

(2016) 08 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.15120 of 2007 With Interlocutory Application No. 1999 of 2015 And Interlocutory Application No. 6296 of 2016

Amar Lal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 5(1)(iii)
Constitution of India, 1950 — Article 226

Citation : (2016) 4 BLJud 102

Hon'ble Judges : Mr. Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Mr. Raghib Ahsan, Sr. Advocate, Mr. Asif Kaliw, Advocate, for the Petitioners; Mr. M.K. Upadhyay, AC to G.P. 3, for the Respondent Nos. 1 to 5; Mr. Raj Kumar, Advocate, for the Respondent Nos. 7, 8, 13 and 14

Final Decision : Allowed

Judgement

Mr. Birendra Prasad Verma, J. (Oral) - Re.: Interlocutory Application No. 1999 of 2015

The instant interlocutory application has been filed by the heirs and legal representatives of the petitioner No.1 -Amar Lal @ Amar Lal Pandit stating therein that during the pendency of the writ petition, aforesaid petitioner no.1 died on 05.11.2013 leaving behind the applicants of the instant interlocutory application as his heirs and legal representatives.

2. The learned Senior counsel appearing on behalf of the applicants submits that all the proposed heirs of deceased petitioner no.1 are major and all of them have entered appearance by filing their duly executed vakalatnama through their counsel.

3. The learned counsel appearing on behalf of the respondents do not raise any

objection to the prayer for substitution made in the instant interlocutory application.

4. In above view of the matter, the prayer for substitution is allowed. Let the name of petitioner no.1- Amar Lal @ Amar Lal Pandit be expunged from the array of the parties of the main writ petition and he be substituted by the applicants of the instant interlocutory application, who all are major and have entered appearance through their lawyer by filing their duly executed vakalatnama.

5. The instant interlocutory application stands finally disposed of with above directions/ observations.

Re.: Interlocutory Application No. 6296 of 2016

6. The instant interlocutory application has been filed on behalf of the surviving petitioners stating therein that during the pendency of the writ petition, respondent no.9- Munuwa Khatoon, respondent no. 10- Nepal Nat and the respondent no.11- Mina Khatoon have died on 2.1.2008, 28.2.2008 and 31.9.2013 respectively leaving behind their heirs and legal representatives, fully detailed in paragraph-3, 4 and 5 respectively of the instant interlocutory application.

7. It is submitted that earlier the petitioners had no knowledge and information about their death, and once they came to know about their death, they have filed the present interlocutory application seeking substitution of the aforesaid deceased respondents.

8. The learned State counsel as also the learned counsel appearing on behalf of the other private respondents do not raise any objection to the prayer for substitution made in the instant interlocutory application.

9. In above view of the matter, the prayer for substitution is allowed. Let the name of the deceased respondent nos. 9, 10 and 11 be expunged from the array of the parties of the main writ petition and they be substituted by their heirs and legal representatives, fully detailed in paragraph-3, 4 and 5 respectively of the instant interlocutory application.

10. The instant interlocutory application stands finally disposed of with above directions/ observations.

Re. Civil Writ Jurisdiction Case No. 15120 of 2007

11. On the request of the parties, the main writ petition has been taken up for consideration on merits.

12. The petitioners, 14 in number, claim to be the purchasers of parcels of land bearing R.S. khata no.1 appertaining to R.S.plot no. 157, total area being 2.76 acres situate at village Kalpir, P.S. Terhagachh, District Kishanganj (in short the lands in question) through two registered sale deeds dated 13.03.1962 from one

Md. Mazharul Haque, deceased husband of landholder Bibi Gule Fatma (respondent no.6 herein).

13. The grievance of the writ petitioners is that though they purchased the lands in question for valid consideration amount from the rightful owner namely, Md. Mazharul Haque, the husband of respondent no.6, after 22.10.1959, yet the lands in question was included in the Land Ceiling Case No. 5 of 1973-74, initiated and concluded against the landholder-Bibi Gule Fatma (respondent no.6), and it was declared as surplus land of the landholder, and ultimately, by Gazette notification dated 20.4.1993 (Annexure-4) the lands in question, besides other plots of lands, have been acquired by the State Government, and have been distributed amongst the respondent nos.7 to 14.

14. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 7th September, 2007 passed in Ceiling Case No. 40 of 1995-96 by the respondent District Collector, Kishanganj, as contained in Annexure-1 to the writ petition, whereby the petition filed on behalf of the petitioners under Section 45B of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short 'the Land Ceiling Act') for reopening of the original land ceiling case and for exclusion of the lands in question claimed by these petitioners, has been rejected.

15. From the pleadings of the parties as also from the impugned order dated 7.9.2007 (Annexure-1), it is apparent that the Land Ceiling Case No. 5 of 1973-74 was originally started against Md. Majhrul Haque, the husband of the respondent no.6. However, after his death, his widow Most. Gule Fatma was substituted and the aforesaid land ceiling case proceeded further. After conclusion of the aforesaid land ceiling case, after allotting the lands to the landholder to the extent of permissible ceiling units, 119 acres 49 decimals and odd were declared surplus, and ultimately by Gazette notification dated 20.04.1993 (Annexure-4), those surplus lands, which includes the lands in question claimed by these petitioners, were acquired by the State Government u/s 15(1) of the Land Ceiling Act.

16. The claim of the petitioners is that they purchased the lands in question from the original landholder Md. Majhrul Haque through two registered sale deeds dated 13.3.1962 for valid consideration amount, yet at no point of time, they were given any opportunity of hearing in the aforesaid land ceiling case and ultimately the lands in question, besides other lands, were declared surplus and finally acquired by the State Government.

17. It is the case of the petitioners that once they came to know about acquisition of the lands in question under Section 15(1) of the Land Ceiling Act by Gazette notification dated 20.04.1993 (Annexure-4), they filed a petition under Section 45B of the Land Ceiling Act on 2.6.1995 before the respondent District Collector, Kishanganj, who, at that time, was fully empowered to

entertain such petition and, accordingly, Ceiling Case No. 40 of 1995-96 was registered, but by the impugned order dated 7.9.2007 the aforesaid petition filed on behalf of the petitioners has been rejected arbitrarily.

18. The learned Senior counsel appearing on behalf of the petitioners submits that since purchase was made by the petitioners after 22.10.1959 and prior to 9.9.1970, therefore, before declaring the lands in question as surplus of the landholder, an enquiry under Section 5(1) (iii) of the Land Ceiling Act was required to be made and only after holding such enquiry by the Collector under the Land Ceiling Act, after giving an opportunity of hearing to the petitioners, besides others, and after coming to a conclusion that transfer made by the landholder was with a view to defeat the object of the Land Ceiling Act, the lands in question could have been declared to be surplus and could have been acquired by the State Government, but that having been not done and that aspect having not been considered by the respondent District Collector, the impugned order is not sustainable in law.

19. The learned AC to G.P. 3 appearing on behalf of the respondent no. 1 to 5 and the learned counsel appearing on behalf of the private respondents have opposed the prayer and supported the impugned order by referring to the averments made in the counter-affidavit filed on behalf of the respondent nos. 4 and 5.

20. After having heard the parties and taking into consideration the factual matrices of the present case, noticed above, this Court is of the opinion that the matter requires reconsideration and fresh decision by the respondent District Collector, Kishanganj.

21. It is well settled legal proposition that if any parcel of land has been transferred by the landholder or his family member(s) after 22.10.1959 and prior to 9.9.1970, the Collector under the Land Ceiling Act, has jurisdiction to hold enquiry under Section 5(1) (iii) of the Land Ceiling Act, after giving an opportunity of hearing and adducing evidence to the transferee, landholder as also the State. After holding such enquiry, if transfer made by the landholder is found to be genuine and having been made for a valid consideration amount, then those lands are required to be excluded from the land ceiling proceeding. However, in case after holding such enquiry, the Collector under the Land Ceiling Act comes to a conclusion that the transfer so made was with a view to defeat the object of the Land Ceiling Act, then transfer so made can be annulled, yet claim of transferee can be considered for including those transferred lands in the admissible ceiling unit of the landholder in terms of Section 9 of the Land Ceiling Act.

22. Coming to the present case, this Court finds that there is no denial by the respondent State that the transfer made in favour of the petitioners by the ex-landlord was made after 22.10.1959 by executing two registered sale deeds dated 13.3.1962, yet no enquiry under section 5(1) (iii) of the Land Ceiling Act

was conducted by the Collector at any point of time. The respondent District Collector, Kishanganj while passing the impugned order has not taken into consideration this aspect of the matter and has mechanically rejected the prayer for re-opening of the original land ceiling case, initiated and concluded against the respondent no. 6; therefore, the impugned order cannot be sustained in law.

23. For the reasons recorded above, the impugned order dated 7.7.2007(Annexure-1) passed in Land Ceiling Case No. 40 of 1995-96 by the respondent District Collector, Kishanganj is hereby set aside and quashed, and the matter is remitted back to him with a direction to decide the aforesaid ceiling case No. 40 of 1995-96 afresh strictly in accordance with law, keeping in mind the true spirit of the Land Ceiling Act as also the judicial pronouncements of this Court made time to time, particularly the principles enunciated in the case of Md. Salim Uddin v. The State of Bihar [1998(1) PLJR 38], and the observations made above. However, before passing any final order, reasonable opportunity of hearing must be given to the respondent nos. 6 to 14 including the heirs and legal representatives of respondent nos. 9 to 11, who have been substituted by the present order.

24. In order to expedite the matter, the petitioners as also the appearing private respondents are directed to appear before the respondent District Collector, Kishanganj within a period of one month from today with a certified copy of the present order, whereafter the respondent District Collector, Kishanganj shall proceed to decide the aforesaid Ceiling Case No. 40 of 1995-96 afresh in accordance with law as also in the light of observations made above.

25. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. No costs.