

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1837 of 2020

Binod Mandal, Male, Aged about 47 years, son of Bhauru Mandal, Resident of Village- Baghmara, P.S. Kursela, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Collector (Land Ceiling), Katihar.
3. The Circle Officer, Kursela Anchal, District- Katihar.
4. Bodh Narain Yadav, Son of Late Bhudeo Yadav, resident of Village- Indira Gram, P.S.- Kursela, District- Katihar.
5. Aklesh Yadav, son of Shukdeo Yadav, resident of Village- Indira Gram, P.S.- Kursela, District- Katihar.
6. Radha Thakur, son of Shukdeo Yadav, resident of Village- Indira Gram, P.S.- Kursela, District- Katihar.
7. Upendra Thakur, Son of Guletan Thakur @ Bhuletan Thakur, resident of Village- Indira Gram, P.S.- Kursela, District- Katihar.
8. Ratan Kumar Singh, son of Late Akhilesh Kumar Singh, resident of Village- Kursela, P.S.- Kursela, District- Katihar.
9. Sanjeev Kumar Singh, son of Late Akhilesh Kumar Singh, resident of Village- Kursela, P.S.- Kursela, District- Katihar.
10. Pankaj Kumar Singh, Son of Late Akhilesh Kumar Singh, resident of Village- Kursela, P.S.- Kursela, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Raghvendra Kumar Singh
For the Respondent/s : Mr.Sajid Salim Khan (Sc25)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 27-02-2020 Heard Mr. Raghvendra Kumar Singh, the learned counsel appearing on behalf of the petitioner and Mr. Sajid Salim Khan, the learned S.C.25.

The petitioner moved this Court to set aside the order dated 18.09.2018, passed by the learned Member (Administrative), Bihar Land Tribunal, Patna in B.L.T. Case No.1141 of 2015 by



which the learned Member (Administrative), Bihar Land Tribunal, Patna set aside the order dated 15.06.2010, passed by the Additional Collector (Ceiling), Katihar in Misc. Case No.4/2004-05 and the report dated 14.08.2003, passed by the Circle Officer, Kursela, Katihar on the basis of which the Additional Collector cancelled the red cards issued in favour of red card holders under Section 27 of the Land Ceiling Act after acquisition of the surplus land of the land holders.

The facts in brief and relevant for disposal of the case are that a land ceiling proceeding was initiated against Ratan Kumar Singh and others. Lands of the landlords were acquired after declaration of their lands as surplus after allotment of the lands in the unit of the landlords. The surplus lands were distributed under Section 27 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as 'the Ceiling Act'). The petitioner Binod Mandal filed Misc. Case No.4 of 2004-05 before the Additional Collector for cancellation of red cards issued in favour of the respondents no.4 to 7. The Additional Collector (Ceiling), Katihar called for a report from the Circle Officer with regard to possession of the land. The Circle Officer reported that the red cards holders are not in possession of the lands although the lands were distributed and red cards were issued in their favour. The petitioner claimed before the



Additional Collector that the petitioner orally purchased the land from the landlord, respondents no.8 to 10 forty years ago and the petitioner is in possession of the land, therefore, the petitioner is entitled to get the possession of the land under Section 22 of the Ceiling Act. The Additional Collector on the basis of the report of the Circle Officer by order dated 15.06.2010 allowed the petition of the petitioner that since the petitioner orally purchased the land from the land owner and he is in possession of the lands, the red cards issued in favour of the red card holders was cancelled. The red card holders filed petition before the Bihar Land Tribunal. The learned Member (Administrative), Bihar Land Tribunal by order dated 18.09.2018 set aside the order of the Additional Collector holding that there is no basis of oral sale deed to claim the lands of the land holder. The petitioner was not legally declared Sikmidar. Had the petitioner been Sikmidar of the land declared to be surplus, the petitioner would have filed petition under Section 22 of the Ceiling Act for issuance of *purcha* in his favour.

Mr. Raghvendra Kumar Singh, the learned counsel for the petitioner while assailing the order of the Member (Administrative), Bihar Land Tribunal submitted that the petitioner purchased the land forty years ago and he had been in possession of the land, therefore, after declaration of the land of the land owner as surplus, the red cards should have been issued in favour



of the petitioner. The red card holders never came in possession of the land thus, the Member (Administrative), Bihar Land Tribunal committed illegality by setting aside the order of the Additional Collector. It is further submitted that the land owner also filed affidavit stating the facts that he had received consideration money and put the land in possession of the petitioner and thus, the order of the learned Member (Administrative), Bihar Land Tribunal is not sustainable.

Having heard the submissions of both sides, I find that admittedly a ceiling proceeding was initiated against the landlord and the landlord did not disclose the facts during the pendency of the ceiling case that he had sold the land after receiving the consideration amount. No registered sale deed was executed. The landlord after having received the notice is bound to disclose the facts of selling the land in favour of any person after 22.10.1959. After such disclosure by the landlord, the Collector under the Act has to hold enquiry under Section 5 of the Act whether the landlord had made any such transfer with an object to frustrate the provisions of law. If the Collector finds that the landlord genuinely and bona fide sold the land, the lands so sold shall be allotted in the share of the landlord. It further transpires that the landlord did not bring this fact to the notice of the Ceiling Authority and when the excess land of the landlord including the



land in question was declared surplus and notification under Section 15(1) of the Act was issued, the Ceiling Authority under Section 27 of the Act issued red card to the red card holders. Sections 21 and 22 of the Bihar Land Ceiling Act provide the acquisition of status of occupancy *raiyat* by under-*raiyat*. It provides that subject to the other provisions of this Act, every under-*raiyat* of a *raiyat*, holding land in excess of the ceiling area on the date of commencement of this Act, shall, in respect of land not resumed under Section 13, be deemed to have acquired the status of an occupancy *raiyat* if no application for resumption is made within the period specified in sub-section (2) of Section 13, on the expiry of the said period, and where such an application has been made, on the date the application is finally rejected and the right, title and interest of the *raiyat* in such land shall be deemed to have been extinguished with effect from the date of such expiry or rejection, as the case may be. Section 22 provides that 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. It further provides 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 in 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.

From bare perusal of the aforesaid two provisions, it is crystal clear that during the ceiling proceeding if the landlord or a *raiyat* desires to resume the possession of such land from his under-*raiyat* not having right to occupancy therein, he has to make such petition and on such notice was given to under-*raiyat* but the landlord never filed any petition for resuming the land to be in possession of any under-*raiyat*. There is a provision under Section 48E of the B.T. Act for declaration of status of under-*raiyat* if a person who has been in continuous possession of a land under a *raiyat* and he apprehends threat of his ejection, such person may file petition for his declaration as under-*raiyat* but the petitioner did not claim himself to be under-*raiyat* of the landlord/*raiyat* at any point of time or even during the pendency of ceiling proceeding nor the landlord/*raiyat* disclosed this fact before the Ceiling Authority or filed any petition for resuming the possession of the land from any such under-*raiyat*, therefore, Ceiling



Authority after acquiring the surplus land from the land owners/*raiyats* distributed red cards amongst the red card holders. For acquisition of *raiyati* status of an under-*raiyat* on the land already acquired, the under-*raiyat* so declared in accordance with law has to file petition under Section 22 of the Bihar Land Ceiling Act. The petitioner has never been declared as under-*raiyat*. He claimed the land to be in his possession on the basis of an oral sale deed, the consideration of which is more than Rs.100/- and, therefore, the registration of such sale deed is essential but it creates reasonable doubt about the genuineness of such transfer as the landlord never disclosed the facts of transfer of his lands orally to the petitioner during the course of ceiling proceeding. Had the landlord disclosed this fact about the transfer of the land, the land so transferred by the landlord would have been included in the unit of the landlord. The affidavit sworn by the landlord on the face of it appears to have been made in order to frustrate the object of the Bihar Land Ceiling Act. Thus, I find that the Additional Collector has illegally and erroneously cancelled the red cards issued in favour of respondents no.4 to 7 on the basis of the report of the Circle Officer. The Additional Collector/Collector is bound under the law, that if such fact with regard to dispossession of the land from the red card holders comes to his knowledge, the Additional Collector/Collector put the red card holders in possession of the



land. I find that the learned Member (Administrative), Bihar Land Tribunal has rightly set aside the order of the Additional Collector.

Having considered the facts and discussions made above, I find no merit in this writ petition and the same is accordingly dismissed.

(Prabhat Kumar Jha, J)

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