

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6864 of 2019

1. Tekman Mahto, Son of Late Jokhu Mahto Resident of Village-Pipra Kachahari Tola, P.O.-Pipra Naurangiya, P.S. Jogapatti, District-West Champaran
2. Yadolal Yadav, Son of Late Nathuni Yadav Resident of Village-Pipra Kachahari Tola, P.O.-Pipra Naurangiya, P.S. Jogapatti, District-West Champaran
3. Basudeo Mahto @ Basdev Prasad, Son of Gobind Mahto @ Ram Gobind Mahto Resident of Village-Pipra Kachahari Tola, P.O.-Pipra Naurangiya, P.S. Jogapatti, District-West Champaran
4. Pundeo Mahto Son of Gobind Mahto @ Ram Gobind Mahto, Resident of Village-Pipra Kachahari Tola, P.O.-Pipra Naurangiya, P.S. Jogapatti, District-West Champaran
5. Kapildeo Mahto Son of Gobind Mahto @ Ram Gobind Mahto, Resident of Village-Pipra Kachahari Tola, P.O.-Pipra Naurangiya, P.S. Jogapatti, District-West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through Collector, West Champaran at Bettiah.
 2. The Collector, West Champaran at Bettiah.
 3. The Deputy Collector, Land Reforms, Bettiah, West Champaran.
 4. The Circle Officer, Jogapatti, Distt. West Champaran.
 5. Ghanshyam Tiwary, Son of Tara Tiwary, Resident of Village-Turhapatti, P.S., Dist.-West Champaran
 6. Lalji Ram Son of Manohar Ram
 7. Lakshmi Ram Son of Achaibar Ram
 8. Ravindra Ram Son of Harihar Ram
 9. Bhagarasan Ram Son of Mangaru Ram
 10. Tufani Ram Son of Mangary Ram
 11. Jag Ram Son of Dharichhan Ram
 12. Brijhan Ram Son of Rajendra Ram
 13. Jagarnath Ram Son of Juga Ram
 14. Shiv Shankar Ram Son of ramraj Ram
- Respondent nos. 6 to 14 are Resident of Village-Pipra Katchari, P.S. Jogapatti, District-West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Aditya Nath Jha
For the Respondent/s	:	Md. Khurshid Alam (AAG-12)
		Mr. Rakesh Ranjan, AC to AAG-12



=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 11-04-2019 Heard learned counsel for the parties.

Aggrieved by an order, dated 17.12.2018, passed by the Collector, West Champaran at Bettiah, in Case No. RM 45 of 2014-15, whereby the petitioners' claim of being occupancy *raiyat* over the land, declared to have been surplus under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'the Act'), has been rejected.

It is the case of the petitioners that the Collector, West Chmparan at Bettiah, misconstrued the provision of Section 45-B of the Act, while dismissing the petitioners' case treating the same to be a case for reopening of the ceiling proceedings.

In response to the Court's observation that the petitioners have alternative remedy of approaching appropriate forum against the impugned order, learned counsel, appearing on behalf of the petitioners, has insisted that this case may be decided by this Court on merits on the basis of pleadings on record.

It is the case of the petitioners, as has been narrated in the writ application, that they had filed R.M. Case No. 16 of



2002-03, claiming themselves to be the poor persons belonging to the extremely backward classes. They also asserted that the disputed land belongs to respondent nos. 5, the land owner, and these petitioners had been in cultivating possession over the land from more than 40 years and that initially their ancestors were in cultivating possession over the said land.

There is no averment in the writ application as to when the notification under Section 15(1) of the Act was issued, leading to acquisition of surplus land of respondent no. 5 by the State Government. There is vague statement made in paragraph no. 8 of the writ application that earlier these petitioners had not taken any step for allotment of land under Section 22 of the Act, because they were not aware about the said provision earlier. They contend that since they were in cultivating possession over the disputed land, they have a preferential right to get the land allotted in their favour. There is no averment in respect of further development, after acquisition of surplus land consequent upon notification under Section 15(1) of the Act.

They are said to have approached the Collector, West Champaran at Bettiah, thereafter in 2012 and it is evident from the pleadings that their R.M. Case was earlier dismissed for default on 28.03.2012/30.03.2012.



The petitioners appear to have approached this Court by filing writ application, giving rise to C.W.J.C. No. 2227 of 2015, against the order of the Collector, West Champaran at Bettiah, whereby their application was dismissed for default. The said writ application came to be disposed of on 04.02.2015 with the following order:-

“The petitioners claimed themselves to be the under raiyats of the landholder (respondent no.4) against whom the ceiling proceeding was initiated. It is submitted that the land of the petitioners was declared surplus. In 2002, an application was filed before the Collector Bettiah under Section 21/22 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short ‘the Act’) which gave rise to Revenue Misc. case no. 16 of 2002-03 which, unfortunately, remained pending for more than ten years. The Collector, finding the petitioners absent on several preceding dates by an order dated 28.03.2012/30.03.2012 dismissed the said application for non-prosecution. Aggrieved thereby the present writ application has been filed.

After making submission at some length, Mr. Ranjan Kumar Dubey learned counsel for the petitioners submits that they



would file restoration application for reviving the said proceeding on the file of the respondent –Collector. The writ application is disposed of with the said liberty. Needless to say that if any such application is filed the same shall receive due consideration and disposal in accordance with law by the respondent-Collector, Bettiah, West Champaran as quickly as possible preferably within a period of two months of such filing.”

In the light of the said order, dated 04.02.2015, the petitioners again made an application before the Collector, West Champaran at Bettiah. The only plea, which is being taken on behalf of the petitioners, is that they were unaware about the provision of Section 22 of the Act and, therefore, they had not approached the competent authority within time, seeking declaration of their acquisition of the status of occupancy *raiyat*.

Section 22 of the Act reads thus:-

22. Under-raiyat on surplus land to acquire status of raiyat. - [(1) If there is an under-*raiyat* on the surplus land on the date it vests in the State under the provisions of this Act, such under-*raiyat* shall, if he makes an



application in this behalf in the prescribed manner, be allowed to retain as occupancy *raiyat*, subject to payment in the prescribed manner and within the prescribed period to the State Government the amount specified in this behalf in the Schedule, so much of the land as together with all the other lands held by him anywhere in the State does not exceed the area he may hold under Section 5.]

(2) If the under-*raiyat* refuses or fails to make the application within the said period, he shall be liable to be ejected by the Collector and where he is allowed to retain the land under sub-section (1), he shall not have any right to transfer the land until the entire amount he is liable to pay to State Government under sub-section (1) has been paid.

(3) The amount payable by the under-*raiyat* as to the State Government under sub-section (1) shall be a charge on the land and shall take priority over all other claims on the land.”

Language of Section 22 of the Act is absolutely clear. sub-Section (2) of Section 22 of the Act specifically states that if the under-*raiyat* refuses or fails to make the application within the said period, he shall be liable to be ejected by the Collector and where he is allowed to retain the land under sub-section (1), he shall not have any right to transfer the land until the entire



amount he is liable to pay to State Government under sub-section (1) has been paid.

The petitioner admittedly did not make an application under sub-Section (1) of Section 22 of the Act, within stipulated time. The petitioners claim that they are still retaining possession over the land, in question, though they were required to be ejected by virtue of sub-Section (2) of Section 22 of the Act.

The Court fails to understand the circumstance, in which the petitioners have continued to retain possession, whereas it is their own case that *purchas* have been issued to private respondent nos. 6 to 14 long back.

Learned counsel, appearing on behalf of the petitioners, has relied on a decision of this Court in case of ***Kailash Prasad Vs. The State of Bihar and Ors.***, reported in **1994 (1) PLJR 632**, to contend that if there is any failure on the part of the under-tenant to make an application in terms of Section 22 of the Act, such failure does not disentitle their claim of under-tenancy rights under Section 48-E of the Act.

The petitioners have admittedly not raised any claim of under-tenancy under Section 48-E of the Act. He has started taking steps only after *purchas* have been issued in favour of the



persons, otherwise eligible to be allotted land.

In my view, the said decision in case of ***Kailash Prasad*** (supra) does not support the case of the petitioners in any manner. The petitioners' claim under Section 22 of the Act is absolutely frivolous.

This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Ashish/-

U			
---	--	--	--

