

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4569 of 1994

=====

Deepak Kumar Mandal S/o Shri Surendra Prasad Mandal

.... Petitioner/s

Versus

1. The State of Bihar
2. Additional Member, Board of Revenue, Patna
3. The District Magistrate, Purnea
4. The Additional Collector, Purnea
5. The Sub divisional Officer, Sadar, Purnea
6. The Deputy Collector, Land Reforms, Sadar Purnea
7. The Anchal Adhikari, Bhagwanpur Anchal, P.S. Bhagwanpur, Purnea
8. The Anchal Adhikari, Purnea East Anchal, PS Sadar District Purnea
9. The Anchal Adhikari, Murliganj, District Madhepura

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arun Pd. Ambastha
Mr. Binod Kumar

For the Respondent/s : Mr. R.AHSAN(SC)

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 27-03-2018

Heard both sides.

The petitioner seeks quashing of the order dated 04.11.1986/ 05.11.1986 (Annexure-6) passed by the Additional Collector, Purnea in Case No. 171 of 1975-76/ 69 of 1982-83 so far it relates to the petitioner. The petitioner further seeks quashing of the order dated 06.01.1989/ 07.01.1989 of the Collector, Purnea in Ceiling Appeal No. 24 of 1987-88 (Annexure-7) and the resolution dated 26.03.1990 (Annexure-8) passed by Additional Member, Board of Revenue by which the order of Additional Collector has been confirmed. The petitioner further seeks direction upon the respondents



to exclude the land included in the unit of petitioner which were transferred to different persons through registered sale deeds before 22.10.1959 and properly classify the land of the petitioner in accordance with law.

The facts necessary for disposal of the writ petition are that the Land Ceiling Case No. 27/22 of 1973-74, 171 of 1975-76 was started in the district of Purnea against the petitioner and others. During the course of enquiry under Section 5 (1) (iii) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) the land transferred by the ancestors of the petitioner in the name of different persons through registered sale deed were excluded vide order dated 13.01.1978. Thereafter, draft statement under Section 10(2) of the Act was prepared. The petitioner filed objection on 23.03.1979 but again an enquiry was held under Section 5(1) (iii) of the Act and the order was passed on 18.03.1980. The authority again held enquiry with regard to land situated in village Reshna within Murliganj Anchal of the district of Madhepura which were transferred to different persons before 22.10.1959 and the transfer was found to be genuine vide order dated 10.11.1980/ 12.11.1980 to 05.05.1981. During the pendency of ceiling proceeding the amendment in the Act by ordinance 66 of 1981 (Bihar Act 55 of 1982) came into effect whereupon a separate case No. 69 of



1982-83 was initiated. Thereafter, notification was published but again an enquiry under Section 5 (1) (iii) of the Act was ordered to be held and the authority vide order dated 11.08.1984 reviewed the transfers made in favour of different persons and annulled such transfers made prior to 22.10.1959. The petitioner filed objection on the ground that classification of land was not done properly. The land transferred prior to 22.10.1959 have been illegally entered into share of the petitioner whereas the authority is not at all authorized to hold another enquiry with regard to genuineness of the registered sale deeds executed prior to 22.10.1959. The petitioner objected that the land situated within the Purnea municipality over which the houses are standing have also been included in the ceiling proceeding but the Additional Collector, Purnea vide order dated 04.11.1986/ 05.11.1986 outrightly rejected the objection and issued notification under Section 11(1) of the Act. The appeal and revision preferred by the petitioner before the Collector and Additional Member, Board of Revenue have also been dismissed.

Mr. Arun Kumar Ambastha, the learned counsel for the petitioner, submits that in view of amending Act 55 of 1982 fresh proceeding should have been initiated under Section 10(2) of the Act and proper enquiry held under Section 5(1) (iii) of the Act should not have been reviewed. It is further submitted that the Additional



Collector has wrongly treated such lands, which were transferred prior to 22.10.1959, when the Act came into force, of the petitioner. The ceiling authority has no jurisdiction to treat such lands as land of land holder under Section 5(1) (iii) of the Act with regard to transfers made before 22.10.1959. The ceiling authority is not at all authorized to make enquiry as the authority is not vested with power to enquire into such transfers made after 22.10.1959 and prior to the appointed dated 09.09.1970. It is further submitted that without holding detailed enquiry under Section 5(1) (iii) of the Act, even transfers made after 22.10.1959 and prior to 09.09.1970 cannot be annulled. It is further submitted that the authority has wrongly classified the nature of land of petitioner as class-III whereas most of the lands are situated in Chours and there is no facility of irrigation even for one crop in a year and most of the lands are submerged in water but without holding proper enquiry all the lands of the petitioner have been classified as class-III land.

The State has filed counter affidavit. The learned counsel for the State submits that petitioner has earlier filed CWJC No. 4086 of 1990 which stood dismissed for default on 23.04.1991 but without any explanation for such non appearance on 23.04.1991 and without explaining the delay of about three years the petitioner has filed this writ petition and, therefore, the writ petition is not



maintainable. If the writ petition is dismissed for default the subsequent writ is not barred. It is further submitted that there is no question of reviewing the earlier order which became in effective in view of abatement of the proceeding under Section 32B of the Act and order dated 05.05.1982 (Annexure-10) holding that in view of order dated 13.01.1978 and 18.03.1980 there is no need to proceed afresh under Section 5(1) (iii) of the Act. It is further submitted that transfers made in favour of various transferees have been annulled and the transferees have not filed any appeal.

The first question arises for determination as to whether the transfers made before 22.10.1959 can be enquired into under Section 5(1) (iii) of the Act and the lands transferred through registered sale deeds prior to 22.10.1959 can be annulled.

Section 5(1) (iii) of the Act reads as follows:-

“Notwithstanding anything to the contrary contained in any judgement, 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 22nd 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 purpose of determining the ceiling area he may hold under this section.”

From a bare perusal of the aforesaid provision, it appears that the authority is vested with power to hold enquiry with regard to such transfer which was made after 22.10.1959 and prior to 09.09.1970. So far as transfer made prior to 22.10.1959 is concerned, the same cannot be treated as land of the land holder and the same is to be excluded from the proceeding. The authority is not at all vested with power to hold an enquiry with regard to genuineness of such transfers through registered sale deeds in favour of different persons prior to 22.10.1959. It appears from records that prior to initiation of fresh proceeding after coming into effect of amending Act 55 of 1982, under Section 32B of the aforesaid amendment Act, the authority held enquiry and excluded the lands of village Rashna and Arajpur transferred in favour of different persons such as, Satya Narain Mandal, Mahendra Prasad Mandal, Bindeshwari Mandal, Kamleshwari Mandal and others and found those transfers genuine and those transfers were excluded from the proceedings vide order dated 10.11.1980/ 12.11.1980 to 05.05.1981. In view of provision as contained in Section 32B of the Act any proceeding on the date of amendment shall lapse and fresh proceeding shall be initiated from the stage of Section 10(2) of the Act but the authorities again



reviewed the order and included such lands, which were transferred prior to 22.10.1959, in the lands of the petitioner. I find that the order of the ceiling authority treating such lands, which were transferred prior to 22.10.1959 in favour of different persons, the lands of petitioner is illegal.

So far as second submission of learned counsel for the petitioner with regard to classification of the lands of the petitioner is concerned, it appears from perusal of order of the Additional Collector (Annexure-6) that merely on the basis of report of Circle Officer entire land of petitioner has been classified as class-III but there is no such material to show that all the land of petitioner belonged to class-III category. Classification of lands has to be made on the basis of different conditions, such as nature of land and availability of irrigation facility but none of the factors have been considered in classifying the lands of petitioner.

It has been held by this court in the case of *Shyamdeo Kumar v. the State of Bihar* reported in *1993 (1) BLJ 705* that *it is for the authorities to classify the lands in question in accordance with provisions of the aforesaid Act. For that purpose there must be material on record to show as to whether provisions for irrigation of the land exists. If no provision for irrigating the land in question has been made such lands cannot be classified as class-III lands as has*



been held by this court in various decisions. Similarly, the question as to whether the lands which are submerged under the water of land or not would be land or not could depend upon determination of relevant question of fact, land perennially submerged under water would be class-VI land within the meaning of Explanation II to Section 2(f) of the Act read with Section 4(f) thereof.

Therefore, I find that classification made by Additional Collector and confirmed by appellate authority and revisional authority is not in accordance with law and is illegal and not sustainable.

In the result, this writ petition is allowed and the orders as contained in Annexure-6 dated 04.11.1986/ 05.11.1986, Annexure-7 dated 06.01.1989/ 07.01.1989 and Annexure- 8 dated 26.03.1990 are quashed. The matter is remanded to the Additional Collector to proceed further in the matter afresh in the light of observations made above.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	21.06.2018
Transmission Date	N.A.

