

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14040 of 2018

1. Ahmad Hussain S/o Late Saghiruddin,
2. Md. Hussain Azad, S/o Late Saghiruddin,
3. Manauwer Alam Noori, S/o Late Saghiruddin,
4. Anwar Hussain, S/o Late Saghiruddin,
5. Asgari Begum, D/o Late Saghiruddin,
6. Nazra Begum, D/o Late Saghiruddin,
7. Anjum Ara, D/o Late Saghiruddin,
8. Rukhsana Begum, D/o Late Saghiruddin,
9. Md. Zamil Akhtar, S/o Late Alimuddin,
10. Md. Junaid Alam, S/o Late Alimuddin,
11. Md. Parwez Alam, S/o Late Alimuddin,
12. Naushad Alam, S/o Late Alimuddin,
13. Md. Shahzad, S/o Late Alimuddin,
14. Nagma Parween, D/o Late Alimuddin,
15. Roshan Ara, D/o Late Alimuddin,
16. Rumana Tabassum, D/o Late Alimuddin,
17. Anisa Khatoon, D/o Late Aftabuddin,
18. Badrun Nissa, D/o Late Aftabuddin,

All petitioners are R/o Village- Natua Para, P.O. and P.S.- Bahadurganj,
District- Kishanganj.

... .. Petitioners

Versus

1. The State Of Bihar
2. The Collector cum District Magistrate, Kishanganj.
3. The Deputy Collector Land Reforms LRDC, Kishanganj.
4. The Anchal Adhikari, Bahadurganj, Kishanganj.

..... Respondent 1st Set

5. Asdullah, S/o Late Amiruddin,
6. Sahadullah, S/o Late Amiruddin,
7. Amanullah, S/o Late Amiruddin,
8. Hayatullah, S/o Late Amiruddin,
9. Hemayun, S/o Late Amiruddin,
10. Sarwar, S/o Late Amiruddin,
11. Shahnawaz, S/o Late Amiruddin,
12. Sarfaraj, S/o Late Amiruddin,



13. Sayeda Begum, D/o Late Amiruddin,
14. Wazeda Begum, D/o Late Amiruddin,
15. Bobby, D/o Late Amiruddin,
16. Tarannum, D/o Late Amiruddin,
17. Sarwari Begum, W/o Late Amiruddin,
Respondent no. 5 to 17 R/o Village- Natua Para, P.O. and P.S.-
Bahadurganj, District- Kishanganj.

.... Respondent 2nd Set

... Respondents

Appearance :

For the Petitioners : Mr. Satish Kumar Sinha, Advocate
For the Respondent State: Mr. Fakhruddin Ali ahmad, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-06-2019

Following is the relief, which the petitioners have sought
in the writ application :-

“1. That this is an application for issuance of an appropriate writ, order(s) and/or direction for grant of the following relief/reliefs:

(A) The details of the land mentioned in the Schedule of this application be ordered to exclude from the Gazette Notification published 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) in Ceiling Case No. 27 of 1973-74 started against one Amiruddin son of Nawab Ali;

(B) It be declared that the land mentioned in the Schedule of this application are not the subject matter of the Ceiling Case No. 27 of 1973-74.

(C) The respondents be restrained from acquiring and distributing the Schedule land as the surplus land of Amiruddin by quashing part of the order dated 31.8.2017



passed in Ceiling Appeal No.28 of 1992-93 by the Collector, Kishanganj.

(D) During the pendency of the present writ application the respondents be restrained from acquiring and distributing the schedule land as the surplus land of any ceiling proceeding.

(E) To pass such other order(s), direction or relief/reliefs as may deem fit and proper to secure the ends of justice.”

2. Ceiling proceeding was started in 1973-74 against Amiruddin, the ancestor of the private respondents, which terminated with the issuance of a Notification under Section 15(1) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as ‘the Act’). It is the case of the petitioners that after exercise of option under Section 9 of the Act, certain piece of land belonging to the petitioners were also notified for acquisition on 18.03.1976. The petitioners have set up a case that ancestors of petitioners No. 1 to 16, namely, Saghiruddin, Alimuddin and Anisa Khatoon, had purchased 2.15 acres of schedule land from Amiruddin on 02.03.1964. Through the same sale deed, Amiruddin had transferred an area of 1.15 acres to the ancestors of petitioners No. 1 to 16, whereafter the petitioners were put in possession and till date they are in exclusive possession. It has further been asserted that Bibi Akhtari Begum, mother of petitioners No. 9 to 16, and



Abeda Khatoon, mother of petitioners No. 1 to 8, had also purchased 1.91 acres and 6-2/3 *kari* from Fazlur Rahman on 21.12.1972, whereafter they are in possession over the land. It has further been stated that though the schedule in the notification under Section 15(1) of the Act contained land of Khata No. 22, was prepared in the name of Amiruddin and ancestors of petitioners No. 1 to 16 and some of the petitioners, but because of *khangī batwara* 1.58 acres of the said land belongs to the petitioners. In respect of R.S. Khata No. 102, it has been stated that Amiruddin had transferred 0.82 decimals by registered sale deed dated 02.03.1964 to the ancestors of the petitioners No. 1 to 16 and 17 from R.S. Khata No. 103. A ceiling proceeding, registered as Ceiling case No. 113 of 1973-74, was started against Saghiruddin, ancestor of petitioners No. 1 to 8, but the same was dropped as no surplus land was found. According to the petitioners, the plots transferred in 1972 had also formed subject matter of ceiling proceeding of Ceiling Case No. 113 of 1973-74.

3. It is also their case that they approached the Collector of the District for reopening of aforesaid Ceiling Case No. 27 of 1973-74, registered as Ceiling Case No. 28 of 1992-93 with a plea that such land, which were purchased by them could not be subject matter of the ceiling proceeding and, therefore, the said land



should be excluded from the notification issued under Section 13(1) of the Act. The said proceeding under Section 45B of the Act was dropped by the Collector.

4. A supplementary affidavit has been filed on behalf of the petitioners stating therein that the lands as referred to in paragraphs 7 and 9 were purchased from Amiruddin through registered sale deed dated 02.03.1964 and the land, as indicated in paragraph 8, was purchased through a registered sale deed dated 21.12.1972.

5. The application filed by the petitioners for opening of the ceiling proceeding under Section 45B of the Act subsequently came to be dropped in view of the provision itself having been repealed.

6. On the basis of the pleadings on record, I find that there is no dispute over issuance of notification in respect of lands in question in official gazette in 1976 itself. Sub-section (2) of Section 15 of the Act lays down the consequence of issuance of Notification under Section 15(1) of the Act and reads thus : -

“15 (2) On the publication of the notification under sub-section (1), the land specified in the notification shall, subject to the provisions of this Act, be deemed to have been acquired for the purposes of this Act and vested in the State free from all encumbrances with effect from the date of the notification and all right, title and interest of all persons



claiming interest therein shall, with effect from that date, be deemed to have been extinguished.”

7. It is the petitioners own case that the land, which belonged to them by virtue of acquisition through sale deeds, was included in the notification published under Section 15(1) of the Act. There is nothing on record to show that the petitioners questioned the correctness of the said notification before they filed a title suit in 1992 and approached the Collector giving rise to Ceiling Case No. 28 of 1992-93. The circumstances in which the matter remained pending before the Collector, Kishanganj, for more than two decades also does not have any justification. By virtue of amendment in the Act through the Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) (Amendment) Act, 2016, Section 45B has been repealed and one new Section Section 45D has been added, which reads as under : -

"45D.-After repeal of section-45 B 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-45 B and pending before the collector shall also stand abated.”

8. In view of subsequent amendment leading to repeal of Section 45B of the Act and addition of new Section 45D of the Act, the order of the Collector, Kishanganj, dated 31.08.2017, by



which the proceeding under Section 45B has been held to have abated, cannot be said to be bad in law.

9. Needless to say that through same amendment Act of 2016, power has been conferred upon the Collector of the District under sub-Section (4) of Section 30 of the Act to initiate a fresh proceeding under the Act, if he is satisfied that a land holder, in a proceeding under the Act, fraudulently or by misrepresentation of facts or law has managed to obtain an order from any of the subordinate authorities with a view to defeat the objects of the Act or any provision thereof and 'retain land in excess of the ceiling area', similar power has been conferred on the Commissioner of a Division.

10. In view of the above, while not finding any reason to interfere with the impugned decision of the Collector, I dispose of the writ application with an observation that the Collector shall be at liberty to invoke his jurisdiction under newly added under sub-Section (4) of Section 30 of the Act.

11. This writ application stands disposed of.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	29.06.2019
Transmission Date	N/A

