

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12264 of 2022

1. Pramod Kumar Jha, S/o Late Ram Sundar Jha.
2. Suryakanta Devi, W/o Late Gokhulanand Jha.
3. Arundhati Devi, W/o Late Amrendra Jha.
All resident of village-Khamgara, P.S.- Tarabari, District- Araria.
4. Dilip Mishra S/o Late Rajendra Mishra, resident of Village-Ram Nagar, P.S.- Sikti Bardaha, District- Araria.
5. Madhuri Devi W/o Late Kritya Nand Sharma, R/o Village-Kursa Kanta, P.S.- Kursa Kanta, District- Araria.
6. Malti Devi W/o Late Murli Mohan Thakur R/o Village- Para, P.S.- Katihar, District- Katihar.

... .. Petitioners

Versus

1. The State of Bihar through the Collector, Araria.
2. The Collector, Araria, District- Araria.
3. The Addl. Collector, Araria, District- Araria.
4. The Sub-Divisional Officer, Araria, District- Araria.
5. Prem Sundar Jha S/o Late Ram Sundar Jha.
6. Neelam Jha, W/o Shri Dhruv Kumar Jha.
7. Hem Sundar Jha, S/o late Ram Sundar Jha.
8. Subodh Kumar Jha, S/o Late Ram Sundar Jha.
9. Buchhi Mandal S/o Shibu Mandal.
10. Punyanand Mandal, S/o Late Buldev Mandal.
11. Damodar Mandal, S/o Late Chumman Mandal.
12. Lalit Narayan Mishra, S/o Shiv Narayan Mishra.
13. Futkari Sada, S/o Late Ghongher Sada.
14. Dinesh Sada, S/o Late Mangal Sada.
15. Rameshwer Sada, S/o Late Lakhan Sada.
16. Chandradeep Sada, S/o Late Bhatui Sada.
17. Ameli Sada S/o Late Manti Sada.
18. Ramji Sada S/o Late Jhari Sada.
19. Chamru Sada S/o Late Buchhan Sada.
20. Tarachand Sada S/o Late Baunu Sada.
21. Nandan Sada S/o Late Mangan Sada.
22. Buchwa Sada S/o Late Fagu Sada.
23. Domru Sada, S/o Late Narayan Sada.



24. Lakshmi Sada S/o Late Jhabru Sada.
25. Bowa Sada S/o Manyan Sada.
26. Dilip Sada S/o Late Tupai Sada.
27. Sudhir Kumar Jha S/o Late Mohan Lal Jha.
28. Sushil Kumar Jha S/o Late Mohan Lal Jha.
29. Dr. Shambhu Nath Jha S/o Late Ram Lal Jha.
30. Dr. Prem Kumar Jha S/o Late Ram Lal Jha.
31. Dr. Amod Kumar Jha S/o Late Ram Lal Jha.
32. Kumod Jha S/o- Late Ram Lal Jha.
33. Kaushal Jha S/o Late Ram Lal Jha.
34. Shashi Jha S/o Late Ram Lal Jha.
35. Trilok Nath Jha S/o Late Shobhit Lal Jha.
36. Dilip Kumar Jha S/o Late Shobhit Lal Jha.
37. Kapil Kumar Jha S/o Late Shobhit Lal Jha.
38. Bipin Kumar Jha S/o Late Shobhit Lal Jha.
39. Brajendra Kumar Jha S/o Late Nand Lal Jha.
40. Dvijendra Kumar Jha S/o Late Nand Lal Jha.
41. Narayan Mandal S/o Faturi Mandal.
42. Ram Chandra Paswan S/o Not known.
43. Prabhu Paswan S/o Late Kishan Paswan.
44. Anant Lal Singh S/o Late Khedu Singh.
45. Sital Singh S/o Late Moti Singh.
46. Shankar Singh S/o Late Gulab Chandra Singh.
47. RajKumar Singh S/o Late- Joginder Singh.
48. Ashok Singh S/o Late Sudama Singh.
49. Shiv Prakash Singh S/o Late Mangal Singh.
50. Arjun Singh S/o Late Ramdassi Singh.
51. Sitaram Singh S/o Late Ramlal Singh.
52. Jhari Lal Tatma S/o Late Sugru Tatma.
53. Vikash Tatma S/o Late Gahnu Tatma.
54. Girna Tatma S/o Late Utki Tatma.
55. Ramanand Tatma S/o Late Bhola Tatma.
56. Rameshwar Bhagat S/o Not known.

Respondent nos. 27 to 56 are resident of Village- Tarabari, P.S.-
Tarabari, District- Araria.

... .. Respondents

=====

Appearance :



For the Petitioners : Mr. Samrendra Kumar Jha, Advocate
For the Respondents : Mr. Rishi Raj Sinha, S.C.-19
Mr. Saurav Kumar, A.C. to S.C.-19

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 04-04-2023

In this writ petition, the petitioners have prayed for the following reliefs:-

- “(i) *For quashing the order dated 25.04.2022 passed by the Chairman of the Bihar Land Tribunal, Patna in BLT Case No. 144/2018 whereby the prayer of the petitioners to recall the order dated 12.07.2017 passed in BLT Case No.81/2016 observing that with the repeal of section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the matter relating to the reopening of the ceiling proceeding shall be deemed to have abated.*
- (ii) *For quashing the order dated 12.07.2017 passed by the Member (Administrative) in BLT Case No. 81/2016 whereby it was held that the case has abated in view of the deletion of section 45-B of the 1961 Act by gazette notification dated 02.09.2016.*
- (iii) *For quashing the order dated 09.09.2015 passed by the Addl. Member, Board of Revenue, Bihar,*



Patna, in Revision (Land Ceiling Surplus) Case No.04/2006 whereby the same stood rejected and direction given to the District Collector, Araria and Sub Divisional Officer, Araria to take necessary steps for acquiring the lands given to the married daughters of the land holder as separate units after his death.

- (iv) *For quashing the order dated 12.09.1990 passed by the Sub Divisional Officer, Araria in Ceiling Case No.25/1973-74 whereby the claims regarding option, classification and unfounded voluntary surrender of the petitioners were rejected.*
- (v) *For quashing the appellate order dated 25.11.2004 passed by the Collector, Araria in Ceiling Appeal Case No.221/1994-95 whereby the appeal preferred against the order dated 12.09.1990 was rejected.”*

2. The short facts of this case are that a Ceiling Case No.25 of 1973-75 was initiated against the father of of the petitioners with respect to 179.12 acres of land. On 31.12.1979 the father of the petitioners died leaving behind his wife, four sons and six daughters. After the death of the landholder, his



legal heirs were substituted in the said ceiling proceeding. A draft statement under Section 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was published on 30.06.1983. Four units comprising of 100 acres of class-III land were allowed to the original landholder and 79.12 acres of land of the same class was declared as surplus. Objections were filed under Section 10(3) of the Act before the Sub Divisional Officer, Araria against the said draft statement, which was rejected vide order dated 07.06.1986. Against the said order, an appeal was filed before the Collector, Purnia. The Collector, vide order dated 19.08.1988 set aside the order dated 07.06.1986 as it was not a speaking order and remitted the matter to the Sub Divisional Officer, Araria for passing a reasoned order on all objections. Thereafter, the Sub Divisional Officer vide order dated 12.09.1990 accepted some objections and rejected other objections regarding classification of 46.27 acres of land and landholders were allowed to retain 144.33 acres of land and remaining land was declared as surplus. Against the said order, Ceiling Appeal No.221 of 1994-95 was filed before the Additional Collector, Araria, which was dismissed on 25.11.2004 by upholding the order of the Sub Divisional



Officer, Araria.

2.1. Being aggrieved by the same, a Ceiling Revision Case No.04 of 2006 was filed before the Additional Member, Board of Revenue, Patna which was dismissed vide order dated 09.09.2015 and District Magistrate and Sub Divisional Officer, Araria were directed to take necessary steps for acquiring the lands given to five married daughters of the original landholder. The aforesaid order was challenged in the Bihar Land Tribunal, Patna, in B.L.T. Case No. 81 of 2016. The said B.L.T. Case was disposed of vide order dated 12.07.2017 observing that in view of the repeal of Section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 by Gazette Notification dated 02.09.2016, the present matter stands abated. Thereafter, the petitioner filed B.L.T. Case No.144 of 2018 seeking recall/review of the order dated 12.07.2017. The Tribunal vide order dated 25.04.2022 dismissed the same on the ground that it has no power to review its own order. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the petitioners were not given option to opt the land at any stage of the ceiling proceeding and the respondent authorities have classified the land of the landholder without following the



statutory provisions. He further submits that for acquiring the lands given to the daughters from the share of their father i.e. original land holder, no reason was assigned by the respondent authorities.

4. Learned counsel for the petitioners further submits that before the Tribunal in B.L.T. Case No. 81 of 2016, the State had filed its supplementary counter affidavit duly sworn by the Circle Officer, Araria, wherein it has categorically been stated that after verification of Lower Court Records of Land Ceiling Case No. 25 of 1973-74 no such document with regard to the voluntarily surrender in the prescribed form by the original landholder Ram Sundar Jha, has been found on record but from the order sheet dated 15.07.1975/18.07.1975 it appears that the land holder had filed details of his land in two sheets which has been verified by the Circle Officer. This fact clearly shows that the original landholder has never surrendered his land to the State of Bihar.

5. Learned counsel for the petitioners also submits that the Collector had distributed 40.05 acres of land of the petitioners to the private respondent nos. 9 to 56 on the ground that the original landholder late Ram Sundar Jha had voluntarily surrendered the land to the State of Bihar in 1976



itself and this fact was seriously contested by the original landholder late Ram Sundar Jha and his legal heirs and ultimately in the supplementary counter affidavit of the State it was admitted that there is no proof available on record to substantive voluntary surrender of 40.5 acres of land by the original landholder.

6. He further submits that property of the petitioner were taken away without following the procedure prescribed by the law. It is a well established principle of law that if something is required to be done in a particular manner, then that has to be done only in that way or not, at all. In support of the aforesaid submission, he has relied upon a decision of the Hon'ble Supreme Court in the case of *State through P.S. Lodhi Colony, New Delhi vs. Sanjeev Nanda reported in (2012) 8 SCC 450*.

7. Learned counsel for the petitioners further submits that the original landholder or his legal heirs were not given opportunity at any point of time to exercise their option with regard to the lands and therefore, the denial of option is in teeth of the statutory provisions of the 1961 Act.

8. Learned counsel for the petitioners further submits that the land of the petitioner was distributed to the



private respondent illegally during the pendency of the ceiling proceeding which is illegal.

9. By making the aforesaid submissions, learned counsel for the petitioners submits that the action of the State in distributing 40.05 acres of land of the petitioners to the private respondent nos.9 to 56 is illegal and arbitrary.

10. In this case, a counter affidavit has been filed by the State. In the counter affidavit it has been stated that the petitioners have filed B.L.T. Case No. 81 of 2016 before the Bihar Land Tribunal, Patna, for reopening of ceiling case, which had already been disposed of under Section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 but in the meantime, Section 45-B was repealed by Gazette Notification dated 02.09.2016 and Section 45-D has been added in the Ceiling Act, which provides that after repeal of Section 45-B all matters relating to reopening either before the State Government or before the Bihar Land Tribunal shall be deemed to have been abated. Hence, the Bihar Land Tribunal vide order dated 12.07.2017 disposed of the aforesaid B.L.T. Case No. 81 of 2016 filed by the petitioners holding that since this matter is still pending it shall also stand abated. He further submits that the order dated 25.04.2022 by



which the Tribunal has dismissed the B.L.T. Case NO. 144 of 2018 is just and proper as the Tribunal has no jurisdiction to review its earlier order passed in B.L.T. Case No. 81 of 2016.

11. I have considered the submissions of the parties and perused the materials on record.

12. Vide order dated 13.10.2022, notices were directed to be issued to the private respondent nos. 5 to 56 by ordinary process and the petitioners were directed to file substituted services upon them in daily newspaper namely, Dainik Bhaskar or Prabhat Khabar in Hindi and “The Times of India or the “Hindustan Times” in English. Accordingly, the petitioners filed notices and made substituted services in Hindi daily newspaper namely, “Dainik Bhaskar” and in English daily newspaper namely, “Hindustan Times” dated 05.11.2022. To this effect, a supplementary affidavit has also been filed by the petitioners. Even after issuance of notices and making of substituted services in the local newspapers having wide circulation in the areas concerned, the respondent nos. 5 to 56 did not appear in the proceeding. It seems that they knowingly avoided to appear in the case and substantiate their claim over the land in question.

13. From the record, it appears that before the



Bihar Land Tribunal, a supplementary counter affidavit was filed by the State duly sworn by the Circle Officer, Araria in B.L.T. Case No.81 of 2014. In paragraph no.3 of the aforesaid counter affidavit, it has been stated as under:-

“3. That with regard to paragraph no.14 of earlier counter-affidavit filed by State, it is stated that after verification of LCR of land ceiling case no. 25 of 73-74, no such documents with regard to the voluntary surrender in the prescribed form by the original land holder Ram Sunder Jha has been found on the record. However, from perusal of the order sheet dated 15.7.75/18.7.75, it appears that the land holder had filed a details of the land in two sheets which has been verified by the Circle Officer, Araria, as mentioned in the order dated 12.11.75.”

14. In paragraph no.17 of the writ petition, it has been stated by the petitioners that the Collector distributed 40.05 acres of land of the petitioners' to the red-card holders on the ground that the original land holder had voluntarily surrendered the same and this fact was seriously contended by original land holder and his legal heirs. Ultimately, before the Bihar Land Tribunal, it was admitted by the State that there is no proof available on record to substantiate voluntary surrender of the



aforesaid land by the original landholder. However, in this case also, a counter affidavit has been filed by the State duly sworn by the Sub-Divisional Officer, Araria. In reply to the aforesaid statement made in paragraph no.17 of the writ petition, it has only been stated in the counter affidavit that the averments made in this paragraph is matter of record, which requires no comment.

15. From the aforesaid facts, it is clear that there is no proof available with the State authorities to substantiate voluntary surrender of 40.05 acres of land by the original land holder, late Ram Sunder Jha. Therefore, the distribution of aforesaid land without surrender by the original landholder is held to be illegal.

16. Moreover, it appears from the record that without following the due procedure the land has been distributed to the red-card holders i.e. private respondents and the State has also not been able to show any document to substantiate that the original landholder has surrendered the land in question. It is settled law that if any action is taken *de hors* to the manner prescribed then the entire action or the order would be vitiated.

17. In the case of *Chandra Kishore Jha v.*



Mahavir Prasad and Others reported in ***1999 (8) SCC 266*** a three Judges Bench of Hon'ble Supreme Court has held that it is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. In the case of ***State through P.S. Lodhi Colony, New Delhi vs. Sanjeev Nanda*** reported in ***(2012) 8 SCC 450***, the Hon'ble Supreme Court has held that it is a settled principle of law that if something is required to be done in a particular manner, then that has to be done only in that manner or not at all.

18. Furthermore, from the conjoint reading of the writ application as well as the counter affidavit, it is clear that the landholder or his legal heirs were not given opportunity at any point of time to exercise their option with regard to the lands. Thus, denial of option to opt the land is in teeth of the statutory provisions of the Act. A Division Bench of this Court in the case of ***Faguni Ram & Ors. vs. The State of Bihar and Others*** reported in ***2000(2) PLJR 507*** has held in paragraph no.10 as under:-

“10. Therefore, in our view, so called acquisition of the land and the Gazette notification etc. if any, for distribution etc. have to be declared illegal and without jurisdiction because from a bare



reference to the instant provision, it would appear that the State Government may, pending final publication of the statement under sub-section (1) of Section 11 of the Act, issue notice to any landholder or landholders calling upon him or them to surrender to the State such area which according to him or them is owned or held in excess of the ceiling area prescribed under section 4 of the Act.”

19. It also appears that the land of the petitioners was distributed to the red-card holders i.e. private respondents in the year 1975-77 during the pendency of the ceiling proceeding which is illegal. The counter affidavit is completely silent on the point of share to the daughters of the original landholder. Paragraph no.20(iii) of the writ petition contends about the share of the married daughters of the original landholder. However, in paragraph no.15 of the counter affidavit, the State has simply denied the statement made in paragraph no.20(iii) of the writ petition. As per Section 8 of the Hindu Succession Act, 1956, the daughter is class-I heir and is entitled to her share in her father's property. Thus, their exclusion from the share of the original landholder's is illegal.

20. The contention of the State that after deletion of Section 45-B of the Bihar Land Reforms (Fixation of Ceiling



Area and Acquisition of Surplus Land), Act, 1961, an application for reopening of proceeding could not have been filed, will not leave the petitioner without any legal remedy. The only legal remedy left available to them is by way of writ jurisdiction, which has rightly been filed by the petitioners.

21. This Court is of the view that illegal distribution of land belonging to the petitioner during the pendency of the ceiling proceeding, the denial of separate units to the daughters of the original landholder and the denial of option of choice, has resulted in grave injustice to the petitioners and mere passage of time will not result in denial the relief which could have been granted to the petitioners long back. Further, the stand of the State that the land was surrendered has been found to be completely false from their own counter affidavit filed in the Bihar Land Tribunal, as discussed above.

22. For the foregoing reasons, the order dated 25.04.2022 passed by the Bihar Land Tribunal, Patna, in B.L.T. Case No. 144 of 2018, order dated 12.07.2017 passed by the Bihar Land Tribunal in B.L.T. Case No. 81 of 2016, order dated 09.09.2015 passed by the Additional Member, Board of Revenue, order dated 12.09.1990 passed by the Sub Divisional Officer, Araria and order dated 25.11.2004 passed by the



Collector, Araria are hereby quashed.

23. The Collector, Purnea is directed to reopen the ceiling proceeding considering the case of the petitioners in the light of the aforementioned observation. The purcha holders i.e. private respondents must be evicted from the land belonging to the petitioners if the petitioners exercise their option in favour of those lands which have been distributed in favour of the purcha holders.

24. Since the purcha holders i.e. private respondents have not appeared in the present case, they cannot claim in any subsequent proceeding that they have not been heard in this case. The Collector will not be required to hear the purcha holders again before evicting them in case of exercise of option by the petitioners for the land which has been given to the purcha holders. If the State wants to shift the purcha holders i.e. private respondents on some other land, the same can be done by the Collector. The Collector, Purnea will decide the issue of entitlement of family units under the Hindu Succession Act, 1956 and the exercise of option by the unit holders in accordance with law. The aforesaid exercise must be completed by the Collector, Purnea within six months from the date of receipt/production of a copy of this order.



25. With the aforesaid observations and directions, this writ petition stands allowed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.10.2023
Transmission Date	

