

(2009) 08 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 13659 of 2002

Bhagwat Choudhary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

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

Citation : (2009) 4 PLJR 840

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Uma Shankar Singh No. 2, for the Appellant; Mithilesh Kumar Upadhyay for the State, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State. The writ petitioners seek quashing of Annexure-II, which is the Notification dated 23.12.1988 u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (hereinafter referred to as "the Act") with respect to the landholder, namely, Tek Narayan Choudhary.

2. It is submitted on behalf of the petitioners that earlier in the land ceiling proceedings the petitioners were granted 4 and 1/10 units and were allowed to retain the entire land belonging to them measuring 150.05 acres, as would be evident from Annexure-I. Since no surplus land was found, therefore, the proceedings were dropped in the year 1979. As claimed by the petitioners, 91.69 acres of their land have been shown to be surplus in Annexure-II, which is a subsequent notification u/s 15(1) of the Act with respect to other landholder, namely, Tek Narayan Choudhary. Aforesaid Tek Narayan Choudhary challenged the same in CWJC No. 6394/1993 and by order dated 6.2.1995, as contained in Annexure-III, this Court directed the authorities to allow the petitioners of that case to exercise their option and issue a notification again u/s 15(1) of the Act

after aforesaid modification. Prior to that, the aforesaid petitioners had moved before the Board of Revenue by filing Revision Case No. 26/ 1989 and the petitioners herein also intervened into the matter. However, the aforesaid revision case was dismissed for non-prosecution whereas the intervenor-petitioners were directed to file proper application before the authorities raising their claim.

3. Petitioner No. 1 then filed an application u/s 45B of the Act for reopening of the case before the Collector, Supaul, which was numbered as Ceiling Case No. 36/93. However, the same was consigned for the reason that subsequently, the relevant provision authorising the Collector to hear and dispose of the matter u/s 45B of the Act was taken away on amendment of the Act. The petitioners thereafter moved before the Respondent No. 2 by filing a petition u/s 45B of the Act once again which was numbered as Revenue Misc. No. 2/95/96 wherein the records were called for. However, subsequently the petitioners stopped appearing in the case resulting in its dismissal. It could also not be stated by the learned counsel for the petitioners as to what happened after quashing of Annexure-II by order of this Court as contained in Annexure-III directing the authorities to allow the petitioners to exercise option and then again to issue a final notification u/s 15(1) of the Act in the light of the exercise of such option.

4. In view of the absence of any material on record to show as to what option was exercised by the aforesaid Tek Narayan Choudhary, the petitioners of CWJC No. 6394/1993, the prayer for quashing the notification as contained in Annexure-2 cannot be allowed. It cannot also be allowed for the reason that the petitioners had already opted for filing an application u/s 45B of the Act before the authorities concerned for reopening of the entire case as per the direction of the Board of Revenue, as above, which has been dismissed by the authority concerned in default. The petitioners neither took any step for restoration of the aforesaid application nor had they challenged the aforesaid order passed u/s 45B of the Act passed by the Respondent No. 2 in the writ application.

5. Thus, this Court is constrained to hold that this writ petition has to fail and the same is dismissed. However, this order will not come in the way of the petitioners for filing an application u/s 45B of the Act afresh before the authority for reopening of the case as the earlier application filed under such provision was not disposed of on merit. If such an application is filed, the authority concerned should dispose of the same in accordance with law.