

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.408 of 2019

In

Civil Writ Jurisdiction Case No.565 of 2019

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1. Ainamul Haque @ Md. Ainamul Son of Jarjis Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 2. Md. Jarjis @ Jarjis Son of Late Mofiluddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 3. Md. Mabud Baksh @ Mabud Bakhsh Son of Late Abdul Hamid Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 4. Abdul Kadir Son of Late Abdul Hamid Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 5. Habibur Rahman Son of Late Abdul Hamid Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 6. Fazlur Rahman Son of Late Abdul Hamid Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 7. Raja Choudhury Son of Safiul Alam Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 8. Shaukat @ Shaukat Ali Son of Haidar Ali Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 9. Anwar Alam Son of Haji Tafiluddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 10. Md. Abdul Kalam @ Md. Kalam Son of Sahikh Rafiuddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 11. Md. Ebrahim Son of Sahikh Rafiuddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 12. Md. Hasain Son of Sahikh Rafiuddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 13. Md. Maqдум Son of Sahikh Rafiuddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 14. Abdul Matlaib Son of Shaikh Sultan Ali Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 15. Md. Kalam @ Md. Kamal Son of late Md. Danesh Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 16. Neel Kanth Shah Son of Vishwanath Shah Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 17. Safiqul Haque @ Safiqul Son of Emarat Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
 18. Jahir Son of Shaikhraful Mahmmd Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.



19. Md. Yunus Son of Shaikhraful Mahmmad Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
20. Namiruddin Son of Jiaruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
21. Noor Islam Son of Jiaruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
22. Md. Latifur Rahman Son of Jiaruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
23. Md. Alam Son of Jiaurddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
24. Nursad Alam Son of Jiaruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
25. Dukho Jaan W/o Abdul Kuddush Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
26. Prakash Chandra Das Son of Ganesh Chandra Das Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
27. Vikash Chandra Das Son of Ganesh Chandra Das Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
28. Prabhash Chandra Das Son of Ganesh Chandra Das Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
29. Sultan Son of Imarat Hussain Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
30. Md. Isberu Son of Imaruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
31. Mohan Nunia Son of Raghu Prasad Nunia Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
32. Ganga Nunia Son of Raghu Prasad Nunia. Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
33. Jamshed Ali @ Jamshed Son of Sujauddin Resident of Village -Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
34. Md. Abdus Salam Son of Sujauddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
35. Md. Belal Son of Sujauddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
36. Mahboob Alam Son of Sujauddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
37. Mannan Son of Sujauddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
38. Tazmul Hassin Son of Ainuddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
39. Taimur Rahman Son of Ainuddin Resident of village Abadpur, Barsoi, P.S.-



Abadpur, District- Katihar.

- 40. Shabiddin Son of Ainuddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 41. Shakeel Ahmad Son of Md. Tufail Ahmed Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 42. Md. Mansur Alam @ Manwar Son of Majahidul Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 43. Md. Aajam @ Aazam Son of Majahidul Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 44. Minajul Son of Majahidul Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 45. Imtiyaz Son of Majahidul Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 46. Mujahidul Son of Late Badiruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.
- 47. Majifur Son of Late Badiruddin Resident of village Abadpur, Barsoi, P.S.- Abadpur, District- Katihar.

... .. Appellant/s

Versus

- 1. Union of India Through the Secretary, Ministry of Home Affaire, Govt. of India, New Delhi.
- 2. The Secretary Ministry of Home Affaire, Govt. of India, New Delhi.
- 3. The Collector Katihar
- 4. The Deputy Custodian of Enemy Property C/o the Collector, Sant Colony, Mirchaibari, District- Katihar.
- 5. The Anchal Adhikari Barsoi, District- Katihar.
- 6. Md. Kausar @ Kausar Alam Son of Hajunur Mahmad Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ray Saurabh Nath, Advocate
		Mrs.Manjari Nath, Advocate
For the UOI	:	Ms.Kanak Verma, CGC
For the Respondent/s	:	Mr.Md. Khurshid Alam (AAG-12)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-02-2024

The petitioners challenged notice under the Enemy Property Act, 1968 (for brevity “Act of 1968”). The petitioners contended that the notice is beyond limitation and hence requires interference. The replies filed by them have not been considered was another contention.

2. The petitioners had purchased land from one Abdul Jabbar, who in course of time migrated to Bangladesh. The notice is said to have been issued in October 2018, when the properties were purchased long back. The learned Single Judge directed that replies are filed within a period of one week, if not already filed. The authorities were directed to consider the same and proceed accordingly. Liberty was also reserved to the petitioners to approach the appropriate forum, if any adverse action or decision is taken. The learned counsel for the petitioner submits that the properties purchased in 1964 cannot be vested under the Act of 1968.

3. Learned counsel also placed a decision of the Calcutta High Court before us, *Md. Nazrul Islam vs. Union of India & Ors. 1977 (2) CLJ 96*. The specific reference made is to the following declaration:

It appears from the materials placed



before me that before 1968 there was no finding that the impugned property belonged to a Pakistani National and unless there was a specific order in terms of the said Notification the property of a Pakistani National could not be continuing to vest in the Custodian of Enemy Property in terms of Section 5 of the Act.

4. With due respect, we are unable to accept the principle in the aforesaid extract. The Act itself was a successor to the Defence of India Act, 1962. Under the Defence of India Act, the Defence of India Rules, 1962 was promulgated and in exercise of the powers conferred by sub-rule (1) of Rule 133-, the Central Government issued a notification dated 10.09.1965 bearing no. 121. The notification is extracted hereunder.

No.12/2/65-E. Pty.- In exercise of the powers conferred by sub-rule (1) of Rule 133-V of the Defence of Indian Rules, 1962, the Central Government hereby orders that all immoveable property in India, belonging to or held by or managed on behalf of all Pakistan nationals, shall vest in the Custodian of Enemy Property for India with immediate effect.

2. Nothing in this notification shall apply to any such property, belonging to or held by or managed on behalf of such of the Pakistan nationals as are employed in the different Missions of the Government of Pakistan in India.

5. Hence, any property belonging to a person who had migrated to Pakistan would vest in the custodian of Enemy Property for India, as on the date of this notification.



6. We also extract hereunder Section 5 of the Act of 1968:

5. Property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 to continue to vest in Custodian.^a[(1)] *Notwithstanding the expiration of the Defence of India Act, 1962 and the Defence of India Rules, 1962, all enemy property vested before such expiration in the Custodian of Enemy Property for India appointed under the said Rules and continuing to vest in him immediately before the commencement of this Act, shall, as from such commencement, vest in the Custodian.*

^a[(2)] *Notwithstanding the expiration of the Defence of India Act, 1971 and the Defence of India Rules, 1971, all enemy property vested before such expiration of the Custodian of Enemy Property for India appointed under the said Rules and continuing to vest in him immediately before the commencement of the Enemy Property (Amendment) Act, 1977 shall, as from such commencement, vest in the custodian.]*

7. Hence, any vesting that occurred by virtue of the notification, continues after the Act of 1968 came into force. We do not find any reason to hold that unless there is a specific order passed under the notification, there would be no vesting as per the notification. The notification vests such properties with the Custodian Of Enemy Property for India, automatically and statutorily, and there is no escape from it.

8. However, the petitioners could urge before the



appropriate authority as to whether the vesting had occurred or the sale had occasioned before the vesting. We say nothing on the merits of the matter, which will have to be considered by the authority. We dismiss the writ petition leaving the petitioners to agitate their cause before the appropriate authority.

9. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.03.2024
Transmission Date	

