

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10653 of 2018

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Noorbeely Vegam W/o Late Afaque Alam @ Md. Afaque Alam, Resident of
Village- Laucha, P.O. and P.S.- Bahadurganj, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Kishanganj.
3. The Deputy Collector, Land Reforms, Kishanganj.
4. The Anchal Adhikari, Bahadurganj, Kishanganj.
5. Md. Quasim,
6. Md. Nazim @ Nazim Anwar,
7. Md. Kazim, All respondent nos. 5 to 7 are sons of Late Ehasan Ali, R/o
Village- Laucha, P.O. and P.S.- Bahadurganj, District- Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Kumar Sinha

For the Respondent/s : Mr.Subhash Chandra Yadav- Gp15

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 14-12-2018 The petitioner has filed this writ petition to declare the

Notification No.14, dated 11.01.1993, issued under Section 15(i)

of the Bihar land Reforms (Fixation of Ceiling Area and

Acquisition of Surplus Land) Act, 1961 (hereinafter referred to

as ‘the Act’) illegal so far as the land of the petitioner and others

are concerned by which the lands of the petitioner have been

declared as surplus of the Respondent 2nd Set without following

due procedure and without holding any enquiry under Section

15(iii) of the Act (Annexure-1). It is further prayed that that the

respondents be directed to maintain status quo with regard to the

land belonging to the petitioner which has also been declared



surplus without giving any notice to the petitioner.

The facts bereft of unnecessary details are that R.S. Khata No.16, R.S. Plot No.1899, Area 1.02 acres and R.S. Khata No.178, Plot No.1780, Area 0.90 acres situated in Mauza Laucha, Anchal Bahadurganj, District Kishanganj were purchased by the ancestor of the petitioner and others through registered sale deeds and their names were mutated. One Ceiling Case No.138 of 1973-74 Kishanganj (old Purnia) was initiated against one of the co-recorded tenant, namely, Ehsan Ali who during the pendency of the proceeding died and his legal heirs- Respondent 2nd Set were substituted. Respondent 2nd Set gave their option to retain their lands under the Act and consequently the State authority without perusing the revenue records standing in the name of the petitioner acquired the land of the petitioner and issued gazette notification under Section 15(i) of the Act. R.S. Khata No.16, R.S. Plot No.1899, Area 1.02 acres belonged to Md. Taiyab, Md. Yasin and Md. Tahir all sons of Yakeen Ali, the ancestor of the petitioner and others and Eksan Ali, Son of Hussain Bakhsh ancestor of Respondent 2nd Set in equal share. Similarly R.S. Khata No.178, Plot No.1780, Area 1.35 acres belonged to Yakeen Ali and others and 2/3 share of the aforesaid land belonged to Ehsan Ali, ancestor of the



respondents but the lands of the petitioner were acquired. No notice under Section 5(i) (iii) was issued to the petitioner. After publication of notification under Section 15(i) of the Act, the ancestor of the petitioner and others filed a petition under Section 45B of the Act before the Collector on 12.02.1993 which was admitted by order dated 15.05.1995 numbered as Case No.29 of 1993-94 and the notification under Section 15(i) of the Act was kept in abeyance vide order dated 15.05.1995. The Collector, Kishanganj amalgamated Case No.29 of 1993-94 with Misc. Case No.30 of 1993-94. After promulgation of Ordinance of 1995 on 08.09.1995, the Collector dropped the proceeding of Misc. Case No.29 of 1993-94 and 30 of 1993-94 holding that the Collector has no power to proceed further under Section 45B of the Act. The petitioner being aggrieved by the aforesaid order dropping the aforesaid proceeding filed CWJC No.12088 of 1995 and this Court vide order dated 27.10.1995 set aside the order of the Collector holding that the Ordinance of 1995 got no retrospective effect and directed the Collector to dispose of the Miscellaneous Case in accordance with law but the case remained pending and has not yet been disposed of till the amendment brought about in the Act by Act of 18 of 2016. By Sections 4 and 5 of the amending Act, Section 45B of the



Act, 1961 is repealed and by Section 5, Section 45D has been added after Section 45C which reads that after repeal of Section 45B of this Act, proceeding pending before the State Government or the Bihar Land Tribunal shall be deemed to be abated and the proceeding reopened earlier deleted Section 45B and pending before the Collector shall stand abated. In pursuance of the aforesaid amendment, the Principal Secretary vide letter no.258, dated 21.03.2017 directed the land ceiling authority to abate such proceeding and distribute the lands already acquired amongst the landless.

Learned counsel for the petitioner submits that by the Amending Act 18 of 2016, Section 45B of the Act has been repealed but at the same time by Section 2 of the Amending Act, sub-clause 4(i) and (ii) have been added in Section 30 of the Act. Section 30 sub-clause 4(i) vests power in the Collector to initiate a fresh proceeding on the basis of the information that the landlord on concealment of relevant facts retained the lands but the proceeding initiated under Section 45B of the Act, the Collector simply abated the proceeding and made the petitioner remediless. If the notification (Annexure-1) is not stayed so far as it relates to the petitioner, it will cause irreparable loss.

Learned counsel for the State filed counter affidavit



annexing the Amending Act 18 of 2016 and Letter No.252(8) dated 21.03.2017 issued by the Principal Secretary and submitted that the proceeding already initiated under Section 45B of the Act shall abate but could not give any satisfactory answer that after abatement of the proceeding, the petitioner, whose land has already been acquired, without following the procedure of law or holding any enquiry under Section 5(i)(iii) of the Act has become remediless. It is admitted fact that landlord without disclosing the actual facts gave option in Ceiling Case No.138 of 1973-74 and consequent thereon the lands of the petitioner were acquired. Notification under Section 15(i) of the Act was also issued on 12.02.1993. The petitioner filed petition under Section 45B now repealed of the Act and on such Misc. Case No.29 of 1993-94 was registered. The same was admitted for hearing on 15.05.1995 and the notification dated 12.02.1993 (Annexure-1) was kept in abeyance by order dated 15.05.1995 itself. After promulgation of the Amending Ordinance of 1995 on 08.09.0995, the power of the Collector to initiate the proceeding under Section 45B of the Act has been divested and in consequence thereof, the Collector dropped the proceeding but the petitioner filed CWJC No.12088 of 1995 and this Court vide order dated 27.10.1995 set aside the order of the



Collector dropping the proceeding in view of the Ordinance dated 08.09.1995 holding that the Ordinance has got no retrospective effect and the power of the Collector cannot be divested retrospectively and directed the Collector to dispose of the Miscellaneous Case in accordance with law vide order dated 04.04.1996, passed in CWJC No.12088 of 1995 (Annexure-2). Thereafter the proceeding remained pending and the Collector did not decide the case of the petitioner but after coming into effect the Amending Act 18 of 2016 by which Section 45B of the Act has been repealed and the proceeding pending under Section 45B of the Act is ordered to be abated the proceeding. The Collector is bent upon to distribute the lands of the petitioner which has been illegally acquired without giving any notice or holding any enquiry under Section 15(i) (iii) of the Act. The Amending Act 18 of 2016 also brought about some changes in Section 30 of the Act and Section 30 sub-clause 4(i) and (ii) have been added which vest power in the Collector to reopen the proceeding but the Collector did not exercise the power vested in it by law and abated the proceeding by which the petitioner became remediless, therefore, I find that the Notification No.14, issued under Section 15(i) of the Act shall not be operative so far it related to the lands of the petitioner as



the same has been issued by which the land of the petitioner has been illegally acquired.

Accordingly, this writ petition is allowed. The Collector, Kishanganj is directed not to give effect of the notification as contained in Annexure-1 so far it relates to the lands of the petitioner. However, the Collector shall be at liberty to proceed afresh in accordance with the provisions as contained in Section 30 sub-clause 4(i) and (ii) of the Act.

(Prabhat Kumar Jha, J)

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