
(1999) 01 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 7737/88

Ashok Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 15(1), 45B, 5

Citation : (1999) 1 PLJR 906

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Chandra Shekhar and Rajesh Ranjan, for the Appellant; Raghib Ahsan and Matloob Rab, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this case the Petitioner who is the purchaser of the land, in dispute, had challenged the Gazette notification dated 10.8.84 issued u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the Act) and the order dated 4.8.87 passed by the Respondent Collector by which the lands purchased by the Petitioner is sought to be declared surplus in the proceeding initiated under the Act against the land holder Babunandan Mishra. Respondent Nos. 4,5 and 6 are the sons of land holder. Admittedly, the Petitioner purchased the land in question, the details whereof has been mentioned in the notification itself. The relevant facts for disposal of this writ application is that a ceiling case was initiated against the land-holder Babu Nandan Mishra being Ceiling Case No. 696/76 and in the said Ceiling case the land purchased by the Petitioner has been declared surplus. It is submitted that the Petitioner is not in any way related with the land holder nor he has been made a party to the proceeding initiated against the said Babu Nandan Mishra. Accordingly, the Petitioner filed a petition in terms of Section 45-B of the Act for opening of the case on the ground of being a bonafide purchaser who is not in any way related with the said Babu Nandan Mishra, the land holder.

The Respondent Collector has rejected the prayer of the Petitioner simply on the ground that the Petitioner was shown as cousin in the notice issued by the Anchal Adhikari. It is well established principle of law that if such objection is raised the authority must hold an enquiry in terms of Section 5(1) (iii) of the Act. Admittedly, that has not been done in this case and merely relying upon the notice issued by the Anchal Adhikari the Petitioner has been non-suited from the land, in question. Since the Petitioner has purchased the land in the year 1978, the Respondent authority should have held an enquiry u/s 5(1) (iii) in order to ascertain as to whether the Petitioner is a bonafide purchaser of the land in question which has admittedly not been done in this case. Accordingly this Court has no option but to quash the Gazette notification issued u/s 15(1) of the Act including the order dated 4.8.87 passed by "the Respondent Collector so far the land purchased by the Petitioner as mentioned in Gazette notification contained in Annexure-1 to this writ application. In the result, this writ application is allowed. However, if authority so advised, may proceed in accordance with law. This writ application is allowed to the extent indicated above. No cost.