

(1999) 03 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 1581 of 1989

Gahendra Narain Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145

Citation : (1999) 2 BLJR 1456

Hon'ble Judges : Narbadeshwar Pandey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narbadeshwar Pandey, J.—This writ petition has been filed for quashing the order of the Collector, Shaharsa dated 25.1.1981 in Ceiling Case No. 34 of 1988-89 and Misc. Case No. 35 of 1988-89 so far it relates to the petitioners and further for a direction to the respondents to withdraw provisional Purchas, issued for distribution of their lands.

2. Before averting to the core contentions, raised on behalf of the parties, it would be apt to have a brief survey of some of the facts, which gave rise to the present writ application. Undisputedly the lands, which the petitioners are claiming, Jiwanmal Chiroriya against whom Ceiling Case No, 585 of 1973-74 was started, had no concern. This is also not in dispute that lands of the petitioners were wrongly included in the said ceiling case and declared surplus in spite of the objection raised on behalf of Mr. Chiroriya.

3. As the petitioners were neither party to the said ceiling case nor they had any notice, therefore, having learnt about publication u/s 15(1) of Bihar Land Reforms/(Fixation of Ceiling Area and Acquisition of Surplus Land) Act, in short "the Act" they made applications before respondent authorities for exclusion of their lands from the ceiling case. But having failed to get any relief before the Collector, they filed C.W.J.C. No. 2152 of 1976 before this Court for a direction to

the respondents to release their lands and also to restrain them from distribution of the same. The matter was placed before a Division Bench and by order dated 22.9.1976 it was directed that pending hearing of the application, there will be stay of distribution of the lands and delivery of possession thereof. Ultimately, having appreciated the claim of the petitioners over the land in question and irregularity committed by the authorities in declaring such lands to be surplus, allowed the writ application on 3rd February, 1977 with a direction to the Deputy Collector, Land Reforms to hold an enquiry and decide whether the petitioners are raiyats in respect of the lands claimed by them and thereafter, pass appropriate order in terms of the observations, made in the judgment.

4. As would appear from Annexure-6, pursuant to the direction of this Court, the Deputy Collector, Land Reforms, conducted enquiry and after hearing the parties by order dated 28.2.1978/29.5.1978 held that Mr. Chiroriya against whom Ceiling Case No. 585 of 1973-74 was started had no concerns with the petitioners' land and accordingly, he released the lands of the petitioners from the said ceiling case. The said order ultimately became final as no appeal or revision against the same was preferred by the State Government.

5. In the meantime, some of the persons in whose favour Purchas were distributed, tried to take possession over the land, therefore, proceedings under Sections 107 144 and 145, Cr.P.C. had commenced and ultimately decided in favour of the petitioners. The last order u/s 145, Cr.P.C. is dated 15.2.1988, as contained in Annexure-10, whereby, petitioners' possession was declared over the land in question.

6. As the Gazette publication u/s 15(1) of the Act was made on 14.6.1976, therefore, Purchas were issued for distribution of the lands including the lands of the petitioners, which were declared surplus in Ceiling Case No. 585 of 1973-74. However, as would appear from the interim order of this Court dated 22.9.1976 and orders passed by the Executive Magistrates under Sections 107 144 145, Cr.P.C. delivery of possession of such lands remained stayed, therefore, petitioners continued in possession.

7. In spite of the order of the Deputy Collector, Land reforms, to release the lands of the petitioners from the Land Ceiling Case, no attempt was made by the authorities to cancel the provisional of Purchas, which were wrongly issued. It would further appear that against the notification u/s 15(1) of the Act, Mr. Chiroriya had also filed a revision before the Member, Board of Revenue, and on remand, the Deputy Collector, Land Reforms, Birpur found no surplus land. It further appears from the impugned order of the Collector that the case was again reopened u/s 45-B of the Ceiling Act and the same was transferred before the Additional Collector (Ceiling), Saharsa, who also vide his order dated 16.10.1985 found to surplus land. But no attempt was made to de-notify the Purchas, which were already issued.

8. Faced with the aforesaid situation, Misc. Case No. 34 of 1988-89 was filed on

behalf of Mr. Chiroriya u/s 37 of the Act and another application to the same effect was filed on behalf of the petitioners, which was numbered as Case No. 35 of 1988-89. Both the cases were later heard together and disposed of by the impugned orders. It would appear from a bare perusal of the order of the Collector that he has fully agreed with the findings of the Deputy Collector, Land Reforms and the Additional Collector that petitioners' lands were wrongly included in the ceiling case, which was started against Mr. Chiroriya. Therefore, orders passed by the authorities to declare such lands surplus was wholly illegally and without jurisdiction. But an objection was raised by the Government Pleader that Purchas were distributed to the landless persons, therefore, in absence of such Purcha-holders, it was not proper to de-notify the lands of the petitioners or to recall Purchas. The learned Collector without appreciating that in view of the interim order of the High Court, delivery of possession over the land of the petitioners were not given to the Purcha-holders, agreed with the suggestion of the Government Pleader and rejected the petition.

9. Learned Counsel contended that from a bare reference to the facts, stated above, since the final publication u/s 11(1) or the publication u/s 15(1) of the Act declaring the lands of the petitioners surplus was held to be illegal and without jurisdiction, it was wholly unjustified on the part of the respondent authorities to distribute the Purcha with respect to such land. Because the moment those orders are found illegal and without jurisdiction, such findings will definitely go to the root of the matter and, therefore, all subsequent events would automatically become without jurisdiction and non-est in the eye of law. He contended even the learned Collector accepted the findings recorded by the Deputy Collector, Land Reforms and Additional Collector that petitioners' lands were wrongly included in the ceiling case in question. Not only that, even he accepted that Mr. Chiroriya had also no surplus land, but it is really unfortunate that in spite of such a finding he declined to withdraw provisional Purcha.

10. Neither any counter-affidavit has been filed in this case on behalf of the State to controvert the facts, stated above, nor learned State Counsel could point out any material to justify the previous notifications and orders, passed by the authorities whereby, the lands were declared surplus. He however, in order to maintain the line of contention, as was advanced by the learned Government Pleader before the Collector, submitted since the final publication declaring such land surplus was made way back in the year, 1976, rights had been conferred on the concerned allottees and, as such, no order to cancel Purcha can be passed without impleading them as parties. Therefore, the Collector was justified while rejecting the petition u/s 37 of the Act. In support of his contentions, learned Counsel relied upon a decision of the Apex Court in the case of Ram Swarup v. S.N. Maira 1999 (1) PLJR 52 (SC). In that case lands were declared surplus way back in the year 1960 and thereafter different landless persons were put in possession of the same in the year 1976, therefore, it was held that such allottees by virtue of their possession over the land had acquired right to be heard before taking away their possession and cancellation of Purchas.

11. In my view, the facts of the case before me being quite different, the proposition as laid down by the Apex Court in the aforesaid case, may not be fully applicable. Because in the instant case, it has already been noticed that by virtue of the interim order of this Court passed as back as on 22.9.1976 in C.W.J.C. No. 2152 of 1976 restraining the respondents from distribution of the lands and delivery of possession, it would not be open to presume that Purchadharis could come in possession of these lands. That apart, even in the proceeding u/s 145, Cr.P.C. which was finally decided on 15.2.1988 petitioners were found in possession of the lands. Therefore, it would be wrong to presume that even after the order of the High Court, as noticed above, or the orders passed by the Deputy Collector, Land Reforms, as well as the Additional Collector in the year 1988 to release the lands from the Ceiling Case. Purchadharis could get possession over the land.

12. Therefore, in my view, in the background of the facts, stated above, it is highly unjust and improper on the part of the Collector to reject the petitioner u/s 37 of the Act, which was filed for withdrawal of the Purchas. Accordingly, I set aside the impugned order and allow the writ application with a direction to the Collector to withdraw such provisional Purchas, which were granted with respect to the lands of the petitioners. However, in the facts and circumstances, there shall be no order as to costs.