

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12100 of 2018

Pradeep Kumar Sinha S/o Late Anil Kumar Sinha resident of village-
Petbhari, P.O.- Powakhali, Pawa khali, P. and Anchal- Thakurganj, District-
Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Kishanganj
3. The Deputy Collector Land Reforms LRDC, Kishanganj
4. The Anchal Adhikari, Thakurganj, Kishanganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Adv. Mr. Alexander Ashok, Adv. Mr. Ashish Kr. Ghosh, Adv.
For the Respondent/s	:	Mr. Manoj Kr. - AC to SC19

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

6 07-07-2025 Heard Learned Senior Counsel, Mr. D.K. Sinha, with

Mr. Alexander Ashok, Advocate for the petitioner and Learned

Counsel for the State.

2. Learned Senior Counsel for the petitioner submits
that the present writ petition has been filed to exclude the land
belonging to mother of the petitioner from the schedule of
surplus land of the land holder namely, Raja P.C. Lal under
notification published under Section 15(i) of the Bihar Land
Reforms (Fixation of Ceiling Area and Acquisition of Surplus
Land) Act, 1961 (hereinafter referred to as 'Act of 1961'). The
further prayer has been made to direct the respondents not to



disturb the possession of the petitioner and his mother from the land duly acquired by purchase and gift. The further prayer has been made to direct the respondents to restrain from acquiring and distributing the land of the petitioner under the provision of Ceiling Act and further that the order passed by the Collector, Kishanganj for the acquisition and distribution of the land dated 31.08.2017 be also quashed.

3. Learned Senior Counsel further submits that vide order dated 18.08.2018, this Hon'ble Court has pleased to pass protection order in favour of the petitioner. He further submits that during pendency of the present writ petition, the validity of the Ceiling Act, namely, Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 2019 (hereinafter referred to as 'Amendment Act, 2019') has been challenged before this Hon'ble Court and Hon'ble Division Bench has pleased to pass the final order on 13.10.2023 and the terms and conditions have been passed in paragraph 52 of the said order.

4. Senior Counsel further submits that this Hon'ble Court has upheld the Constitutional validity of Amendment Act, 2016 and 2019, but with regard to those cases, which was listed before the appropriate Bench having roster, has to be decided



on its own merit. In this background, he submits that this Hon'ble Court is competent to pass order in this case on merit.

5. Senior counsel further submits that the protection order granted to the petitioner, was never placed before the Full Bench, and therefore, the order may be passed in his favour in this case particularly, when after blockage of Section 45B of the Act of 1961, Section 30(4) of the Act still empowers the Collector of the District that he may initiate the proceeding according to the Act based on his own knowledge and information.

6. Senior counsel further submits that maternal grand mother of the petitioner is the purchaser of the land from the original landlord prior to Ceiling Act, and therefore, the petitioner seeks protection in his favour.

7. Counsel for the State submits that a counter-affidavit has been filed in this case and in the counter-affidavit, the clear cut stand has come that the petitioner has no remedy left particularly, in the light of repealing of section 45B and insertion of section 45D of the Act which states that after repealing of section 45B of the Act, the proceeding pending before the State Government or the Bihar Land Tribunal, shall be deemed to be abated and under 45B of the Act and pending



remedy, the Collector shall also stand abated.

8. In response thereof, Senior counsel for the petitioner submits that the petitioner for his grievances, moved before the Collector, who kept mum for 30-31 years and thereafter, on one fine morning, has passed order dated 31.08.2017 by which the abatement order has been passed. Therefore, he submits that the petitioner has no scope and if any, has only limited scope to move before the Collector under section 30(4) of the Act.

9. In the light of the submissions made, particularly, the Hon'ble Division Bench at the time of testing the validity, has pleased to observe vide order dated 13.10.2023 in paragraph 52 which states as follows:-

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 its 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.

10. It transpires to this Court that under law, no person can be remediless particularly, when right has been accrued under the statute. It also transpires that Hon'ble Division Bench has categorically held that the Court is of the opinion that those matters arising out of 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 before this Court, though the Constitutional validity of the Amendment Act, 2016 has been upheld, these cases will have to be listed before appropriate Bench having roster, for it to be decided on its own merits. With these observations, the writ petition stands disposed off.

11. Upon going through the pleadings of the parties and order passed by the Division Bench, this Court is of the firm opinion that the order of the Division Bench has come in the year 2023 particularly, on 13.10.2023 and on the said date, the writ petition was pending before this Hon'ble Court with the protection order dated 18.08.2018 which states as follows:-

Heard both sides.

By the impugned order as contained in



Annexure 3, the Collector, Kishanganj, in view of the provisions of Amending Act 2016 of Bihar Land Reforms Act, by which Section 45B has been deleted, dismissed the petition of the petitioner.

The learned counsel for the petitioner submits that ancestor of the petitioner purchased the land from the landlords in the year 1958. Section 5(1) (iii) empowers the Collector to hold enquiry with regard to transactions made only after 22.10.1959 and the Collector is not at all empowered to hold any enquiry with regard to transfer made by the landlord in favour of any person prior to 22.10.1959 but the Collector under the Act declared the land of the petitioner surplus and notified the same 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). Thereafter, the petitioner filed petition in the year 1985- 86 which was numbered as Ceiling Appeal Case No. 563/1985-86. It is also very surprising that the same case remained pending for 31 years and one fine morning the Collector vide order dated 31.08.2017 dropped the proceeding in view of the fact that by Amending Act of 2016 Section 45 of the Act has been repealed rendering the petitioner remediless but the Amending Act itself provides Se Section 30(4) which gives power to the Collector to PA dispose of any objection under the Act in accordance with law.

Learned counsel for the State prayed for two weeks time to file counter affidavit.

As prayed for, put up this case under the same heading after two weeks.

In the meantime the possession of the petitioner from the land purchased by his maternal grand mother shall not be disturbed.

(hereinafter referred to as ‘Act of 1961’)



12. It transpires to this Court that the grand mother of the petitioner, who is purchaser of the land prior to the ceiling having protection under the Bihar Land Reforms Act and due to enactment of section 45B of the Act has to be remediless particularly, when her matter was pending before the Authority since last 30-31 years.

13. The fundamental jurisprudence of litigation is that if a right has been created under any statute for a person, the person cannot be left remediless and in this view of the matter, that section 45B of the Act has been repealed and 45D has been enacted even then section 30(4) of the Act is still under existence, therefore, this Court is of the firm view that the petitioner may not have remedy under section 45B, but still rights are in his favour. Therefore, it is hereby directed to the petitioner to avail his remedy by filing a fresh representation/application before the Collector, Kishanganj (respondent No.2) under section 30(4) of the Act and respondent No.2 shall decide this matter well within time as Hon'ble Division Bench has also categorically held that the matters which are pending before the Bench of this Hon'ble Court will be decided on its own merit.

14. In this view of the matter, the order passed by the



Collector, Kishanganj dated 31.08.2017 is hereby set aside and the present writ petition stands allowed.

15. It is made clear that the protection order granted to the petitioner dated 18.08.2018 shall continue, till the litigation shall acquire finality. It is also directed to the Collector that the order dated 31.08. 2017 (annexure-3 of the writ petition) shall not create barrier for the petitioner while deciding the matter under section 30(4) of the Act.

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

(Dr. Anshuman, J.)

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