
(2005) 04 PAT CK 0040

In the Patna High Court

Case No : CWJC No's. 14493 of 2002 and 102 and 768 of 2003

Bihar State Sunni Waqf Board and Another, Serwat Jehan @ Sarbat Ikabal and Yamun Mandal and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Waqf Act, 1995 — Section 91

Citation : (2005) 2 BLJR 1249 : (2005) 3 PLJR 128

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the counsel appearing for the State.

2. In these three writ applications common orders have been challenged by the petitioners passed by the authorities in same case, as such, all these writ applications are being heard and decided by a common order.

3. Petitioner No. 1 in CWJC No. 14493 of 2002 is the Bihar State Sunhi Waqf Board and petitioner No. 2 is the Motawalli of petitioner No. 1, petitioner in CWJC No. 102 of 2003 are the legal heirs of Qudisia Bano, whose lands have also been clubbed in the Ceiling Case No. 69 of 1973-1974 and petitioner in CWJC No. 768 of 2003 is the purchaser of lands from Zafar Sadique, petitioner No. 2 in CWJC No. 14493 of 2002, through registered sale deeds executed in the year 1973 to 1979.

4. Ceiling Case No. 69 of 1973-1974 was initiated with respect to 107.90 acres of land out of which 66.24 acres are situated in Keoti Anchal and 41.66 acres are situated in Biraul Anchal. Qudisia Bano is the land holder of the land measuring 41.66 acres situated in Biraul Anchal. Out of 66.24 acres of land situated in Keoti Anchal, 43.16 acres belongs to Waqf and 22.09 acres belongs to Zafar Sadique, the land holder, against whom the Ceiling proceeding was initiated. The land

holder filed an objection stating that he possessed only 26 bighas 6 kathas and 1/2 dhurs of land out of which 3 bighas B(1/2) dhurs have been transferred prior to 1970. Now he possesses only 29.01 acres of land. So far other lands are concerned, they belonged to different sharers, 43.16 belonged to Wakf and 41.66 acres of land situated in Biraul Anchal belonged to one Qudisia Bano. By order, dated 27.01.1996, the Additional Collector, Ceiling, disposed of the objection filed by the land holder, without giving any notice to the Bihar State Sunni Wakf Board and without giving any notice to Qudisia Bano, who was land holder of and measuring 41.66 acres. By this order one unit of 30 acres was allotted to the land holder and 77.90 acres were declared as surplus. Petitioner No. 2 (the land holder) challenged the order dated 27.01.1996, in Ceiling Appeal No. 1 of 1996-1997 which was disposed of by order, dated 31.3.2001. By this order 30 acres of land equivalent to one unit was allotted to the Wakf and one unit equivalent to 30 acres was allotted to Qudisia Bano. 13.16 acres of land belonging to Wakf was declared surplus and similarly 11.66 acres of land belonging to Qudisia Bano was also declared surplus, though, neither the Wakf Board nor Qudisia Bano was ever noticed during the entire ceiling proceeding. Thereafter, a gazette notification u/s 15 was published notifying the surplus land.

5. This writ applications have been filed by petitioners for quashing the order, dated 27.1.1996, passed by the Additional Collector, Ceiling, Darbhanga, in Ceiling Case No. 69 of 1973- 1974 as well as order, dated 31.3.2001, passed by the Collector, Darbhanga, in Ceiling appeal No. 1 of 1996-1997.

6. In all these writ applications common points are involved that without giving any notice to the land holder and without holding any enquiry as provided u/s 5(1)(iii) of the Ceiling Act the lands of the land holders have been declared surplus. The petitioner in CWJC No. 768 of 2003 has challenged the order on this ground also that the lands which were purchased by him from the petitioner No. 2 of CWJC No. 14493 of 2002 should not have been declared surplus rather land holder should have been allowed to retain this land in his ceiling unit u/s 9(2) of the Ceiling Act. Reliance has been placed by the petitioner on a decision reported in *Sib Narrain Roy v. The State of Bihar and Ors.*, 1994 (1) PLJR 294, wherein it has been held that "if the land holder transfers any land without obtaining permission from the Revenue Authority in such cases the transferred land should be treated as the land opted by the land holder in his unit u/s 9(2) of the Ceiling Act."

7. Counter-affidavit has been filed by the State wherein it has been stated that the statement made by the petitioners that no notice was issued to them for filing objection is without any substance. Proper notice was issued to Qudisia Bano which returned unserved. The appeal was also preferred by Qudisia Bano, as stated in paragraph 9 of the writ application. Her legal heirs were also substituted at the appellate stage. So far the case of petitioner No. 1 of CWJC No. 14493 of 2002 is concerned, petitioner No. 2 being the Motawalli of the Wakf it cannot be said that proper notice was not given to petitioner No. 1 to protect

its interest. There is no illegality in the impugned orders. In reply to this submissions the counsel for the petitioner has drawn the attention towards the provision u/s 91 of the Wakf Act, 1995, wherein it has been made mandatory that in case the authorities in any proceeding have this knowledge that the property is the Wakf property in such cases notice must be issued to Bihar State Sunni Wakf Board, as all Wakf properties belong to Bihar State Sunni Wakf Board. Notice must have been issued to the Bihar State Sunni Wakf Board, as provided under the Wakf Act.

8. Considering the fact it was not done, all the impugned orders cannot be held to be legal and valid.

9. On consideration of the submissions made by the parties. I find that the orders have been passed by the Additional Collector, Darbhanga, as well as Collector, Darbhanga, in appeal without issuing any notice to petitioner No. 1 of CWJC No. 14493 of 2002 and the petitioners in CWJC No. 102 of 2003 as well as the petitioner in CWJC 768 of 2003 there was no proper enquiry also as provided u/s 5(1)(iii) of the Act. On this count the impugned orders cannot be held to be legal and they are fit to be quashed. So far the case of the petitioner of CWJC No. 768 of 2003 is concerned, the Revenue Authorities will consider that the lands have been purchased by the petitioner in between 1973 to 1979, the land lord transferred these land through registered sale deeds without taking permission as provided u/s 5(1) of the Ceiling Act. In case of such transfer the land should not be declared surplus, it should be allowed to be retained by the land holder u/s 9(2) of the Act. All these cases are remanded to the Additional Collector, Ceiling, Darbhanga, for fresh consideration in accordance with law.

10. Accordingly, this application is disposed of, lands, declared surplus, should not be distributed till the matter is decided by the Additional Collector, Ceiling, Darbhanga, in accordance with law.