

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2690 of 2020

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Dayanand Singh, Son of Fate Narayan Singh, Resident of Village- Harpur
Hardas, P.O.- Khokasha Bugurg, P.S.- Rajapakar, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate-Cum-Appellate Authority, Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Advocate

For the Respondent/s : Mr. Md.Khurshid Alam, AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 15-07-2024

1. The petitioner has filed the instant application for
the following reliefs:-

“1. (a) For declaring the newly added



Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred as “Act of 1961”) as illegal, arbitrary, and unconstitutional, whereby the statutory remedy of appeal/revision- as was earlier available to aggrieved person has been repealed, without providing for any forum for adjudication of disputes.

(b) For declaring the newly added Section 16 (4) (i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 as illegal, arbitrary, and unconstitutional, whereby all cases or proceedings pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other court, have been deemed to be abated.

(c) For holding and declaring that the Clause (2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019, whereby and whereunder Section 16(3) of the Act of 1961 has been repealed and a new Section 16(4) has been added whereby and whereunder all cases or proceedings pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other court,



have been deemed to be abated is illegal, arbitrary, and unconstitutional.

(d) For holding that the orders dated 02.04.2019 passed by District Magistrate, Vaishali in Pre-Emption Appeal Case No. 163 of 2016-17 and 180 of 2016-17 on the basis of Clause (2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019, whereby and whereunder Section 16(3) of the Act of 1961 has been repealed, is illegal in as much as the aforesaid amendment in Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in itself is illegal, arbitrary, and unconstitutional.

(e) For any other relief or reliefs for which the petitioners are found entitled in the facts and circumstances of the case.”

2. Before proceeding to deal with the reliefs sought for by the petitioner in the instant application, it may be mentioned here that the constitutional validity of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2016 (hereinafter referred to as ‘the Amendment Act of 2016’) as also that of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019 (hereinafter referred to as ‘the Amendment Act of 2019’) both came to be considered by this



Court in **Sudhakar Jha and Ors. vs. The State of Bihar and Ors.; 2023 (6) BLJ 397.**

3. By the Amendment Act of 2016, amendments were affected in sections 30, 32 and 45 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as ‘the Act’), which are not essential to be dealt with for the purpose of the instant application. By the Amendment Act of 2019, section 16(3) of the Act which gave right of preemption was repealed and section 16(4) was added which provided that all cases of proceedings pending before any of the authorities/tribunals/Courts shall be deemed to have abated and the purchase money together with the sum equal to 10% shall be refunded to the depositor without any interest. This Court by the its judgment dated 13.10.2023 passed in the case of **Sudhakar Jha** (*supra*) dismissed the application so far as challenge to the constitutional validity of the Amendment Act of 2016 as also the Amendment Act of 2019 was concerned. It was further held that cases arising out of an application under section 16(3) of the Act stand abated. The operative portion of the judgment in the case of **Sudhakar Jha** (*supra*) is extracted herein below for ready reference :-

“52. The applications stand disposed



of in the following terms :-

(i) The applications so far as the challenge to the constitutional validity of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2016 as also that of the Bihar Land Reforms (Fixation of Surplus Area and Acquisition of Surplus Land) (Amendment) Act, 2019 are concerned, stand dismissed.

(ii) The following cases either challenge the Amendment Act, 2019 and/or arise out of an application under section 16(3) of the Act. The cases arising out of an application under section 16(3) of the Act stand abated. They are all the cases in the instant batch of applications except CWJC no.1840 of 2019, CWJC no.2728 of 2019 and CWJC no. 10416 of 2020.

(iii) It may be mentioned here that by Amendment Act, 2016, section 45B of the Act was repealed and section 45D added, which provided that after repeal of section 45B of the Act, proceedings pending before the State Government or the Bihar Land Tribunal as also pending before the Collector shall stand abated. Both section 45D and 16(4) provide for the consequence upon repeal of section 45B and section 16(3) of the Act. The language of section 45D is different from that of section 16(4). While section 16(4) provides that all cases of proceedings pending before the Tribunal or the Authorities mentioned therein 'or in any other Court' shall abate, the words 'or in any other



Court' does not find mention in section 45D. Thus, in this view of the matter, the Court is of the opinion that those matters arising out of an application under section 45B of the Act having been decided by the Authorities or the Tribunal and applications preferred against the said orders being pending in this Court, though the Constitutional validity of the Amendment Act, 2016 has been upheld, these cases will have to be listed before the appropriate bench having roster, for it to be decided on it's own merits. The cases falling under this category are CWJC no.1840 of 2019, CWJC no.2728 of 2019 and CWJC no. 10416 of 2020."

4. Coming to the prayer made by the petitioner in the instant application, though the petitioner has prayed for declaring the newly added section 16(3) of the Act as illegal, as it appears from complete reading of paragraph no.1(a), the petitioner is aggrieved by the repeal of section 16(3) without providing any forum for adjudication of disputes.

5. This aspect of the case was dealt with in paragraph no.47 in the case of **Sudhakar Jha** (*supra*) which is extracted herein below for ready reference :-

"47. So far as the other contentions raised by learned counsel for the petitioners, like the difficulties which would be faced by the persons, being left remedy-less as a result of the amendments, the hardships which may be caused



on enforcement etc. are concerned, in the opinion of the Court, the same cannot be grounds for challenging the Constitutional validity of an Act. The same can be challenged only on the grounds mentioned in the case of R.M.D. Chamarbaugwala (supra) or on the grounds as mentioned in paragraph no.11 in the case of Namit Sharma (supra) which broadly speaking is contravention of any of the fundamental rights or a mandatory provision of the Constitution, the State Legislature not having the legislative competence or seeking to operate beyond the boundaries of the State etc.. In the opinion of the Court, the petitioners have not been able to make out any case on any of the grounds as mentioned in the aforesaid cases to challenge the constitutional validity of the two amendment Acts.”

6. In addition to the above, it may be mentioned that in no case would the petitioner be left remedy-less as it will always be open for the affected party to move the High Court under its writ jurisdiction.

7. The other two prayers of the petitioner is with respect to Clause (2) of the Amendment Act of 2019 whereby section 16(3) providing right of preemption was repealed and a new section 16(4) added. The newly added section 16(4)(i) provided that all cases or proceedings pending before the State



Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court shall be deemed to be abated and further section 16(4)(ii) provided that pursuant to repeal of section 16(3) of the Act any purchase money together with the sum equal to 10% thereof shall be refunded without any interest to the depositor.

8. The issue of the validity of the Amendment Act of 2019 was dealt with in detail in the case of **Sudhakar Jha** (*supra*) including the grounds on which an enacted law may be declared unconstitutional. All the points being raised by the petitioner herein having already been dealt with, the Court upheld the constitutional validity of the Amendment Act of 2016 as also that of the Amendment Act of 2019.

9. It may be mentioned here that so far as abatement of all pending proceedings as provided in the newly added section 16(4)(i) of the Act is concerned, the Hon'ble Supreme Court in the case of **Punyadeo Sharma and Ors. vs. Kamla Devi and Ors. [2022 (1) BLJ 434 (SC)]**, while dealing with the same held that the words 'in any other Court' is wide enough to include the constitutional Courts ie the High Court and the Supreme Court. Thus, the prayer of the petitioner to hold the



order dated 2.4.2019 passed in the Preemption Appeal Case no.163 of 2016-17 and 180 of 2016-17 as illegal is also not sustainable and fit to be rejected.

10. In view of the facts and circumstances of the case, the Court finds no merit in the instant application and the same is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	
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