
(1992) 01 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. 1572 of 1990

Abdul Jabar Mian and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(1), 5

Citation : (1992) 1 PLJR 379

Hon'ble Judges : S.N. Mishra, J; Ali Ahmad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The prayer in this application is to quash Annexure 4, the notification issued u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus land) Act declaring plot Nos. 485, 486, 487, 507, 508, 509, 518 and 519 of khata No. 419 of village Parmanandpur, P.S. Raniganj district Araria as surplus lands besides other plots also of Respondent Nos. 10, 11 and 12 Ceiling Case No. 130/74-75/55/82-83. Petitioner Nos. 1 and 2 purchased the aforesaid land measuring 3.14 acres from ancestor of Respondent Nos. 10 to 12 by a registered sale deed dated 21.11.1960 a copy of which has been marked annexure 2. Their names were mutated. Subsequently a ceiling case was initiated against the ancestor of Respondent Nos. 10 to 12 in which no notice was given to these Petitioners. As said above these lands were declared surplus land of Respondent Nos. 10 to 12 vide annexure 4. Petitioner Nos. 3, 4, 5, 6 and 7 are transferees from Petitioner Nos. 1 and 2. They now claim that they are holding the lands as raiyats and the declaration of these lands as surplus lands of Respondent Nos. 10 to 12 is illegal. It is also said that steps are being taken to distribute lands in question to Respondent Nos. 6 to 9. Notice, in the circumstance, was issued to Respondents Nos. 6 to 9 but they have not appeared. The case was also adjourned on several previous occasions to enable learned Counsel for the State to file counter affidavit but no counter affidavit has been filed.

2. Having heard learned Counsel for the Petitioner and learned Counsel for the State, we dispose of this application at this stage itself. Presuming that the ancestor of Respondent Nos. 10 to 12 had surplus land, still these lands cannot be declared as surplus lands because transfer made by the ancestor of Respondent Nos. 10 to 12 was made by a registered sale deed dated 21.11.1960. Section 5 of the Act as it existed then provided that any land holder while holding land in excess of ceiling area cannot transfer any land except by way of a registered document for valuable consideration. Transfer of these lands by registered document for a valuable consideration as appears from annexure 2 does not come within the prohibited arena of Section 5 of the Act. The records do not show that any notice was given to the Petitioners showing that their lands could be declared surplus land of Respondent Nos. 10 to 12. We accordingly, allow this application and direct that plot Nos. 484, 485, 486, 487, 507, 508, 509, 518 and 519 of khata No. 419 of village Parmanandpur within Ranipur police station be deleted from the notification dated 11.1.87 declaring these lands as surplus lands of Respondent Nos. 10-12. It need not be said that these lands cannot now be distributed as surplus lands of Respondent Nos. 10 to 12.