

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6621 of 2019

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Md. Abu Ejaz @ Abu Ejaz Rahi @ Abu Ejaz Son of Late Hazi Sajidul Haque,
Resident of Village- Nandaniya, P.S.-Routa, District-Purnia

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Land Reforms Department, Bihar, Patna
2. The District Collector, Purnia, District-Purnia
3. The Deputy Collector, Land Reforms, Sadar Purnea.
4. The Additional Collector, Sub Divisional Officer Ceiling Sadar, Purnea.
5. The Sub Divisional Officer Baisa, District Purnia
6. The Deputy Collector, Land Reforms Baisa, District -Purnia.
7. The Circle Officer baisa Block, District Purnia

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uday Prakash Sharma
For the Respondent/s	:	Mr.Raj Kishore Roy (GP-18)
		Ms. Surekha Kumari, AC to GP-178

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 04-04-2019

This writ application has been filed on 02.04.2019, seeking quashing of an order dated 26.10.2017, passed by the Collector, Purnea in Ceiling appeal No. 12 of 1983-84/64 of 1985-86, whereby his claim filed pursuant to the order of this Court dated 07.12.2004, passed in CWJC No 14851 of 2004 has been rejected. The petitioner is also seeking quashing of an order dated 30.06.1983, passed by respondent No.4, whereby the of his majority as on 09.09.1970 has been rejected, for the



purpose of determining permissible units under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the 'Act'). The petitioner, in support of his case has relied on a decision of this Court reported in 1986 PLJR 67 (The State of Bihar vs. Sri K.M. Zuberi and others) and according to him he is entitled to 30 acres of land if he treated to be major as on 09.09.1970, and thus, the land possessed by him which he received through gift from his father within the ceiling limit.

2. Before I refer to the points which the petitioner has attempted to raise in the present writ application to establish his claim, certain facts need to be looked into.

3. It has been asserted in the writ application that a ceiling case was instituted *vide* Ceiling Case No. 1189 of 1973-74 in the Court of Additional S.D.O., Sadar, Purnea against the petitioner's father, who was holding 161.548 acres of Class-IV land and accordingly by allowing him one unit equivalent to 30 acres to the land holder, 131.548 acres was sought to be declared as surplus land against which objections were sought and filed by the land holder. It is the case of the petitioner that in the year 1962, his father had executed a deed of *hibba* (gift) in his favour measuring 39.99 acres. The petitioner retained



about 21 acres and returned the rest land to his father through *hibba* which was registered on 16.03.1972. It is accordingly the case of the petitioner that he has been in possession over nearly 20 acres of land against which he has been paying rent to the Government of Bihar. By order dated 05.01.1976, the Additional S.D.O. (Ceiling) Sadar, Purnea allowed six units to the landholder (father of the petitioner) and an area of 27.32 and half acres to the donee and the said gifted land was directed to be excluded from the lands of the landholder. The said order was passed after considering the objection filed by the petitioner's father. It is the petitioner's case that several objections were filed in the land ceiling proceeding which were considered but his objection was not considered though the petitioner had attained the age of 23 years as on 09.09.1970 and was, therefore, entitled to one unit. It is his case that even the deed of *hibba*, which was executed on 18.08.1962 and registered on 20.08.1962 in favour of the petitioner with regard to the land measuring 39.99 acres within permitted period by the petitioner through another *hibba* duly registered on 16.03.1972 in respect of about 20 acres within the permitted period was ignored. It is further case of the petitioner accordingly, that the Additional S.D.O. committed grave error on record while



holding that the petitioner was possessing 39.99 acres acquired by way of gift beyond the limit of one unit because the petitioner had returned the land through another *hibba* dated 16.03.1972, within permitted period. It seems that the petitioner's father had preferred Ceiling Appeal No. 12 of 1983-84 which was disposed of by an order dated 04.07.1988 by the Additional Collector, Land Ceiling, Purnea, noticing a Special Bench decision of this Court in case of **State of Bihar Vs. K.M. Zuberi** (five Judges Bench) reported in **1986 PLJR 67**, which allowed one unit in favour of the major sons of Muslim. The appellate authority, allowed certain lands to be excluded from the list of surplus land and accordingly directed to publish notice under Section 15(i) of the Act. It is further stated that since certain lands possessed by the sons and daughter of the original landholders were declared to be surplus treating those lands as the lands of the landholder, Afroz Alam, Sahroz Alam, Abu Shalma, Abu Ejaj and Saweja Khatoon moved this Court by filing writ application registered as CWJC No. 2489 of 1989, questioning the Gazette notification. The said writ application was finally disposed of by order dated 12.11.1998 with a direction to the respondents to comply with the appellate order. From reading of the order dated 12.11.1998, passed by this



Court in CWJC No. 2489 of 1989, it can be easily noticed that the order passed by the appellate authority in the ceiling proceeding was not challenged. Paragraphs 5 to 7 of the said order are being reproduced herein below for ready reference:-

“5. In view of the fact that the appeal was allowed in part on 4.7.88 and the appellate authority ordered to make necessary correction in the notification which had already been issued under section 15(1) of the Act, no fresh order is required to be passed in the present case. The Collector of the district concerned is directed to comply with the appellate order, if not yet complied not later than a period of three months from the date of receipt/production of a copy of this order.

6. At this stage, learned counsel for the petitioners submitted that the petitioners are also aggrieved by the appellate order. From the writ petition, I find that no such relief has been sought for. Therefore, I am not inclined to decide the question of legality or propriety of the said order.

7. The writ petition stands disposed of with the aforesaid directions/observations. However, on the facts and circumstances, there shall be no



order as to costs.”

4. Alleging non-compliance of the order dated 12.11.1998, said Afroz Alam and others had filed a contempt petition giving rise to MJC No. 4013 of 2000. After having considered the show cause filed on behalf of the Opposite parties in the said contempt petition, the same came to be disposed of by an order dated 16.10.2003, which reads thus:-

“3. I have perused the materials on record and considered the submissions of learned counsel for the parties. The petitioners find fault with the inaccurate details mentioned in the said denotification notice marked Annexure-C. I should, therefore, think that it would be in the interest of justice to direct the learned Collector to give one more opportunity to the petitioners, re-consider the whole matter in the light of the documents required to be produced by them, and on consideration of his objections take fresh steps for implementation of the appellate order. I hereby direct the petitioners to appear before the learned Collector of the district of Purnea on 10.11.2003 along with a certified copy of the present order.”

5. It is evident from the order of this court dated



16.10.2003, that the petitioners were directed to appear before the Collector of the District of Purnea on 10.11.2003.

6. The petitioner did not appear on 10.11.2003 despite this Court's order though he was petitioner in CWJC No. 2489 of 1989 which had given rise to the contempt proceeding, i.e., MJC No. 4013 of 2000. This is not the petitioner's case that he was not a party in contempt proceeding, i.e., MJC No. 4031 of 2000.

7. It seems that after a year the petitioner filed a writ application before this Court giving rise to CWJC No. 14851 of 2004, seeking direction to the Collector, Purnea to reconsider his case as he could not appear before the Collector on the date fixed by this Court in MJC No. 4031 of 2000 in which he was also a party. This Court refused to interfere in the matter and disposed of the writ application by order dated 07.12.2004 with the following observations:-

“However, if the petitioner appears before the Collector and makes a prayer the Collector may give an opportunity to the petitioner for presenting his case.”

8. It is noteworthy the petitioner has mischievously concealed the fact that he was also petitioner in MJC No. 4013 of 2000 as is evident from the averment made in paragraph 19



of the writ application. In my opinion, by not making clear statement that he was also a petitioner in MJC No. 4013 of 2000, he was concealed material fact which is crucial for present adjudication. This he has apparently done in order to make out his case that he was not aware of the order passed by this Court in the said contempt proceeding, whereby the petitioners were directed to appear before the Collector on 10.11.2003. He has taken a peculiar stand in paragraph 21 of the writ application that the Collector, in the light of the order of this Court dated 16.10.2003 passed in MJC No. 4013 of 2000 was obliged to issue notice to him in obedience of the said order but no notice was issued to him. The stand so taken in paragraph 21 of the writ application, in my view, is misleading. The fact that the petitioner was one of the petitioners in MJC No. 4031 of 2000 can be seen on close reading of the order dated 07.12.2004, passed in CWJC No. 14851 of 2004 which was filed by him. The petitioner, in his all fairness ought to have disclosed this fact in his pleadings, which he has attempted to conceal. Leserely, more than one year after the order of this Court dated 07.12.2004 was passed, he claims to have filed an application dated 27.12.2005 in pursuance of said order. The application which he filed before the Collector on 27.12.2005 is not there



on record. According to him, he was surprised when the Circle Officer issued notice on 18.04.2007, asking him to vacate the land. The petitioner attempts to make out a case that during the pendency of his claim before the Collector, the Circle Officer had wrongly asked the petitioner to vacate the land. On 30.04.2007, he filed a contempt application before this Court for proper implementation of the order dated 07.12.2004 passed in CWJC No. 18451 of 2004. The contempt application, i.e., MJC No. 1030 of 2007, according to the petitioner, is still pending (paragraph 27 of the writ petition). He thereafter appeared before the Collector and the Collector by his order dated 26.10.2007 rejected his claim.

9. He, thereafter, filed a writ application, challenging the order dated 26.10.2007 in the year 2009, giving rise to CWJC No. 14582 of 2009. From an order dated 17.03.2011 passed in the said case which has been brought on record by way of Annexure-13 to this application, it can be easily seen that the said writ application filed in the year 2009 remained defective, at least till 17.02.2011. The said writ application was finally dismissed for default for non-compliance of the peremptory order, whereafter he filed restoration application giving rise to MJC No. 741 of 2012. The restoration application



was also dismissed by order dated 30.11.2016. The statement made in paragraph 27 of the writ application that the contempt petition registered as MJC No. 1030 of 2007 is still pending is completely false and misleading. The contempt petition also stood dismissed for default for non-compliance of the peremptory order dated 09.02.2019, passed in that case.

10. The above noted facts go to demonstrate that the petitioner has not only attempted to mislead this Court but has left no stone unturned to keep the dispute alive by filing one petition or the other without any element of seriousness, knowing well that the order passed by the appellate authority had attained finality as was indicated in this Court's order dated 12.11.1998, passed in CWJC No. 2489 of 1989. The petitioner, in my view, thus cannot be said to have approached this Court with clean hands and as a matter of fact, in the light of discussions as above, filing of such application is misuse of the process of the Court.

11. There is yet another aspect of the matter. The petitioner has relied on Special Bench judgment of this Court in case of **State of Bihar Vs. K.M. Zuberi** (supra). The said decision of the Special Bench in case of **State of Bihar Vs. K.M. Zuberi** (supra) has been specifically overruled by



subsequent Supreme Court's decision in case of **State of Bihar Vs. K.M. Zuberi** reported in **(1996) 9 SCC 171**. Paragraph 14 of the said decision is being reproduced herein below:-

“14. An analysis of the aforesaid provisions unequivocally indicates that under the Act the ceiling area is required to be determined of a ‘family’ as defined in Section 2(ee) and, therefore, the landholder of whose ceiling is going to be determined may either be a person, his or her spouse, and minor children. A major child whether belonging to a Hindu family or a Mohammedan or Christian is not conceived of getting an additional unit while determining the ceiling area of a landholder. A major son of a Hindu can get an independent ceiling determined provided he is a raiyat within the meaning of Section 2(k) and has become a landholder within the ambit of Section 2(g) but not as a successor to the landholder whose ceiling is being determined on the ground that he has a right in the property by virtue of birth. In other words, under the Act no distinction has been maintained between Hindus, Mohammedans, Christians for determination of the ceiling area in the hands of the landholder. The majority view expressed by the Chief Justice as well as by Justice Agrawal approached the problem on incorrect premise as if under the Act the adult son of a landholder governed by Mitakshara School of Hindu Law has been given an additional unit. Minority view of Justice L.M. Sharma is wholly correct one. The ultimate



conclusion, as expressed by the majority judgment, in answering Question 2 is, therefore, unsustainable in law. In our considered opinion, under the Act while determining the ceiling area in the hands of a landholder whether governed by Mitakshasra law or governed by Mohammedan law no additional unit is given to an adult son of the landholder and, therefore, the earlier view expressed by the Patna High Court in Imamul Hassan Choudhry case lays down the law correctly.”

12. In view of the above discussion, this writ application deserves to be dismissed with a cost which is assessed at Rs. 10,000/-(ten thousand) recoverable from the petitioner as arrears of land revenue.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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