

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5564 of 2018

1. Rajani Kant Singh, son of Late Surya Narayan Singh and Late Sanyukt Devi, Resident of village-Basgarha, P.O. and Via and P.S. Korha, District-Katihar.

2. Pradeep Narayan Singh, son of Late Surya Narayan Singh and Late Sanyukt Devi, Resident of village-Basgarha, P.O. and Via and P.S. Korha, District-Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary Department of Revenue and Land Reform, Patna.

2. Collector, Katihar

3. D.C.L.R. Katihar.

4. Circle Officer, Korha, Katihar

5. Reghubansh Kumar Jha, son of Late Badri Nath Jha, All resident of village Jhagru Chak, P.S. Korha, District-Katihar.

6. Yadubansh Kumar Jha, son of Late Badri Nath Jha, All resident of village Jhagru Chak, P.S. Korha, District-Katihar.

7. Kanheya Lal Jha, son of Late Badri Nath Jha, All resident of village Jhagru Chak, P.S. Korha, District-Katihar.

8. Gautam Dom, son of Late Dhanu Dom, Resident of village Basgarha, P.O., Via and P.S.-Korha, District-Katihar.

9. Amrendra Dom, son of Late Dhanu Dom, Resident of village Basgarha, P.O., Via and P.S.-Korha, District-Katihar.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Raghib Ahsan, Sr. Advocate

Mr. Bipin Kumar, Advocate

For the Respondent/s : Mr. Arun Kumar Bhagat, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-08-2024

Heard Mr. Raghib Ahsan, learned Senior Advocate ap-



pearing on behalf of the petitioner and Mr. Arun Kumar Bhagat, learned Advocate for the State.

2. The petitioners are aggrieved by the District Gazette Notification No. 367 dated 17.07.1995 issued in Land Ceiling Case no. 46 of 1973-74 whereby and whereunder the Collector, Katihar purported to acquire land admeasuring 25 Decimals appertaining to Khata No. 311, Plot no. 501 and 45 Decimals appertaining to Khata No. 321, Plot no. 203 situated at village Basgarha, P.S. Korha, District Katihar held by the petitioner under Section 15(1) of the Ceiling Act.

3. The aforesaid land in question was duly purchased by the mother of the petitioners vide sale deed no. 11745 dated 11.9.1962.

4. Learned Senior Advocate contended before this Court that during the lifetime, the mother of the petitioners remain in possession and after her death on 14.10.2004 the petitioners have inherited the said land and they are coming in peaceful possession. On 11.09.1962, when the registered sale deed was executed, there was no restriction on a land holder holding land in excess of the ceiling area under the Ceiling Act and, as such, the transfer was made for a valuable consideration.

5. Referring to Section 5(1), (iii) as well as Section



9(2) of the Bihar Land Ceiling Act, it is vigorously contended that the lands transferred by the land holder after 22nd day of October, 1959 in the manner as aforesaid have to be included within this ceiling limit allowed to be retained by the land holder.

6. Since the Gazette Notification was issued containing the name of the original vendor Sri Badrinath Jha, father of the opposite party no. 5 to 7, therefore neither the petitioners' mother nor the petitioners could know about the impugned notification earlier. For the first time the petitioners came to know in the year 2015 from the halka karmachari, when he informed that the petitioners land have been acquired under Section 15(1) of the Act by the impugned notification.

7. Reliance has also been placed on various judgments rendered by this Court in identical matters. Learned Senior Advocate firstly placed reliance on a judgment rendered by this Court in the case of **Lakshmi Bhagat & ors. vs. The State of Bihar & ors., (1998) 1 PLJR 348** wherein the Court has held that since the land has been purchased from the land holder prior to the issuance of the Gazette Notification, the purchasers are entitled to protection in terms of Section 9(2) of the Ceiling Act.



8. Further reliance has been placed on a judgment rendered in the case of ***Fullo Devi and ors vs. State of Bihar*** reported in ***1994 (1) BLJ 730*** wherein this Court while dealing with the identical issue has held that compliance of Section 5(1)(iii) of the Ceiling Act is mandatory one and thus, while allowing the writ petition set aside the Gazette Notification and remitted the matter to the Collector to re-open the proceeding and hold an enquiry, or cause such an enquiry to be made under Section 5(1)(iii) of the said Act in presence of the land holder.

9. On the similar point, further reliance has been made in the case of ***Bisheshwar Prasad Yadav vs. State of Bihar & ors., 1992 (2) BBCJ-V 311***, especially paragraph no 6 thereof. It would be apt and proper to quote the same :-

*“6. In my view, apart from the decision of this court as mentioned above, a bare reference of Section 9(2) of the Act it would appear that lands transferred either in accordance with or in contravention of the provisions of clause II of sub-section (1) of section 5, shall, to the extent not exceeding the ceiling area, be deemed to have been selected by him for retaining within the ceiling area. Reference in this regard can usefully be made to the decision of this court in the case of ***Md. Salim Uddin & ors. vs. The State of Bihar & ors.*** reported in ***1998(1)****



PLJR 38 and another case in the same volume at page 348 (Lakshmi Bhagat & ors. vs. The State of Bihar & ors. ”

10. Adverting to the aforesaid facts learned Senior Advocate thus submitted that ‘Right to Property’ being a Constitutional Right, no person shall be deprived of his property without any authority of law.

11. In circumstances narrated hereinabove, as also in view of the settled legal position, the petitioners filed an application giving rise to Case No. 03 of 2015 under Section 45 (B) of the Act for reopening the land ceiling proceeding no. 46/73-74 against the father of the respondent nos. 5 to 7. While the aforenoted case was pending, in the meanwhile, vide Bihar Amendment Act 18/2016, Section 45 (B) of the Act was repealed and in terms of Section 45 (D), the proceeding under Section 45 (B) stands abated.

12. Thus left with no alternative remedy the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

13. On the other hand learned Advocate for the State referring to the averments made in the counter affidavit categorically stated that the land in question was transferred through registered sale deed in favour of the mother of the petitioner



way back in the year 1962. The mother of the petitioner or her legal heirs had the right to file an application under Section 10(3) of the Ceiling Act. They had also the liberty to file an appeal under Section 30 of the Act before the District Collector, Katihar but they did not do so.

14. After acquisition of the land the matter could only be considered after opening of proceeding by the order passed under Section 45 (B). However, Section 45 (B) stands repealed and, thus any case or proceeding under Section 45 (B) also stood abated. In such circumstances, the prayer of the petitioner is fit to be rejected.

15. At this juncture, learned Senior Advocate for the petitioner submitted that since the aforesaid provision has been repealed and thus, this Court has ample power under Article 226 of the Constitution of India to relegate the matter to consider the claim of the petitioner in the ends of justice.

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 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 obtain 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 been 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 aforementioned 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.”

21. In view of the amended provisions and the mandate of the law, this Court doesn't find any substance in the submission of the learned Advocate for the State and, as such, it stands rejected.

22. On the other hand, this Court finds that there is no compliance of Section 5 (1)(iii) as well as Section 9 (2) of the Ceiling Act and the petitioners are able to satisfy this Court that they had never got any opportunity to file an application under Section 10 (3) as the Gazette Notification was issued in the name of the father of private respondents. Moreover, the petitioners had been pursuing their remedy before the State respondents by filing Case No. 3/2015 before coming to the Bihar Amendment Act 18/2016.

23. In view thereof, this Court relegate the matter to the Collector, Katihar, who shall call for the records of the case, reopen the proceeding, hold an enquiry or cause such an enquiry to be made under Section 5 (1)(iii) of the Act in presence of the legal heirs of landholders and pass an appropriate order taking into consideration the materials available on record, preferably



within a period of four months, from the date of receipt/production of a copy of this order.

24. The writ petition stands allowed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2024
Transmission Date	NA

