

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1749 of 2022

1. Dilip Kumar Singh Son of Late Hem Chand Singh Resident of Village - Sarsauni, Ahilgaon, P.S. - Kasba (Jalalgarh) Distt. - Purnea (Bihar).
2. Manoj Kumar Singh, Son of Munnilal Singh, Resident of Village - Sarsauni, Ahilgaon, P.S. - Kasba (Jalalgarh) Distt. - Purnea (Bihar).
3. Radha Devi, Wife of Dharendra Prasad Singh, Resident of Village - Sarsauni, Ahilgaon, P.S. - Kasba (Jalalgarh) Distt. - Purnea (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Collector of the District, Purnea.
2. The Collector of the District, Purnea.
3. The Additional Collector, Land Ceiling, Purnea.
4. The Sub-divisional Officer (SDO) Sadar, Purnea.
5. Deputy Collector, Land Reforms, Sadar, Purnea.
6. The Anchala Adhikari, Kasba, Purnea.
7. Smt. Jaya Devi W/o Late Krityanand Biswas (D/o Late Munni Lal Biswas) resident of Village - Simariya, P.S. - Kasba Distt. - Purnea (Bihar) PIN - 854327.
8. Shashi Kumar Singh, S/o Late Krityanand Biswas, Resident of Village - Simaria, P.S.- Garhbanaili, Distt. - Purnea (Bihar).
9. Anuradha Devi, W/o Sri Deepak Kumar Singh (D/O Late Krityanand Biswas) Resident of Village - Simaria, P.S.- Garhbanaili, Distt. - Purnea (Bihar).
10. Anita Devi, W/o Sri Anirudh Prasad Biswas (D/o Late Krityanand Biswas) Resident of Village - Simaria, P.S.- Garhbanaili, Distt. - Purnea (Bihar).
11. Archana Devi, W/o Sri Ajit Kumar (D/O Late Krityanand Biswas) resident of Village - Chak, P.S. Jalalgarh, Distt. - Purnea (Bihar).
12. Veena Devi Wife of Sri Bivendra Kumar Singh (Daughter of Late Jiya Lal Singh and Late Usha Rani Devi) Resident of Village - Chakhat, Garhbanaili, P.S.- Jalalgarh, Distt. - Purnea (Bihar).
13. Chanchala Devi Wife of Sri Mayanand Prasad Biswas @ Manoj Kumar (Daughter of Late Jiya Lal Singh and Late Usha Rani Devi) Resident of Village - Park Tole, Baraitha P.S. Garhbanaili, Distt. - Purnea (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. ShashiNath Jha, Advocate Mr. Bijendra Kumar Singh, Advocate
For the State	:	Mr. Sajid Salim Khan, SC 25



CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 19-08-2025

The petitioners have filed the instant writ petition under Article 226 of the Constitution of India for the following reliefs:

“(1) That in this writ application, the petitioners pray for issuance of appropriate writ/order/direction in the nature of Mandamus against the respondents for:-

(i) Excluding the lands of the petitioners from the Gazette Notification dated 2784 dated 19.08.1990 published U/S 15(1) of the Land Ceiling Act, 1961 (herein after referred to as Act) with respect to Land Ceiling Case No. 109 of 1976-77/585 of 1973-74 (State of Bihar Vs. Smt. Jaya Devi) as contained in Annexure-3 hereto.

(ii) Modifying the Gazette Publication U/S 15(1) of the Land Ceiling Act, 1961 dated 19.08.1990 (Annx-3) so far as it relates to the lands of the present petitioners and publish a new Notification U/S 15(1) of the Act by excluding the lands of the petitioners from the personal lands of the land-holder -Resp. no. 7, which have wrongly been shown as surplus

(iii) Holding and declaring that the lands in question are the exclusive raiyati lands of the present petitioners and there was no occasion/justification for the respondents -authorities to club the lands of the present



petitioners along with the lands of the land holder-Resp. no.7

(iv) Restraining the respondents-authorities from dispossessing the petitioners from the lands in question as detailed in para no. 4 hereto which have wrongly and illegally been declared as surplus along with other lands of the land holder-Resp. No. 7.

(v) Granting any other relief/reliefs for which the petitioner may be found entitled to.”

2. It is pertinent to mention at the outset that the petitioners are claiming title over following lands in question as delineated below by virtue of purchase from one Krityanand Biswas:-

I. <u>Petitioner No. 1</u>				
	Mauza	Khata No.	Plot No.	Area
a.	Dehiya P.S.	33/32/31	1034/882/832	0.56 Dec.
b.	-Kasba, Distt. -Purnea		1039/1088/83 7	0.81 Dec.
			Total	<u>1.37 Dec.</u>

II. <u>Petitioner No.- 2</u>				
	Mauza	Khata No.	Plot No.	Area
a.	Dehiya P.S. -Kasba, Distt. -Purnea	42	347/39	1 Acre 10 Dec.
b.		139	621	0.03 Dec.
			Total	<u>1 Acre 13 Dec.</u>



III. <u>Petitioner No.-3</u>				
	Mauza	Khata No.	Plot No.	Area
a.	Dehiya P.S. -Kasba, Distt. -Purnea	127	1740	0.47 Dec.
				0.81 Dec.
			Total	<u>1.37 Dec.</u>

3. It is the case of the petitioners that they purchased the above-mentioned lands in question on different dates in the year 1971, 1981 and 1982 from one Krityanand Biswas, since deceased (husband of private respondent no. 7).

4. Further, case of the petitioners is that the Collector, Purnea issued a notification dated 19th August, 1990 under Section 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter described as ‘1961 Act’). Section 15 of the said Act runs thus:

“15. Acquisition of Surplus land.-

[(1) The State Government or the Collector of the district specially so empowered in this behalf shall after the statement under sub-section (1) of Section 11 has been finally published and subject to appeal or revision, if any, acquire, the surplus land by publishing in the Official Gazette of the district, a notification to the effect that such land is



required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned :

Provided that without awaiting the result of appeal or revision the State Government or the Collector of the district specially so empowered in this behalf may proceed to acquire such of the surplus land of the land-holder in respect of which there is no claim or dispute or which is admitted by the land-holder to be surplus:

Provided further that a copy of the notification shall also be sent to the landholder concerned by registered post with acknowledgment due.

[(2) On the publication of the notification under sub-section (1), the land specified in the notification shall, subject to the provisions of this Act, be deemed to have been acquired for the purposes of this Act and vested in the State free from all encumbrances



with effect from the date of the notification and all right, title and interest of all persons claiming interest therein shall, with effect from that date, be deemed to have been extinguished.] [Substituted by Act I of 1973.]

(3) [Subject to [* * * *] [Existing sub-sections (3) to (5) omitted and sub-sections (6) & (7) renumbered as (3) & (4) thereof by Act 7 of 1978.] any order made on appeal or revision the Collector may at any time after the publication of the notification under sub-section (1) take possession of any land specified in the said notification and may for that purposes use such force as may be necessary.*

(4) If the mortgagor becomes entitled to recover possession of his mortgaged land under Section 12 of the Bihar Money-Lenders Act, 1974 (Bihar Act XXII of 1975) and the area of such mortgaged land, together with the land, if any, held by him anywhere in the State, exceeds the ceiling area, then the



provisions of Section 18 shall apply thereto as if such mortgaged lands were in acquisition under that section and thereafter the land which the mortgagor is not entitled to retain shall be deemed to have been acquired for the purposes of this Act and vested in the State in accordance with sub-section (2).]

[15A. Voluntary declaration of surplus land. *[Inserted by Act 12 of 1976.]*

(1) Notwithstanding any thing contained in Section 15 or any other provisions of this Act, where a Notification under Section 6 has been published, the State Government may, pending final publication of the Statement under sub-section (1) of Section 11, issue notice to any land-holder or to all land holders generally, calling upon him or them to surrender to the State such area which according to him or them is owned or held in excess of the ceiling area prescribed under Section 4.

(2) The land-holder to whom such notice is issued under sub-section (1) may



thereupon make an application to the Collector in the prescribed form offering to make such surrender.

(3) If the land-holder is a minor or of unsound mind, the offer of surrender shall be made by his guardian.

(4) Where the land-holder or his guardian, as the case may be, makes an application to the Collector offering to surrender his surplus land the State Government shall on the recommendation of the Collector acquire the surplus land specified in the application or any part thereof by publishing a notice in the manner provided in sub-section (1) of Section 15 and thereupon such land shall be deemed to have vested in the State Government under sub-section (2) of Section 15 of the Act.

(5) The order passed under sub-section (4) shall be subject to provisions contained in Section 11 relating to the final publication of the draft statement and the



Collector shall, at the time of making final publication of draft statement under Section 11, make such alteration or modification in the order passed under subsection (4) as may be necessary.]”

5. It is alleged by the petitioners that the notification dated 19th August, 1990 was published in the name of Shrimati Jaya Devi, daughter of one Munilal Biswas, since deceased for acquisition of surplus land. In the said notification, the Collector wrongly introduced the purchased land of the petitioners though the said land was not owned by Jaya Devi or her predecessor in interest, namely, Munnilal Biswas. One Binesh Kumar Biswas & Others challenged the said notification before this Court in CWJC No. 5903 of 1990. The said writ petition was disposed of by the Division Bench of this Court *vide* order dated 25th April 1991. In the said writ petition also, the petitioners challenged the Gazette Notification dated 19th August 1990 on the similar ground that they purchased the lands in question specifically described in the foregoing paragraph from one Jiya Lal Biswas and Krityanand Biswas but the said land was included in the property of Shrimati Jaya Devi and it was declared surplus. The writ petition was disposed of with the following direction:-



*“If the petitioners are so advised they may file an application under Section 37 of the Ceiling Act before the Collector, Purnea within three weeks from today. If what the petitioners”*10. The declaration under Section 15(1) of the Act in Ceiling Case No. 1854/1274/1973-1974 in the then district of Purnea, later on Kishanganj, by which the lands in question totalling an area of 6.59 acres, after being held to be surplus land of the- ex-landholder Pradip Chandra Lal, has been acquired by the State of Bihar, stands quashed as far as the lands of the petitioners are concerned, for a total of 6.59 acres.

11. The notification under Section 15(1) of the Act automatically stands modified/corrected to the extent indicated above. The authorities are further directed to notify such exclusion by issuance of a fresh notification which may be done within one month from the date of production of a copy of this order before the Collector, Kishanganj



(respondent no. 2).” say is correct then it is an obvious mistake which can be rectified by amending the notification, annexure-9. The petitioners claim that they are still in possession of the lands in question. If that is so, they shall not be disturbed till the disposal of the application.”

6. It is pertinent to note that petitioner no. 1 and others in CWJC No. 5903 of 1990 are the brothers and co-purchasers of the land in question with the present petitioners, therefore, the status of the present petitioners is identical to the petitioners in the said writ petition, where the validity of Gazette Notification under Section 15(1) of the ‘1961 Act’ was directly and substantially an issue between the same parties or between the parties under whom or any of them claim, litigating under the same title. When the previous writ petition was disposed of by a specific direction, subsequent writ petition for almost identical relief challenging gazette notification dated 19th August 1990 under the garb of the order passed in Misc. Ceiling Case No. 104 of 1991-92 on 05th March 2019 is hit by the principle of *res judicata*.

7. There is another twist in the matter, after the order dated 25th April 1991 having being passed in CWJC No. 5903 of



1990 giving liberty to the petitioners to file an application under Section 37 of the Ceiling Act before the Collector for appropriate relief, Section 37 was struck down by Act 8 of 1997 dated 27th March 1997. Therefore, the petitioners were not entitled to get any relief under Section 37 of the Ceiling Act of 1961.

8. The learned Advocate for the petitioners has laid a great stress on a Co-ordinate Bench's decision of this Court in **Md. Shafique Alam and Others Vs. The State of Bihar and Others** reported in **2020(2) PLJR 764**. In the said reported decision, the petitioners are the descendants of the purchasers of land through registered sale deed from the ancestors of respondents no. 5 to 10 in the year 1965. Subsequently, in 1973-74 the proceeding was started in under the '1961 Act' with regard to vendors of the land in question. In the instant case, the petitioners challenged the said notification (annexure 3) on the ground that the land purchased by them was wrongly included in the surplus land of one Jaya Devi. In the aforementioned reported decision, the Co-ordinate Bench of this Court held in paragraph no. 8 as hereunder:-

“8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds



that the action of the authorities cannot be sustained. The petitioners grievance with regard to non consideration of the case by the authorities stands established. Further, the Court would also indicate here that till date, neither the sale deed in favour of the ancestors of the petitioners has been annulled nor the Jamabandi created in their favour followed by issuance of rent receipt in their favour has been interfered with by any of the authorities and most importantly, there is no adverse report to indicate that such transaction was with the object of defeating or in contravention of any of the provisions of the Act. The reports of the authorities further indicate that till date, the lands in question are in the possession of the petitioners.”

9. The Court accordingly held in paragraph no. 10 and 11 as follows:

“10. The declaration under Section 15(1) of the Act in Ceiling Case No. 1854/1274/1973-1974 in the then district of



Purnea, later on Kishanganj, by which the lands in question totalling an area of 6.59 acres, after being held to be surplus land of the- ex-landholder Pradip Chandra Lal, has been acquired by the State of Bihar, stands quashed as far as the lands of the petitioners are concerned, for a total of 6.59 acres.

11. The notification under Section 15(1) of the Act automatically stands modified/corrected to the extent indicated above. The authorities are further directed to notify such exclusion by issuance of a fresh notification which may be done within one month from the date of production of a copy of this order before the Collector, Kishanganj (respondent no. 2).”

10. In the instant case, the petitioners are claiming their right title and ownership over the property in question on the basis of their deeds executed by Kritayanand Biswas. The petitioners could not produce even a chit of paper to show ownership of Kritayanand Biswas which was transferred in favour of the petitioners. Unless and until these documents, relating to



ownership of Krityanand Biswas is produced before the Court for examination and adjudication, it is not possible for the writ court to hold that the land transferred by Krityanand Biswas was wrongly notified in the Gazette Notification, specially when the Gazette Notification holds evidentiary value which is of course rebuttable by the petitioners.

11. The petitioners, however, failed to rebut the evidentiary value of the Gazette Notification dated 19th August 1990 producing acceptable documents relating to ownership of Krityanand Biswas. Even, no Jamabandi in the name of Krityanand Biswas has been filed by the petitioners.

12. In view of such circumstances, this Court is not in a position to grant relief to the petitioners as claimed by them. The instant writ petition is, accordingly, dismissed on contest. There shall, however, be no order as to cost.

13. This order, however, does not debar the petitioners to take appropriate action in accordance with law, if available to them.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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