

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5499 of 2018

1. Umesh Prasad Yadav, S/o late Braj Kishore Prasad Yadav, Resident of Village Sherpur, P.S. Matriya, Anchal- Gaunaha, Distt. West Champaran.
2. Malti Devi, Widow of Shambhu Sharan Prasad Yadav, Resident of Village Sherpur, P.S. Matriya, Anchal- Gaunaha, Distt. West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Collector, West Champaran at Bettiah.
3. The Deputy Collector, Land Reforms, West Champaran at Bettiah.
4. The Anchal Adhikari, Gaunaha Anchal, Distt. West Champaran.
5. Digvijay Kumar Yadav, Son of late Indal Prasad Yadav and Mother Late Thago Kunwer, Resident of Village- Sherpur, P.S. Matriya, Anchal- Gaunaha, Distt. West Champaran.
6. Kamal Urawn S/o not known
7. Malahi Urawn S/o not Known
8. Dhanraj Urawn S/o not known
9. Bhikhari Urawn S/o not known
10. Shukhdeo Urawn S/o Lallu Urwan
11. Narendra Urawn S/o Thag Urawn
12. Ravi Urawn S/o not known
13. Sumitra Devi -not known
14. Mahendra Urawn S/o not known
15. Bhola Urawn S/o Patau Urawn
16. Basmatiya Devi S/o not known
17. Sona Devi not known
18. Chanan Urawn S/o Thag Urawn
19. Banshi Manjhi S/o Gopal Urawn
20. Jhangru Manjhi S/o not known
21. Akli Devi not Known
22. Dharbhakhi Devi not known
23. Paltan Manjhi S/o Not known
24. Prabhawati Devi not known
25. Chandra Manjhi S/o Not known
26. Mahanth Manjhi S/o Budhan Manjhi



27. Bannu Manjhi S/o Kataru Manjhi
28. Ramawatar Manjhi S/o Solahi Manjhi
29. Chandraprakash Dishwah S/o Harihar Dishwah
30. Shivnarayan S/o Aklu Dishwah
31. Bhukhali Diswah S/o Dhodhi Diswah
32. Rajendra Dishwah S/o not known
33. Radha Devi, not known
34. Sukai Dishwah S/o Budhlal Dishwah
35. Nandlal Dishwah S/o not known
36. Rampukar Mahto S/o not known
37. Ramprasad Dishwah S/o Ramawatar Dishwah
38. Dinesh Mahto S/o not known
39. Narsingh Manjhi S/o Meghu Manjhi
40. Budhai Manjhi S/o Kamal Manjhi, All residents of Village Mandiha, P.S. Gaunaha, Anchal- Gaunaha, Distt. West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Sr. Advocate Mr. Santosh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25

**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT**

Date : 26-09-2024

Heard Mr. Ashok Kumar Sinha, learned senior counsel along with Mr. Santosh Kumar Singh, learned counsel for the petitioners and Mr. Sajid Salim Khan, learned counsel for the State.

2. The petitioners have invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution seeking a direction upon the State Government and the District



Collector, West Champaran, Bettiah to reopen the Ceiling Case No. 96/81-82, which was started in the name of Thago Kunwar (since deceased), in order to ascertain the claims of the petitioners as their lands were wrongly included in the ceiling case of Thago Kunwar, who had never been the land holder and, in fact, the land in question was recorded in the name of one Bindeswari Prasad Yadav, in whose name still revenue record continues. The petitioners also sought quashing of the Notification S.O. No. 1168 Bettiah dated 31.10.1985 of the Bihar Government Revenue and Land Reform Department, West Champaran, Bettiah, published in Extraordinary Gazette No. 159 dated 05.11.1985 issued in purported exercise of power under Section 15(1) of the Bihar Land Ceiling Act, 1961 (for short “the Act, 1961”), whereby the lands in question have been declared surplus of the land holder, namely, Thago Kunwar, who had never been the land holder in respect of the various plots situated at Mauza-Mandiha bearing Plots no. 57, 62, 68, 61 and 63.

3. Before coming to the point in issue(s), learned senior counsel for the petitioners in order to fortify his contention gave a short picture of the case that initially a Land Ceiling Case No. 95/75-76 was initiated against Most. Thago



Kunwar, which was later numbered as Land Ceiling Case No. 86/81-82. A miscellaneous case was filed before the then Revenue Minister, Government of Bihar, Patna, sometime in the year 2002-03 under Section 45(A) of the Act, 1961, stating therein that in the land ceiling case of Most. Thago Kunwar, many plots situated at Mauza-Mandiha and Khurhuriya belonging to Bindeswari Prasad Yadav had been included in the Land Ceiling Case No. 86/81-82 and were published in the draft statement prepared under Section 11(1) of the Act, 1961.

4. Despite the fact that Most. Thago Kunwar being not the owner of the land in question, the particulars of which have been duly mentioned in para-8 of the writ petition, the lands were declared to be surplus and acquired under Section 15 of the Act, 1961 in a most illegal manner. The land owner against whom the ceiling proceeding was started ought to have clarified this fact of not being the owner of the land but they kept silent, as a result of which, the petitioners who are the legal heirs of the recorded owners are being deprived of their properties. Neither the recorded owner nor had legal heirs preferred any appeal against the publication under Section 11(1) of the Act, 1961 by reason of the fact that they had no knowledge of the publication. After final publication of the statement under Section 11(1) of



the Act, 1961 and also after publication of a Gazette Notification dated 05.11.1985, the lands belonging to the petitioners were declared as surplus and further Parwana was issued in favour of respondents no. 6 to 40.

5. Learned senior counsel for the petitioners adverting to the aforesaid facts contended that though the Circle Officer, Gaunaha, had issued Parwana on 26.11.1987 in favour of the private respondents, but they never came in possession of the land, which is said to have been settled with them after issuance of Notification under Section 15(1) of the Act, 1961. On 25.01.2018, the Parwana holders, for the first time, submitted an application to the District Collector for being put them in possession. Thereupon, for the first time, the petitioners came to know about the settlement and distribution of the land after having declared it surplus, in an illegal manner. Thereafter, the petitioners approached before the respondent no.5, who is none else but the son of late Thago Kunwar and asked him to make clear stand before the District Collector, Bettiah, West Champaran that the lands do not belong to him. The petitioners were told that Most. Thago Kunwar and after his death, the respondent no.5, approached the District Collector, Bettiah for exclusion of plots in question from their holding, but despite the



aforesaid fact, the impugned Notification under Section 15(1) of the Act, 1961 came to be issued.

6. Learned Senior Advocate for the petitioners also narrated that the land in question over which the petitioners are making claim, were/are in the name of their ancestors. In the year 1973, a Ceiling Case No. 34 of 1973-74 was initiated against Bindeshwari Prasad Yadav, ancestor of the petitioners, with respect to the land in question and others where four units were granted to him. On being dissatisfied, Bindeshwari Prasad Yadav approached before this Court in C.W.J.C. No. 4308 of 1978 and vide order dated 17.07.1984, he was accorded two more ceiling units in addition to four units earlier granted to him; this includes the land in question. The land in question acquired as surplus in Ceiling Case No. 86 of 1981-82 initiated against Most. Thago Kunwar, mother of respondent no.5, was without any notice to the petitioners or their ancestors.

7. After clarifying the aforesaid facts, learned senior counsel, thus contended that the land in question was wrongly included in the Ceiling Case No. 86 of 1981-82 by way of misrepresentation of facts and in a most fraudulent manner at the instance of land holder Most. Thago Kunwar. No notice was ever served upon Bindeshwari Prasad Yadav, though the



Jamabandi with respect to the land in question has been stood recorded in the name of land holder Bindeswhari Prasad Yadav. In support of the aforesaid contention, the attention of this Court has been drawn to Annexure-5, a copy of the Register-II, Tenants Ledger. In the aforesaid premise, it is prayed that the land in question may be denotified from the acquisition in Ceiling Case No. 95 of 1975-76/86 of 1981-82.

8. On the other hand, Mr. Sajid Salim Khan, learned counsel for the State contended that if the petitioners have had any grievance with regard to the final publication of settlement under Section 11(1) of the Act, 1961 as well as the Gazette Notification under Section 15(1) of the Act, 1961, the petitioners should have been approached before the competent authority within thirty days. The issue which has already been set at rest, way back in the year 1986 after publication of the Gazette and further issuance of Parwana in favour of the private respondents, the ceiling proceeding cannot be re-opened after forty years in such a casual manner.

9. Learned counsel for the State further contended that the very prayer of the petitioners is wholly misconceived and not sustainable in view of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act,



2016 as also the Amendment Act, 2019, whereby Section 45(B) of the Act, 1961 was repealed and a new provision Section 45 (D) was added, which provided that the proceedings pending before the State Government or the Bihar Land Tribunal or pending before the Collector shall all stand abated. Once, the provision of Section 45(B) to re-open the Ceiling Proceeding gets deleted from the statute, no question arises to direct the Collector to look into the matter.

10. In response to the contention of the learned counsel for the State, learned senior counsel for the petitioners, contended that if an order is obtained by playing fraud or misrepresentation, no law of limitation shall apply. An order which is *void ab initio* can be questioned at any point of time even at the stage of execution.

11. Further, the learned Senior Advocate also placed reliance on a judgment of this Court rendered in **Rajani Kant Singh and Another v. The State of Bihar and Others [C.W.J.C. No. 5564 of 2018]**, wherein this Court held that irrespective of Section 45(B) deleted from the statute and the proceedings pending stood abated in terms of Section 45(D) of the Amendment Act, 2019, this Court while exercising the jurisdiction under Article 226 of the Constitution, in certain



cases many direct the concerned Collector to re-open the ceiling proceeding for the ends of justice and if situation warrants.

12. This Court has anxiously heard learned counsels for the respective parties and also perused the materials available on record.

13. The issue now posed before this Court is as to whether in absence of the earlier provision as prescribed under Section 45(B) of the Act, 1961, whether the Collector is empowered to look into such matter by re-opening the ceiling proceeding.

14. Before parting with the case, it would be apt and appropriate to quote paragraphs-16 to 20 of the judgment dated 08.08.2024 rendered in **Rajani Kant Singh** (supra), which would be relevant to deal with the issue raised herein.

“16. This Court has anxiously heard the submissions advanced on behalf of the learned counsel for the respective parties and also perused the materials available on record. So far the contention raised by the learned Advocate for the State with regard to the repealing of Section 45 (B) and in terms of Section 45 (D), the proceeding under Section 45 (B) abated and, as such, the prayer of the petitioner is fit to be rejected, found no merit.

17. The constitutional validity of the Bihar



Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 2016 as also Amendment Act, 2019, whereby, apart from Section 16 (3), Section 45 (B) were repealed and a new provision Section 45 (D) was added, was duly considered by the learned Division Bench of this Court in **CWJC No. 15060 of 2019** and other analogous cases captioned as **Sudhakar Jha Vs. The State of Bihar and Ors., 2024 (3) PLJR 409**. The learned Division Bench while holding the constitutional validity of the aforesaid Amendment Act has taken note of the fact that the provisions of Section 45 (B) was repealed and at the same time, Section 4 (I)(ii) and (iii) were added to Section 30. Section 30(4) (i) gives the power to Collector of a district to initiate a fresh proceeding under the Act, if he was satisfied that a landholder, fraudulently or by misrepresentation has managed to obtain an order from any of his subordinate authority. Similarly, Section 30(4)(ii) provided similar powers to the Commissioner of a Division in case the order had been obtained from the Collector of a district. These were the amendments carried out in the principal act by the Amendment Act, 2016. Simultaneously, by the amending Act, amendment was also affected in Section 30 (sic)(13) by adding sub-Section 3 thereof, which provides that an appeal shall be disposed of within the period of six months.



18. Thus, in view of the aforesaid amendments, as noted hereinabove, indubitably, the Collector of a district is empowered to initiate a fresh proceeding under the Act, if he was satisfied that a landholder fraudulently or by misrepresentation has managed to obtained an order from the subordinate authority. Irrespective of repealing of Section 45 (B), which had earlier empowered the State Government to call for and examine records of any proceeding disposed of by a Collector under the Act and direct the case to be reopened. Still the Collector has the power to look into the matter if the circumstances warrants under Section 30(4) (i) of the amended act.

19. It is trite law that Article 226 of the Constitution of India is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Courts are enable to mould the reliefs to meet the peculiar and complicated requirements. However, the Apex Court has cautioned that there are some limitations implicit in the articles and this power cannot be exercised arbitrarily. The aforesaid observation has accorded by a three Judge Bench of the Hon'ble Supreme Court in the case of **Dwarka Nath Vs. I. T. Officer, AIR 1996 SC 81.**



20. In the case of **U. P. State Co-operative Land Development Bank Limited Vs. Chandra Bhan Dubey and Ors, AIR 1999 SC 753**, the Hon'ble Supreme Court placing reliance upon the aforenoted judgment has further held and observed that "Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances."

15. In the afore-noted case, this Court having noted the provisions of Section 30(4)(i) of the Amending Act, 2019



which couched the Collector with the power to initiate a fresh proceeding or to reopen the ceiling proceeding, while exercising the power under Article 226 relegated the matter to the Collector; as *prima facie* there was no compliance of Section 5(1)(iii) as well as Section 9(2) of the Ceiling Act.

16. This Court is of the view that by deleting the prescription of Section 45(B) of the Ceiling Act and the proceeding pending under Section 45(B) having been abated by virtue of Section 45D of the Ceiling Act, 2019 the legislature has confined the power of the Collector with respect to initiating a fresh proceeding only to the grounds set forth in Section 30(4) (i) of the Ceiling Act, if the aggrieved party is able to satisfy the Collector that “a land holder, in a proceeding under the Act, by fraudulently or by misrepresentation of facts or law, has managed to obtain an order from any of his subordinate authority with a view to defeat the object of the Act or any provision thereof and retain land in excess of the ceiling area”.

17. Having gone through the Amending Act, 2016 it would be evident that the Amending Act has not completely ousted the jurisdiction of the Collector to reopen the matter but only confined it to certain contingencies, as discussed hereinabove, especially under Section 30(4)(i) of the Amending



Act.

18. Trite it is that if an order has been obtained by suppression of facts or misrepresentation, it can be thrown at any stage or even in collateral proceeding. By mere passage of time, any fraudulent practice would not get sanctity. A fraud misrepresentation is also known as deceit. Transaction that is tainted with fraud cannot be saved by equitable doctrine. The Hon'ble Supreme Court has ruled that fraud vitiates every solemn act. Fraud is defined as a conduct that leads another party to act in response to the conduct of first party. Misrepresentation is also considered to be a form of fraud. The period of limitation would not come in the way to the person with whom misrepresentation or fraud has been played, once, it render a transaction void from the beginning.

19. In that view of the matter, this Court without making any comment on the merit of the case, disposed off the writ petition with a liberty to the petitioners to approach before the concerned Collector under Section 30(1) of the Act, 1961, who shall initially examine the matter as to whether the land in question as claimed by the petitioners has been declared surplus by playing fraud upon the authorities or any misrepresentation of facts.



20. In case, the Collector comes to the conclusion that the claim of the petitioners to the extent of fraud or misrepresentation gets substantiated, he shall take proper action under Section 30(4)(i) of the Amending Act, 2016.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2024
Transmission Date	

