
(2008) 03 PAT CK 0062

In the Patna High Court

Brijesh Kumar @ Brajesh Pd. Jai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 11(1), 15(1)

Citation : (2008) 03 PAT CK 0062

Hon'ble Judges : Shiva Kirti Singh, J; Kishore Kumar Mandal, J

Bench : Division Bench

Judgement

Shiva Kirti Singh and Kishore Kumar Mandal, JJ.—Heard learned Counsel for the petitioner, learned Counsel for the State and learned Counsel for the purchasers (respondent Nos. 5 to 37).

From the materials on record, it appears that a Ceiling case No. 34/75-76 was initiated against the land holder Ghurna Devi, w/o- Parmeshwar Jha of village Turhapatti, P.S.- Chanpatia, District West Champaran and was finally decided by Addl. Collector, Land Ceiling, West Champaran, Bettiah by his order dated 14.1.1993 (Annexure-2) whereby the land holders were found entitled to have 5 units under which they were permitted to hold 94.45 1/2 acres of land and lands of different classes in total measuring 235.12 1/2 acres was declared surplus. Accordingly, a final publication u/s 11(1) of the Bihar Land Ceiling Act, 1961 (hereinafter referred to as the Act) appears to have been published in the district gazette on 6th April, 1994 (Annexure-3). According to the petitioner, a further gazette notification u/s 15(1) of the Act was made on 11.5.1994. It is the case of the petitioners that they have purchased altogether 18.5 acres of land from the family of the land holders between the year 1972 and 1983 as per details of land given in Annexure-1. It is further case of the petitioners namely Brijesh Kumar, @ Brajesh Prasad Jaiswal and Birendra Kumar, both sons of Late Gorakh Prasad and both residents of village Chanpatia P.O. + P.S.- Chanpatia, District West Champaran that they had no knowledge of the ceiling proceeding against their vendors and hence they could not file any claim or objection in the Ceiling

proceeding vide Case No. 34/75-76. When they got knowledge that the lands purchased by them have been declared surplus land, they moved this Court directly through C.W.J.C. No. 5586/1994. That writ application was dismissed as withdrawn on 8.2.1995 (Annexure-5). That order discloses that after some arguments, the counsel for the petitioners had sought permission to withdraw the writ application to agitate their grievance u/s 37/45B of the Act before the Collector of the district of West Champaran at Bettiah. Since the power exercisable u/s 45B of the Act was only with the state government on account of legislative amendment in the Act, the petitioners' prayer for reopening of the Ceiling case u/s 45B was considered by the Minister, Revenue and Land Reforms, Government of Bihar and rejected by the impugned order dated 10.4.1997 (Annexure-6). Against the order contained in Annexure-6, C.W.J.C. No. 10329/1999 was preferred by the petitioners and the same has been dismissed by the order under appeal dated 25.1.2000 passed by a learned Single Judge of this Court.

2. On behalf of the appellants, it has been submitted that Section 9(1) of the Act gives to the family concerned an option to select lands which it may desire to retain but such option has been made subject to provisions of Sub-section (2), (3) and (4) and of other provisions of the Act. Sub-section (2) of the Section 9 provides that where the land held by the land holder includes land transferred by him in accordance with or in contravention of Clause (ii) of Sub-section (1) of Section 5, the land so transferred in accordance with or in contravention of aforesaid Clause (ii) of Sub-section (1) of Section 5, shall to the extent of the ceiling area admissible to the land holder, be deemed to have been selected by him for retention within the ceiling area and if such land is less than the ceiling area admissible to him, the land holders shall select the balance of ceiling area from his remaining land.

3. On the basis of aforesaid legal provision, it has been submitted that it would appear from Annexure-2, the order of learned Addl. Collector that the family has been allowed to hold land up to 94.45 1/2 acres whereas the petitioners are claiming transferred lands measuring only 18.5 acres, hence such lands should have been included in the land opted by the land holders and permitted to be retained by them out of their ceiling area. It has further been submitted that while rejecting petitioners prayer for re-opening of the ceiling case by the order contained in Annexure-6, the competent authority of the State of Bihar failed to Keep in mind the provisions of Section 9(2) of the Act and that has resulted in failure to appreciate the case of the petitioners and the prejudice which may be caused to them on account of non-observance of the provisions of Section 9(2) of the Act.

4. On the other hand, learned Counsel for the state has submitted that as held by the Hon'ble Single Judge, the competent authority did not permit reopening of the ceiling case on account of his subjective satisfaction that no case was made out for reopening and hence such order requires no interference. Learned

Counsel for the purcha holders has submitted that since purchas have been issued, the purcha holders are likely to be affected on account of reopening of the ceiling case.

5. Having considered the rival submissions, we are of the view that the order under challenge in the writ petition as contained in Annexure-6 did not take into consideration relevant provisions of law u/s 9 of the Act and that has resulted in rejection of petitioners" prayer for reopening of the ceiling case and hence the order contained in Annexure-6 suffers from error and illegality and is fit to be interfered with. In the facts of the case, we are further of the view that the entire ceiling case need not be reopened. To meet the grievance of the petitioners, only the issue of option of retaining lands by the land holders u/s 9 of the Act is fit to be reconsidered by the Collector under the Act, more particularly the Addl. Collector who decided the case finally vide Annexure-2. Hence, the ceiling case is ordered to be reopened for the limited purpose of re-examining the option to be permitted to the land holders or the concerned family as per Section 9 of the Act. To that extent, the writ application as well as this appeal are allowed. The matter is remitted back to the learned Addl. Collector, Ceiling West Champaran, Bettiah. The petitioners are directed to appear before him with a copy of this judgment within four weeks. The learned Addl. Collector or any other competent authority will hear the matter under the Act and shall decide the aforesaid claim and grievance of the petitioners after hearing other affected parties, in accordance with law.