4) and other provisions of this Act the option to select, within the period prescribed in sub-section (3) of Section 10, the land which it desires to retain in accordance with the provisions of Section 5.

(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) 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.

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.....”

From the facts noticed above, it is apparent that the land holder-Harihar Mandal, the father of the respondent nos.4 and 5, was having surplus land, but the transfer made by his sons namely the respondent nos.4 and 5 in favour of the present petitioners during the period of 1987 to 1998 were made without obtaining permission from the Collector under the Act. Though, the copies of the sale deeds executed in favour of the petitioners by the respondent nos.4 and 5 have not been brought on record, but from the facts pleaded in paragraph 11 of the writ petition, it is apparent that some of the purchases made by these petitioners were made even after final publication of draft statement under Section 11(1) of the Act, whereby lands of the land holder were declared surplus. Therefore, the respondent nos.4 and 5 could not have executed any sale deed with respect to those surplus lands. Since, the land holder was found to have surplus lands in his possession and since no permission was obtained from the Collector under the Act before execution of the sale deeds by the respondent nos.4 and 5 in favour of these petitioners and further in view of the fact that all the transfers were made after 09.09.1970, the appointed day, the purchases made by these petitioners or the transfers made by the respondent nos.4 and 5 were per-se illegal. Therefore, the only question remains as to whether the interest of these petitioners can be protected under Section 9(2) of the Act, if they have purchased the lands in question on payment of valid consideration to the respondent nos.4 and 5.

In the considered opinion of this Court, the provisions



contained in Section 5(1)(ii) of the Act cannot be read in isolation. The aforesaid provisions are required to be read along with the provisions contained in Section 9 (2) of the Act. The harmonious construction of the provisions contained in Section 5(1)(ii) and Section 9 (2) of the Act leads to only one conclusion that where the lands held by the land holder includes the lands transferred by him either in accordance with or in contravention of the provisions of the Act, the lands so transferred by the land holder to the extent of the ceiling area admissible to the land holder shall be deemed to have been selected by him for retention within the ceiling area subject to certain riders indicated in Section 9 of the Act.

This Court is fortified in arriving at the aforesaid conclusions by the principles enunciated by a Co-ordinate Bench of this Court in the case of *Md. Salim Uddin Vs. The State of Bihar (supra)*, where almost identical issues came up for consideration. In that case, the issues involved was regarding transfers made by the land holder prior to 22.10.1959, in between 22.10.1959 and 09.09.1970, as also after 09.09.1970. In paragraph 5 of the aforesaid judgment, the principles have been laid down with respect to transfer made by the land holder after 09.09.1970. For better appreciation, paragraph 5 of the aforesaid judgment is reproduced hereineblow:-

“5. With regard to the transfer made after 09.09.1970, it is well settled that only question which a ceiling authority is required to consider, is as to whether on the date of transfer the transferor was holding land in excess of ceiling area or not and in case, the answer is in the affirmative, such transfer shall be ignored for the purposes of acquiring surplus land, but the authority should consider the matter of statutory option in terms of Section 9 (2) of the Act. If it is found that it is not possible to grant statutory option wholly or partially in view of the area to be retained by the land-holder and the area covered by such transfer, then so much area of land, with regard to which it is not possible to grant option,

may be acquired as surplus land. In case, it is found that on the date of transfer the transferor was holding land within the ceiling area, the transfer cannot be ignored on the ground that the same was made after 09.09.1970. In such an eventuality, even with regard to such a transfer a ceiling authority has jurisdiction to make an enquiry under Section 5(1)(iii) of the Act after giving opportunity of hearing and adducing evidence to the transferee, the land holder and the State.

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.....”

After laying down the aforesaid principles, in paragraph 8(iv) of the aforesaid judgment appropriate directions were issued to the Additional Collector for considering the case of the petitioners of that case in terms of Section 9(2) of the Act, which is also reproduced hereinbelow:-

“8. From the facts disclosed by the petitioner of this writ application, referred to above, it would appear that transfers made in their favour would come under all the categories, referred to above.

In view of the aforesaid facts, I give following directions to Additional Collector, Land Ceiling, Araria, respondent no.2:-

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.....  
(iv). With regard to the transfer made after 09.09.1970, 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.

.....  
.....”

The identical issues came up for consideration once again before another Co-ordinate Bench of this Court in the case of *Rajdeo*

***Bhagat Vs. The State of Bihar (supra)***. In that case also, after laying down the identical principles, the petitioners of that case were directed to approach the Collector under the Act for granting protection in terms of Section 9 of the Act.

Taking into consideration the aforesaid factual matrices and also taking into consideration the provisions contained in Section 5(1)(ii) read with Section 9 (2) of the Act, as also the principles enunciated in the case of ***Md. Salim Uddin Vs. The State of Bihar (supra)*** and ***Rajdeo Bhagat Vs. The State of Bihar (supra)***, this Court is of the opinion that the interest of justice shall be sub-served, if the petitioners are granted liberty to file an appropriate petition along with all the sale deeds executed in their favour by the respondent nos.4 and 5 as also with a certified copy of the present order before the respondent no.3 or his successor officer under Section 9 (2) of the Act within a period of two months from today.

If such a petition is filed on behalf of the petitioners, then the respondent no.3, or his successor officer, shall decide the claims of the petitioners in terms of Section 9 (2) of the Act for including the lands in question in the admissible ceiling unit of the land holder i.e. the respondent nos.4 and 5, who are the sons of the land holder Harihar Mandal, and equal area of land earlier allotted to the land holder shall be taken away, but, before passing any final order, reasonable opportunity of hearing must be given to the petitioners and the respondent nos. 4 and 5 once again, besides others, including the parcha holders, if any. After passing the final order, if the claim of the petitioners is allowed, suitable amendments shall be made in the final publication made under Section 11(1) of the Act and Gazette notification issued under Section 15(1) of the Act with respect to the lands in question. All endeavours shall be made to conclude the

proceeding at an early date preferably within a period of six months from the date of filing of the petition by these petitioners.

The writ petition stands finally disposed of with the observations and directions made above, but without costs.

**(Birendra Prasad Verma, J)**

Arvind/-

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