IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2268 of 2009

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1. Bibi Zaida Khatoon, widow of late Md. Tajuddin
2. Bibi Zulekha Khatoon, wife of Lal Mohammad
3. Bibi Sitare Khatoon, wife of Md. Alimuddin
4. Md. Noor Alam, son of late Md. Tajuddin
5. Haidar Ali, son of late Md. Tajuddin
6. Ali Murtaza, son of late Md. Tajuddin
7. Bibi Taiyabunnissa, widow of late Md. Sharfuddin
8. Bibi Begum, wife of Md. Ishaque
9. Bibi Sabila Khatoon, wife of Md. Quayum
10. Bibi Shajira Khatoon, wife of Md. Siyajul
11. Bibi Nazira Khatoon, wife of Md. Shafique
12. Bibi Shakira Khatoon, wife of Md. Quasim
13. Bibi Zeenat Ara, wife of Md. Kafilur Rahman
14. Bibi Anjum Ara, wife of Md. Wasi
15. Md. Intekhab Alam, son of late Md. Sharfuddin
16. Md. Mushtaque Alam, son of late Md. Sharfuddin
17. Md. Ishteyaque Alam, son of late Md. Sharfuddin

    All residents of Village-Lachmipur Lohjar, P.O. Morsanda, P.S. Phalka, District Katihar.

.... Petitioners

Versus

1. The State of Bihar
2. The Member, Board of Revenue, Bihar, Patna.
3. The Collector, Katihar
4. Md. Sharif, son of late Md. Hanif, resident of Village-Lachmipur, P.S. Phalka, District Katihar.
5. Gobardhan Sah, son of late Satya Narain Sah
6. Gulab Chand Sah, son of late Satya Narain Sah
7. Moti Chand Sah, son of late Bhola Chand Sah (no. 5 to 7 resident of Village Pothia, P.S. Phalka, District Katihar

8(a) Most Kari Khatoon, widow

8(b) Mostt. Gulzarul Khatoon, widow of late Md. Murshid

8(c) Bibi Saifunnissa, widow of late Saddam Hussain

8(d) Md. Nazir (No. 8(a) to 8(d) are resident of village Lachmipur, P.O. Morsanda, P.S. Phalka, District Katihar

.... Respondents

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Appearance :

For the Petitioners : Mr. Najmul Hoda, Adv.
For Respondent No. 1 to 3 : Mr. Ajay Kumar, AC to GP-4
For Respondent No. 4 : Mr. A.P. Ambastha, Adv.
Mr. Binay Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. JUDGMENT

Date: 11-10-2017

1. Petitioners have preferred this writ petition for quashing the order dated 16.02.2005 (contained in Annexure-5) passed by learned Member, Board of Revenue, Bihar, Patna in Board Case No. 55 of 2003 by which and whereunder the learned Member, Board of Revenue cancelled the Government Notification No. 131 dated 22.11.1976 as well as acquisition of Khata No. 369, Khesra No. 2322, Area 4.05 acre of Village-Haseli and also cancelled the settlement of aforesaid land in favour of Sk. Makiruddin in Land Ceiling Settlement Case No. 169 of 1976-77/ 8 of 1977-78 and also set aside the order dated 28.02.2003 passed by the Collector, Katihar in Misc. Ceiling Case No. 367/1996-97.

2. Admittedly, Khesra No. 2322 of Khata No. 369, Area 4.05 acre of Village-Haseli originally belonged to respondent no. 5 to 7 and Sk. Makiruddin was recorded as shikmidar of the aforesaid land vide shikmi khata no. 334. However, a land ceiling case was initiated

against the respondent no. 5 to 7 and in the aforesaid land ceiling case, respondent no. 5 to 7 voluntarily surrendered the aforesaid land under Section 15 A of Bihar Land Ceiling Act, 1961 (hereinafter referred to as "the Act 1961") and accordingly, the aforesaid land was notified as surplus land vide Gazette notification no. 131 dated 22.11.1976. After acquisition of the aforesaid land, the said land was settled with Sk. Makiruddin in the year 1977 and after settlement said Sk. Makiruddin came in possession of the aforesaid land and his name was mutated in the sirista of the State. The original settlee, namely, Sk. Makiruddin died in the year 1989. The petitioners claimed themselves to be legal heirs of Sk. Makiruddin and it is admitted position that original respondent no. 8, namely, Sk. Kamaluddin was son of above stated Sk. Makiruddin.

3. The respondent no. 4 filed an application before the Collector, Katihar for reopening the ceiling case which was initiated against the respondent no. 5 to 7 and on the basis of aforesaid application, Case No. 444 of 1992-93 was registered. However, the aforesaid petition was dismissed on 07.12.1995 taking note of this fact that the State Government had denuded the Collector to reopen the ceiling case. The respondent no. 4 filed writ petition before this court against the order of the Collector and during pendency of the writ petition, the State Government restored the previous power of the

Collector to reopen the ceiling case and in the light of aforesaid changed circumstance, this Court directed the respondent no. 4 to seek relief before the appropriate forum. The respondent no. 4 again filed an application before the Collector, Katihar which was numbered as Misc. Ceiling Case No. 367/1996-97. The respondent no. 4 claimed before the Collector, Katihar that respondent no. 5 to 7 sold plot no. 2322 area 4.05 acre along with some other lands to original respondent no. 8 executing registered sale deed dated 07.01.1960 and similarly, the recorded Shikmidar, namely, Sk. Makiruddin, who happened to be father of respondent no. 8, had also transferred his shikmi right to respondent no. 8 by executing registered sale deed dated 23.07.1976. Further case of respondent no. 4 is that original respondent no. 8, subsequently, sold 1.66 acres equivalent to 2 bigha land of plot no. 2322 to respondent no. 4 by executing registered sale deed dated 23.07.1976 but the respondent no. 5 to 7 concealing the aforesaid facts surrendered plot no. 2322 area 4.05 acre under Section 15 A of the Act, 1961 though the respondent no. 5 to 7 had already transferred their right and title to respondent no. 8 who subsequently, transferred his right and title to respondent no. 4.

4. The learned Collector, Katihar rejected the above stated Misc. Ceiling Case No. 367/1996-97 on the ground that original tenure holder had voluntarily surrendered the aforesaid land and

moreover, the shikmidar had no right to transfer the land.

5. The respondent no. 4 challenged the order of Collector, Katihar before the Board of Revenue by filing Revision Case No. 55 of 2003 which was allowed by the learned Member, Board of Revenue passing impugned order dated 16.02.2005. The learned Member, Board of Revenue observed in the impugned order that sale deed executed by respondent no. 5 to 7 in favour of respondent no. 8 was never annulled by Collector under Section 5(1) (iii) of the Act, 1961 and, therefore, the respondent no. 5 to 7 had no right to surrender the aforesaid lands under Section 15 A of the Act, 1961.

6. Learned counsel appearing for the petitioners submitted that petitioners and original respondent no. 8 are legal heirs of shikmidar, namely, Sk. Makiruddin and it is admitted position that respondent no. 5 to 7, who were original land holder, had surrendered the lands in question under Section 15 A of the Act, 1961 and after that the aforesaid land was notified as surplus land and subsequently, the disputed land was settled with original shikmidar but petitioners were not made party to the proceedings and without giving any opportunity of hearing to them, not only the notification by which the lands in question was declared surplus land but also the proceeding of settlement was cancelled by the learned Member, Board of Revenue. He, further, submitted that no doubt, notice to original respondent no.

8 was given by learned Member, Board of Revenue but as a matter of fact, the original respondent no. 8 was in collusion with respondent no. 4 and that was the reason he did not properly contest the matter.

7. On the other hand, learned counsel appearing for the respondent no. 4 refuted the above stated submissions arguing that respondent no. 5 to 7 executed registered sale deed in favour of original respondent no. 8 and it is also an admitted position that respondent no. 8 is son of Sk. Makiruddin, who was recorded shikmidar. He, further, submitted that as a matter of fact, the recorded shikmidar, namely, Sk. Makiruddin purchased the lands in question from respondent no. 5 to 7 in the year 1960 in the name of his son, namely, Sk. Kamaluddin (original respondent no. 8). He, further, submitted that subsequently in the year 1976, the original respondent no. 8 transferred 1.66 acre lands of plot no. 2322 in favour of respondent no. 4 by executing registered sale deed. However, since the father of original respondent no. 8 was recorded as shikmidar, the respondent no. 4 by way of precautionary measure got executed another registered sale deed on the same day from Sk. Makiruddin, father of original respondent no. 8 so that in future no controversy could arise. He, further, submitted that respondent no. 5 to 7 had already transferred their right and title in respect of the disputed lands in the year 1960 and, therefore, subsequently, they had no right to

surrender the aforesaid land under Section 15 A of the Act, 1961.

8. Learned counsel for the respondent no. 4, further, submitted that moreover, the above stated proceeding of Section 15 A of the Act, 1961 was not in accordance with law because no public notice was issued in Form LC-1-A and Division Bench of this court in the case of Jitin Jha and others vs. The State of Bihar reported in **1984(1) PLJR (HC) 148,** has already held that non compliance of mandatory provision of Section 15 A of the Act, 1961 is fatal.

9. Learned counsel for the respondent no. 4, further, submitted that even if it assumed that the impugned order has been passed without impleading the petitioners as party to the proceeding, then also, by setting aside the impugned order no purpose would be solved because the original respondent no. 5 to 7 had no right to declare the disputed land under Section 15 A of the Act, 1961 and moreover, it is well settled principle of law that court cannot set aside an order passed without jurisdiction, if it would result in restoring an illegal order. In support of above stated contention, he referred decision of **Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and others** reported in 2000(2) PLJR (SC) 196.

10. Having heard the contentions of both the parties, I went through the record. It is an admitted position that petitioners were not made party either before the Collector or before the learned

Member, Board of Revenue and it is also an admitted position that impugned order was passed behind the back of the petitioners. Furthermore, it is admitted position that Sk. Makiruddin was recorded as shikmidar over the plot in question. It is also an admitted position that original land holder i.e. respondent no. 5 to 7 surrendered the plot in question under Section 15 A of the Act, 1961 and, thereafter the aforesaid land was notified as surplus land. It is also an admitted position that after above stated notification, the plot in question was settled with recorded shikmidar, namely, Sk. Makiruddin under Section 27 of the Act, 1961 though in the present writ petition it has been claimed that the land was settled under Section 22 of the Act, 1961. The petitioners claimed themselves to be legal heirs of Sk. Makiruddin though the respondent no. 4 denies the above stated status of petitioners but in my view, when the disputed land was settled with Sk. Makiruddin, the learned Member, Board of Revenue ought to have given notice to all legal heirs of Sk. Makiruddin before cancellation of settlement but admittedly, petitioners were not made party before the learned Member, Board of Revenue and they did not get any opportunity of hearing. Therefore, in my view, the impugned order passed by learned Member, Board of Revenue cannot sustain in the eye of law.

11. No doubt, court cannot set aside an order passed

without jurisdiction, if it would result in restoring an illegal order but the aforesaid principle is not applicable in the present case because in the present case, petitioners did not get any opportunity of hearing to place their case before the learned Member, Board of Revenue as well as before the Collector, Katihar which is against the natural justice.

12. Therefore, considering the aforesaid facts and circumstances, this writ petition is allowed and the impugned order dated 16.02.2005 passed by learned Member, Board of Revenue, Bihar is, hereby, set aside. The matter is sent back to learned Member, Board of Revenue, Bihar with direction to him to pass a fresh order in the matter after impleading the petitioners as party to the revision petition and also after giving proper opportunity of hearing to them.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	08.08.2017
Uploading Date	13.10.2017
Transmission Date	N.A.