

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1745 of 2019

1. Hemant Sharma and Ors son of Late Bishwanath Singh Sharma Resident of Om Nilay, Harrkh Kothi, P.S. Begusarai, District- Begusarai, presently residing at House No. C- 127, Shivalik Malviya Nagar, South Delhi, Hauz Khas, Delhi.
2. Rashmi Sinha daughter of Late Bishwanath Singh Sharma Resident of Om Nilay, Harrkh Kothi, P.S. Begusarai, District- Begusarai.
- 3.1. Ajay Kumar S/o Late Harikishoree Thakur, Husband of Late Nilima Thakur, R/o Mohalla Harrah Kothi P.s. Town Thana at present residing at C-6/57, 2nd floor, Safdarganj Development area South West Delhi - 110016.
- 3.2. Mrs. Bhavna Thakur, D/o Late Nilima Thakur, W/o Mr. Lalit R/o Mohalla Harrah Kothi P.s. Town Thana at present residing at C-6/57, 2nd floor, Safdarganj Development area South West Delhi - 110016.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Secretary, Revenue and Land Reforms Dpartment, Government of Bihar, Patna.
2. The Member Board of Revenue, Bihar, Patna.
3. The Collector, Begusarai.
4. The Additional Collector, Begusarai.
5. The Sub- Divisional Officer, Teghra, District- Begusarai.
6. The Land Reforms Deputy Collector, Teghra, District- Begusarai.
7. The Circle Officer, Teghra, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narain Shahi, Sr. Adv. Mr. Shivam, Adv.
For the Respondent/s	:	Mr. Manoj Kumar Sinha (AC to SC19)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 10-07-2025

Heard Mr. Pushkar Narain Shahi, Learned Senior Counsel
with Mr. Shivam, Advocate for the petitioners and Learned Counsel



for the State.

2. Learned Senior Counsel for the petitioners submits that the present writ petition has been filed to ignore the ex-parte enquiry report dated 26.12.2014 contained in letter dated 05.01.2015 (Annexure-P/7) made by the Additional Collector in absence of the land holder/petitioners and conducted without giving notice to the land holder. Further prayer has been made to quash the order dated 29.11.2016 passed by the Collector (respondent No.3) based on an enquiry report dated 26.12.2014 (Annexure-P/10) and further to quashing the Begusarai District Gazette Notification dated 05.12.2016 (Annexure-P/11) made under Section 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act of 1961').

3. Senior Counsel for the petitioners further submits that the petitioners are admittedly the heirs of landlord against whom the Land Ceiling Case No.6 of 1973-74 has been initiated. He further submits that in the earlier round of litigation, the Member Board of Revenue has passed order dated 25.09.1996 in Case No.65 of 1995 and specifically directed that a more detailed enquiry is required to establish that the ex-



landlord entered into false transaction to defeat the purpose of Ceiling Act and further ordered that it is undisputed that the petitioners (petitioners of Case No.65 of 1995) have purchased these plots of land from Jamabandi raiyat and they are in peaceful possession. Therefore, it has been hold that the land held by the present petitioners should not be declared surplus under the Ceiling Act. The order of learned Commissioner, Munger Division therefore, set aside and specific direction has been made to the Collector to scrutinize the entire matter and get a spot enquiry done by a Senior Officer in presence of the parties. It has been further observed in the said order that after such scrutiny, it has been held that the ex-landlord tried to defeat the provision of Ceiling Act by making forge transactions then, the quantum of land involved in this transaction should be deducted from the unit allotted to the landlord in accordance with Section 9(2) of the Act of 1961.

4. Senior Counsel further submits that the said order has been passed in the year 1996, thereafter the Collector was sitting tight over these observations made by Member Board of Revenue and has conducted an ex-parte enquiry through Additional Collector and submitted a report in the year 2014.



5. Senior Counsel further submits that the said enquiry conducted by Additional Collector has been made in gross violation of Section 5(1)(iii) of the Act of 1961. He further submits that the concerned party as mentioned in Section 5(1)(iii) of the Act of 1961 means landlords also.

6. Senior Counsel further submits that in the present writ petition, the specific pleading has been made in this regard in paragraph 21 of the writ petition in which it has been submitted that despite the direction given in the order of Member Board of Revenue dated 25.09.1996, the Collector may make spot enquiry into the matter in presence of the party, but no notice was given to the land holders (petitioners), the main concerning party and in absence of the land holders (petitioners), an enquiry said to have been made by a joint team headed by the Additional Collector and a report dated 26.12.2014 was submitted to the Collector.

7. Senior Counsel further submits that on the basis of ex-parte enquiry report, the learned Collector has passed order on 22.08.2015 and held that the land holder has settled/ transferred the concerned land in the year 1942 through unregistered *Hukumnama* in order to get rid of the provisions of the Act of 1961.



8. Senior Counsel further submits that intimation prior to passing final order, has been made by the Collector to the landlords/petitioners, but it is only after submissions of the enquiry report and that the stage of passing final order. He further submits that the contention of law made in Section 5(1) (iii) of the Act of 1961, is very clear. He further submits that when the notion of law has not been followed at the time of conduction of the enquiry then, the enquiry report itself is not sustainable in the eye of law, and therefore, the order passed on the basis of enquiry report is also not sustainable. He further submits that the notification under section 5(1) of the Act of 1961 has been made in the light of said order passed by the Collector based on ex-parte enquiry report and therefore, he submits that all the three orders *i.e.*, ex-parte enquiry report dated 26.12.2014 (Annexure-P/7), the order dated 29.11.2016 passed by the Collector (Annexure-P/10) and the Begusarai District Gazette Notification dated 05.12.2016 (Annexure-P/11) be set aside.

9. Learned Counsel for the State vehemently opposes the prayer of the petitioners and submits that the enquiry report has been made completely in accordance with law. He further



submits that the order passed by the Member Board of Revenue is very clear in which it has been stated that the enquiry report has been conducted informing the party and according to him, the party means the party who filed the petition of revision before the Member Board of Revenue.

10. Counsel further submits that prior to hearing on enquiry report, notices were sent to the petitioners of the Member Board of Revenue. He further submits that the contention of petitioners is that compliance of section 5(1)(iii) of the Act of 1961 has been made, is not correct. He further submits that before passing the final order, the Collector has issued notice on the advise of the General Pleader of the State and notices were served upon petitioners being heirs and legal representatives of the landlord, who died at the time of passing final order. He further submits that the Collector has passed order in presence of the present writ petitioners, and therefore, according to him, the order passed by the Collector is completely in accordance with law in which land of petitioners has been declared surplus and in this regard, the proper notification under section 15(1) of the Act of 1961, has been made. It is due to this reason, according to him, all the three



Annexures- P/7, P/10 and P/11, which are being challenged by the petitioners, be sustainable in the eye of law and the writ petition may be dismissed.

11. After hearing the parties and upon perusal of the documents, it transpires to this Court that a very limited point is involved in the present case *i.e.*, whether the alleged ex-parte enquiry which was directed to be conducted by the senior officials of the State in the order passed by the Member Board of Revenue in revision case, has been complied in its true spirit or not?

12. With a view to decide the above said question, it is necessary to re-look the provisions of Section 5 of the Act of 1961 which states as follows:-

5. No person to hold land in excess of the ceiling area. (1) (i) It shall not be lawful for any family to hold, except otherwise provided under this Act, land in excess of the ceiling area.

Explanation. All lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family.

(ii) No land holder holding land in excess of the ceiling area shall from the commencement of the Bihar Land Reforms



(Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 and till the publication of notification under Section 15, transfer any land held by him except with the previous permission in writing of the Collector, who may refuse to give such permission if he is satisfied for the reasons to be recorded in writing that the transfer is proposed to be made with a mala fide intention of defeating the object of this Act :

Provided that the transfer of any land made, with the previous permission of the Collector, shall be deemed to have been made from within the ceiling area admissible to the land-holder:

Provided also that the transfer of any land beyond the ceiling area admissible to the land holder shall be deemed to have been made with the object of defeating the provisions of the Act.

(iii) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority the Collector shall have power to, make enquiries in respect of any transfer of land by a land-holder whether by a registered instrument or otherwise made after the 22nd day of October, 1959, and if he is satisfied that such transfer was made with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi land in



excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this Section.

13. Upon bare reading of Section 5 of the Act of 1961, it transpires that the said section has been inserted in the Ceiling law with special purpose to ascertain that no person to hold land in excess of the ceiling area, the said provision has been enacted in law by Act No.55 of 1982 by virtue of amendment made.

14. This Court upon bare reading of section 5 of the Act of 1961, is of the view that it is the landlord's land against whom ceiling has to be drawn or whose land comes within the ceiling area, is under scrutiny, and therefore, Section 5(1)(i) of the Act of 1961 talks about the person who owned land individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family. It is also clear that Section 5(1)(ii) of the Act of 1961 also talks about the land holders and upon construction of the meaning of the party used in the revisional order of the Member Board of Revenue construed according to this Court means landlord and in his absence, his heirs and legal representatives and also the holders of land. As opportunity of



enquiry as well as reasonable notice are indicated in section 5(1) (iii) of the Act of 1961. Admittedly both parties agreed that in the said enquiry report, petitioners were not heard as mentioned in paragraphs 14 and 15 of the counter-affidavit filed by the State. It has been accepted that the spot enquiry was not made in presence of the present petitioners or their ancestors, but only before the party to Revision before the Member Board of Revenue in Case No.65 of 1995. But denial of paragraph 21 of the writ petition, has not been made and on the basis of ex-parte enquiry, the Collector relied upon and at the time of final order, issued notice to the petitioners and then, passed order, which has been followed by publication of Gazette Notification (Annexure-11 of the writ petition).

15. This Court is of the firm view that petitioners were necessary persons in whose presence, enquiry has to be made in the light of Section 5 of the Act of 1961, which is lacking in the present case. Therefore, all the three orders *i.e.*, ex-parte enquiry report dated 26.12.2014 (Annexure-P/7), the order dated 29.11.2016 passed by the Collector (Annexure-P/10) and the Begusarai District Gazette Notification dated 05.12.2016 (Annexure-P/11) are hereby set aside. The matter is remanded back to the Collector once again with



direction that the enquiry under section 5 of the Act of 1961 has to be conducted by the senior officer of the State in presence of all concerned including petitioners in the light of the legal provision of Section 5 of the Act of 1961. The said enquiry shall be conducted within 90 days from the date of production of the order and then, final order be passed within 3 months thereafter.

16. Upon the final decision made by the Collector, the petitioners are free to proceed further.

17. With the aforesaid directions and observations, the present writ application stands allowed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

