

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8021 of 1996

Prakash & Ors.

.... Petitioner/s

Versus

State of Bihar & Ors

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Anant Kumar Bhaskar
Mr. Vishwanath Prasad Singh, Sr. Adv.
For the Respondent/s : Mr. Prabhakar Jha, G.P.27
Mr. Mukund Mohan Jha, A.C. to G.P.27

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 31-10-2018

The petitioners have filed this writ petition for issuance of a writ in the nature of certiorari for quashing the order dated 22.08.1973 as well as order dated 15.02.1984 passed by the Collector/Additional Collector in Land Ceiling Case No.5 of 1973-74(Annexure-1) whereby the land held by the petitioner, his wife and his adult son situated in village Mahataur Kataiya in the district of Madhubani have been declared surplus and further for issuance of writ in the nature of certiorari to quash the gazette notification dated 17.01.1983 and 26.12.1983 as contained in Annexure-2 and the letter dated 08.03.1984 as contained in Memo No.338(Annexure-3).

The facts relevant can be summarised as follows:

Late Maheshwar Prasad Narain Sinha has two wives. From the first wife, Late Maheshwar Prasad Narain Sinha got two sons namely Chandra Mauleshwar Prasad Narain Sinha and Chandra



Vrijeshwar Prasad Narain Sinha, respondent No.9. From the second wife(Smt. Parwati Devi), Late Maheshwar Prasad Narain Sinha got one daughter Smt. Asha Mishra. Maheshwar Prasad Narain Sinha, his first wife and his second wife died. The petitioner, Chandra Mauleshwar Prasad Narain Sinha(now deceased) got two wives, namely, Sita Devi and after the death of first wife, the petitioner married with Smt. Manju Devi in the year 1954. From the first wife, the petitioner got five daughters and one son namely, Prakash who was born on 09.06.1948. From the second wife, petitioner got three sons and one daughter. The father of the petitioner donated 59 bighas 16 kathas and 19 dhurs of land to Smt. Manju Devi, the second wife of the petitioner through a registered deed executed on 01.09.1959. One Partition Suit No.49 of 1960 was filed for partition of joint family properties and the properties were partitioned on compromise. One Ceiling Case No.4/6 was initiated in the year 1969-70 by the Collector, Madhubani and the petitioner and his wife was allotted 46 acres of land and 23 acres of land was declared surplus but the same order was stayed vide Circular No.5571 dated 12.07.1972 issued by the Revenue Department. Another Land Ceiling Case No.12 of 1973-74 was initiated against the father of the petitioner and it transpired that the land holder was resident of district Sitamarhi and accordingly Land Ceiling Case No.12 of 1973-74 was transferred to the Collector,



Sitamarhi. The Collector, Sitamarhi had earlier initiated Land Ceiling Case No.5 of 1973-74 on 22.08.1973 with regard to the land owned by Late Maheshwar Prasad Narain Sinha and notice was issued to him. Late Maheshwar Prasad Narain Sinha had sold many lands and the vendees were also noticed. On 20.08.1978, Maheshwar Prasad Narain Sinha filed petition to implead his two sons, the petitioner and Chandra Vijeshwar Prasad Narain Sinha as party but the same was rejected. Maheshwar Prasad Narain Sinha died. Parwati Devi continued to appear. The petitioner was also impleaded in the case and three units were given; first to the petitioner, Chandra Mauleshwar Prasad Narain Sinha, second to Chandra Vijeshwar Prasad Narain Sinha, the brother of the petitioner and third unit to Smt. Parwati Devi and 90 acres of land was allotted. The rest of the land measuring 225.73 acres of land was declared surplus. No unit was granted to Smt. Asha Mishra, daughter of Smt. Parwati and Prakash, son of the petitioner(now dead) who were major on 09.09.1970. Later on, on account of promulgation of Ordinance of 66 of 1981, 182 of 1981, 202 of 1981 and Act No.55 of 1982, a fresh ceiling proceeding was initiated by the Additional Collector vide order dated 27.02.1982 and fresh notice was issued upon the land holders and the vendees of the land holders but no notice was effected on the petitioner and his brother, Chandra Vijeshwar Prasad Narain Sinha but the Additional



District Magistrate-cum-Additional Collector by order dated 06.09.1982 allotted four units one to Gargi, daughter of Chandra Vijeshwar Prasad Narain Sinha, one unit to Smt. Asha Mishra and two units, one to the petitioner and one to his brother, Chandra Vijeshwar Prasad Narain Sinha and gazette notification was published declaring the rest of the land to be surplus. The petitioner filed an appeal before the Collector but since the Collector was bent upon for distribution of the land, the petitioner filed CWJC No.1892 of 1984 for quashing the entire ordersheet of Ceiling Case No.5 of 1973-74 and also the gazette notification passed in pursuance of the order of the Additional Collector, Sitamarhi. A Division Bench of this Court by order dated 14.04.1984, directed the Collector to dispose of the appeal expeditiously and till the disposal of the appeal, the Collector was refrained from taking any steps for distribution of the lands.

In pursuance of the order passed by this Court in CWJC No.1892 of 1984, the petitioner filed Ceiling Appeal No.21 of 1984 but the same was dismissed for default on 12.11.1990. The petitioner filed restoration petition on 17.12.1990 and 05.08.1991 for recalling the order dated 12.08.1990 but both the petitions were dismissed. The petitioner again filed CWJC No.8230 of 1992 before this Court and vide order dated 14.12.1992, a Division Bench of this Court directed the Collector to dispose of the appeal on merit. Smt. Manju Sinha,



wife of the petitioner (now deceased) also filed CWJC No.1973 of 1984 and another writ petition being CWJC No.10389 of 1992 and both the writ petitions were disposed of with a direction to the Collector to dispose of the petition of the petitioner and his wife. In pursuance of the directions, the Collector issued notice under Section 45B to the land holders asking to file show cause. The Collector dispose of the appeal as well as the petition filed under Section 45B of the Act and remanded the case to the Additional Collector, Sitamarhi for disposal of the proceeding. Accordingly, the Additional Collector heard the objection of the petitioner. The petitioner claimed three units viz. one for himself, second for his deserted wife, Smt. Manju Sinha and third for his adult son, Prakash. The Additional Collector dismissed the petition of the petitioner on 16.04.1996 refusing to grant separate unit to Smt. Manju Sinha and three sons born from her and also to Prakash who was adult on 09.09.1970. Additional Collector also did not consider that the father of the petitioner(now deceased) transferred many lands prior to 22.10.1959 to different persons and many lands were transferred to different persons after 22.10.1959 but before the initiation of the ceiling proceeding but those facts were also not considered. After death of the petitioner(Chandra Mauleshwar Prasad Narain Sinha), his son Prakash was substituted. Many purchasers were also made interveners-petitioners vide order dated



02.08.2006.

One and only question arises for consideration as to “whether Additional Collector is justified to refuse unit to the deserted wife and adult son of the petitioner and the Additional Collector is justified in not holding any enquiry under Section 5(1) of the Ceiling Act to enquire about the bonafide transfer of the land to different persons before and after 22.10.1959 and exclude the lands already transferred prior to 22.10.1959?”

Learned counsel for the petitioners submits that petitioner is son and bonafide purchasers of the lands from the land holders on 09.09.1970. The original land holder, Late Maheshwar Prasad Narain Sinha was alive and he got two sons from his first wife and one daughter from his second wife. Petitioner(now deceased) and respondent No.9 are the two sons from the first wife of Late Maheshwar Prasad Narain Sinha. The first wife of the petitioner died in the year 1953 leaving behind petitioner, five daughters and one son, Prakash. Prakash was major on 09.09.1970. Maheshwar Prasad Narain Sinha gifted 56 acres of land to the second wife of the petitioner(now deceased) by a registered deed of gift dated 01.09.1959. It is further submitted that ceiling authority is not at all authorize to hold any enquiry under Section 5(1) of the Act with regard to transfer made before 22.10.1959. The petitioner no.1 who



was allowed to be intervened vide order dated 02.08.2006 purchased some lands before 22.10.1959 and even thereafter but the Additional Collector did not hold any enquiry about the bonafide and genuineness of the transfer made by the original landlord even after 22.10.1959 and declared the entire transferred land as surplus. It is further submitted that Prakash, son of the petitioner(now deceased) was born on 09.06.1948 according to the certificate of Bihar School Examination Board. He passed matriculation in the year 1965 but the Additional Collector did not allot one unit to Prakash, son of the petitioner. Therefore, the order refusing to grant share to the second wife of the petitioner (now deceased) and the adult son namely, Prakash is illegal.

As per contra, learned counsel for the State very fairly submits that the order impugned does not disclose the facts that the Additional Collector held any enquiry with regard to bonafide transfers of lands by the original landlords to different persons either before 22.10.1959 or thereafter. The Additional Collector is bound to hold enquiry with regard to the transfer made to different persons by the landlord after 22.10.1959 and if the transfers so made are found bonafide and genuine, such transfers have to be excluded from the unit of the landlord.

On hearing submission of both sides and on perusal of



records, I find that while the appeal preferred by the petitioner against the order of Additional Collector declaring the land of the petitioner(now deceased) surplus without giving him notice, the step mother and other legal heirs of original landlord also filed writ petition and this Court directed the Collector to hear them. They filed petition under Section 45B of the Ceiling Act for reopening the ceiling case. From perusal of Section 45B of the Ceiling Act(now deleted), it appears that the provision is made for reopening of the ceiling case, if the same was decided without hearing any of the land holder or transferees or if it is found that the land holders concealed some material facts but it appears that appeal was pending before the Collector. Therefore, there is no application of Section 45B of the Act as the proceeding was pending before the Collector in appeal and the proceeding was concluded. The Collector, Sitamarhi after hearing land holders remanded the case to the Additional Collector to decide the ceiling proceeding afresh and the Additional Collector heard the proceeding afresh but refused to grant unit to the adult son of the petitioner(now deceased) and also refused to hold enquiry under Section 5(1) of the Ceiling Act with regard to transfers made after 22.10.1959. The Additional Collector or the authority under the Act is not at all justified in holding or clubbing such lands with the lands of the land holder which were transferred to different persons before



22.10.1959. Section 5(1) and (3) of the Act says that the Collector shall make an enquiry about the bonafide transfer of the lands by the land holders to different persons after 22.10.1959. Section itself prohibits the authority under the Act to look into or hold any enquiry with regard to transfers made by the land holder prior to 22.10.1959. Thus, I find that the Additional Collector has committed illegality in refusing to grant unit to the adult son of the landlord and not holding enquiry with regard to the bonafide transfers made by the landholder after 22.10.1959 and also clubbing such lands which transferred by the land lords much prior to 22.10.1959 and thus, the order dated 22.08.1973 as well as order dated 15.02.1984 are not sustainable. Consequently, the notification dated 17.01.1983 and 26.12.1983 as contained in Annexure-2 and the letter dated 08.03.1984 as contained in Memo No.338(Annexure-3) are also bad. Accordingly, the order dated 22.08.1973 as well as order dated 15.02.1984 are set aside. The writ petition is allowed. The matter is remitted to the Additional Collector, Sitamarhi to decide the ceiling proceeding afresh in accordance with law.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.12.2018
Transmission Date	

