

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3378 of 2015

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Rambha Devi, Wife of Late Murlidhar Mandal, Resident of village -
Bhangha, Police Station - Falka, District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Minister, Revenue and Land Reforms Department, Bihar, Patna.
 2. The Collector, Katihar.
 3. The Sub-Divisional Magistrate, Katihar.
 4. The Deputy Collector, Land Reforms, Katihar.
 5. The Circle Officer, Anchal Falka, District - Katihar.
 6. Telai Rishi, Son of Guchki Rishi.
 7. Biro Rishi, Son of Santu Rishi.
 8. Jageshwar Rishi, Son of Late Munar Rishi.
 9. Kirtoo Rishi, Son of Sukdeo Rishi.
- Nos. 6 to 9 are residents of village and Post Office - Bhangha, Police Station - Falka, District - Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.K.N.Chaubey, Sr.Adv.
Mr. Ashok Kumar Garg, Adv.
Mr.Dineshwar Pandey, Adv.
Mrs. Ritu Priyadarshini, Adv.

For the Respondent nos.1to5 : Mr.M.K.Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 09-12-2016

Heard.

The petitioner is aggrieved by the order dated 21.01.2014 passed in Misc. Case No.1 of 2010 by the respondent no.1, as contained in Annexure-6 to the writ petition, whereby the aforesaid case filed on behalf of the petitioner under the existing Section 45-B of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'Act') has been dismissed.

The learned senior counsel appearing on behalf of the petitioner submits that, while passing the impugned order dated 21.01.2014, the issues of facts and law raised on behalf of the



petitioner with respect to the lands in question were not properly considered. Therefore, according to him, the order impugned cannot be sustained. He further submits that the petitioner had purchased the lands in question from land holder Anpi Devi in the year 1982 and 1986 by two separate registered sale deeds, as contained in Annexure-2 series, on payment of valid consideration amount; therefore, the interest of the petitioner could have been protected under Section 9(2) of the Act.

Apparently, the purchase of the lands in question was made by the petitioner after 09.09.1970 from the land holder, but there is no material available on the record to show that the land holder had obtained permission from the Collector under the Act before transferring the lands in question in favour of the petitioner. By virtue of Section 5(1) (ii) of the Act, any transfer made by the land holder after 09.09.1970 without obtaining permission from the Collector under the Act in favour of third person is void abinitio. However, the interest of such purchaser can be protected only under Section 9(2) of the Act, if the land holder supports the claim of the purchaser that the transfer was made on payment of valid consideration amount. In that case, that much area of lands shall be treated to be the lands allowed to be retained by the land holder under the permissible ceiling unit and equal area of land is required to be taken out for the purposes of its acquisition under Section 15(1) of the Act and its subsequent distribution amongst the landless persons under Section 27 of the Act.

In the present case, there is some difficulty, as the land holder has not been impleaded as party respondent. It is contended that the original land holder is dead, but there is no averment made in the writ petition that the land holder died



without leaving any heirs and legal representatives. Unless and until the original land holder or in case of death of the original land holder, his/her heirs and legal representatives admits about the transfer of the land made after 09.09.1970 for valid consideration amount, the interest of purchaser cannot be protected even under Section 9(2) of the Act. Furthermore, the land holder must have lands within permissible ceiling unit.

In above view of the matter, the present writ petition is disposed of with a liberty to the petitioner to file an appropriate petition under Section 9(2) of the Act before the District Collector, Katihar within a period of one month from today after impleading all the necessary parties including the land holder or in case of death, his/her heirs and legal representatives as also the parcha holders.

If such a petition is filed on behalf of the petitioner within the aforesaid period of one month from today with a certified copy of the present order, then the respondent District Collector, Katihar shall be obliged to consider the case strictly in accordance with law in terms of Section 9(2) of the Act, but, before passing any final order, an opportunity of hearing must be given to all concerned including the petitioner, the land holder or his/her heirs and legal representatives as also the parcha holders, who are the respondent nos.6 to 9 herein, besides others, if any.

The parties shall be at liberty to raise all the issues of facts and law with respect to the lands in question, which may be available to them, before the respondent District Collector, Katihar.

This is clarified that this Court has not gone into the merits of the claims raised on behalf of the petitioner and this is



left to be decided by the respondent District Collector in accordance with law.

The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

Arvind/-

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