

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7102 of 2019

1. Md. Fazlul Karim Son of Late Haji Mohammad Sultan Resident of Village- Kebala, P.S.- Pranpur, District- Katihar.
2. Md. Raziul Karim Son of Late Haji Mohammad Sultan Resident of Village- Kebala, P.S.- Pranpur, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue, Government of Bihar, Patna.
2. The Collector, Katihar.
3. The Additional Collector (Ceiling) Katihar.
4. The Anchala Adhikari, Pranpur, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Md. Musowir
For the Respondent/s : Mr.Sajid Salim Khan (SC-25)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

- 3 10-04-2019 An order dated 01.02.1993, passed by the Collector in Misc. Land Ceiling Case No. 493/89-90, has been put to challenge in the present writ application under Article 226 of the Constitution of India. Notices issued consequent upon declaration of surplus land under the Bihar land Reforms (Fixation of Ceiling area & Acquisition of Surplus Land) Act, 1961 dated 30.10.1918 have also been put to challenge. This is to be noticed that father of the petitioners had filed a writ application, giving rise to CWJC No.3370 of 1993, which was disposed of along with another writ application on 04.10.1999



with certain observations.

2. It has been stated in paragraph 2 of the writ application that the petitioners were not a parties to the proceeding before this Court in CWJC No. 3370 of 1993 and they did not have any knowledge about the case, which was filed by his father. While disposing of the writ application, this Court had made following observations in paragraph 4:-

“Thus, these applications are disposed of. The petitioners are at liberty to file an application under Section 45B of the Act before the competent authority within a period of six weeks from today. In case such an application is filed the authority concerned shall decide the same after hearing the parties by a reasoned order in accordance with law. It is made clear that till the disposal of the application the order including the notification under Section 16(1) of the Act shall remain in abeyance.”

3. There is vague statement made ion paragraph 4 of the writ application that a case No.01 of 1999 was filed before the State Government, department of Revenue, under Section 45B of the Act by Haji Mohammad Sultan and others. Neither



the application has been brought on record nor the status of the application has, however, been brought on record.

4. It is noteworthy that Section 45B of the Act stood repealed by Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) (Amendment) Act, 2016. Sections 4 and 5 thereof read thus:-

“4. Repeal of Section 45B of the Act, 1961.- Section 45B of the said Act, 1961 is hereby repealed.

5.5. Addition of a new Section-45D after Section-45C of the Act, 1961- After Section 45C a new Section-45D shall be added:

“45D- After repeal of Section 45B of this Act, proceedings pending before the State Government or the Bihar Land Tribunal shall be deemed to be abated and the proceeding reopened earlier under deleted Section 45B and pending before the Collector shall also stand abated.”

5. This is the background, in which the petitioners claim to have approached this court for setting aside an order passed in 1993. It has been stated in paragraph 7 that the petitioners' father died in the year 2002 and the petitioners did not have any knowledge about any case of land ceiling before



issuance of notice by the Circle Officer for distribution of surplus land. It has further been stated that grandfather of the petitioners, namely, Hazi Alimuddin, had died leaving behind a son, namely, Hazi Mohammad Sultan (petitioners' father), Musmat Amna and Musmat Ravijan (two wives) and a daughter Musmat Sahiman. The notice, according to the petitioner, was issued to the petitioners' father Hazi Mohammad Sultan only. I must point out here that Musmat Bibi Rabi Jan had also filed writ application, registered as C.W.J.C. No. 3367 of 1993, questioning the same ceiling proceeding, which too was disposed of with the aforesaid C.W.J.C. No. 3370 of 1993.

6. It is evident from the order of this Court dated 04.10.1999, that the land, after having being declared surplus was acquired and the same was published in the Bihar Gazette on 16.07.1978, under Section 15(1) of the Act. It seems from the said order, that more than 7 years after publication of the notification under Section 15(1) of the Act, the land holders filed an application on 19.07.1985, stating therein that although only 95 acres of land was held to be surplus and notification was accordingly issued, but land mentioned in notification under Section 15(1) of the Act on calculation comes to 157.5



acres. Accordingly, a prayer was made for correction of Gazette notification under Section 15(1) of the Act. The said petition was admitted by the Collector on 15.11.1985, and the matter was remitted to the Additional Collector. Before the Additional Collector, the petitioners filed a petition for reopening of the proceeding under Section 45-B of the Act. The Additional Collector had reopened the matter. The Collector of the District, however, found that the Additional Collector had exceeded his jurisdiction. The Collector recorded in his order dated 01.02.1993, that the matter was remitted before the Additional Collector for correction, but he reopened the entire matter and allowed the claim of the petitioners. In that background, the Collector passed the impugned order. What is evident thus, that the land was declared surplus and Gazette notification in this regard, was published under Section 15(1) of the Act in the year 1978 itself. The Circle Officer had accordingly taken steps for distribution of the land, so acquired, among the landless persons. He thereafter filed an application on 05.02.1990 to the effect that there was typographical error in the Gazette notification dated 16.01.1978, wherein in place of 129.14 ½ acres, 157.82 ½ acres was notified, as having being declared surplus. As has been noticed, when the Collector had



required the Additional Collector to consider the case of the landholder for correction of clerical error, the Additional Collector, as a matter of fact, proceeded to open the entire case. The decision of the Additional Collector virtually reopening the case was found to be illegal by the Collector in his impugned order dated 01.02.1993. It is apparent from this Court's order dated 04.10.1999, that till that date the father of the petitioners had not taken any step for reopening of the ceiling proceeding, as contemplated under Section 45B of the Act, which confers upon the State Government power to call for and examine any record of any proceeding disposed of by the Collector under the Act. The petitioners has feigned complete ignorance about the ceiling proceeding let alone proceeding for reopening proceeding under Section 45B of the Act.

7. It is surprising to note that the lands declared surplus in the year 1978 under the Act are yet to be distributed. In any view of the matter, since Section 45B of the Act has been repealed by the Amendment Act, and by virtue of addition of Section 45D of the Act, no relief can be granted to the petitioners. Even otherwise, in my opinion, pleadings in the writ application are completely inadequate and do not make



out any case, requiring this Court's interference.

8. Before I part with I must refer to certain observations which have been made by me in almost similar circumstance in case of **Subhankar Mishra and ors Vs. State of Bihar and others** passed in **CWJC No. 4613 of 2017** dated 12.03.2019, concerning the State's inaction while dealing with acquisition of surplus lands under the Bihar Ceiling Act and their distribution among the landless. Let this order also be transmitted to the Chief Secretary, Government of Bihar and the Principal Secretary, Revenue and Land Reforms, Government of Bihar, for the needful.

9. The Court would expect them to take earnest efforts to ensure distribution of the land acquired under the Act among the land less persons.

10. This application is dismissed with the observation as above.

(Chakradhari Sharan Singh, J)

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