

(2016) 01 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 500 of 2001

Hira Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), Section 10(3), Section 15, Section 15(1), Section 5, Section 5(1)(ii), Section 5(1)(iii), Section 9, Section 9(2)
Constitution of India, 1

Citation : (2016) 1 PLJR 883

Hon'ble Judges : Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Arun Kumar Ambastha, for the Appellant; Ajay, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Verma, J.—1. Heard the parties. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 14.3.2000 passed in Revision Case No. 7 of 1997 by the respondent Additional Member, Board of Revenue, Bihar, Patna, as contained in Annexure-6, whereby the aforesaid revision case filed on behalf of the petitioner under Section 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "Act") has been dismissed and the order dated 8.10.1996 passed in Misc. Ceiling Case No. 3 of 1990-91 by the respondent-District Collector, Madhubani, as contained in Annexure-5, has been affirmed. The petitioner has also challenged the validity and correctness of the aforesaid order dated 8.10.1996 (Annexure-5) passed in the aforesaid Misc. Ceiling Case No. 3 of 1990-91 by the respondent District Collector, Madhubani, whereby 7.71 acres of land situate at Village-Harishbara in the district of Madhubani has been excluded/released from the acquired lands and the same has been allotted/included in the permissible ceiling unit of the landholder and in its place 7.71 acres of land of Village-Sarabe, Anchal-Khajauli

in the district of Madhubani have been acquired. The petitioner has further prayed for a direction for re-opening of the entire matter and for deciding the same afresh.

2. The relevant facts, for the purposes of disposal of the present writ petition, can be put in narrow compass. Admittedly, the Land Ceiling Case No. 19 of 1975-76 was started under the provisions of the Act against the original landholder Nagendra Narain Singh, the father of the petitioner. On the basis of the verification report submitted by the concerned Anchal Adhikaris, the original landholder was found to be in possession of altogether 72.38 acres of land. Accordingly, draft statement under Section 10(2) of the Act was published showing him to be entitled to have one ceiling unit and rest of his lands were shown to be surplus. The objections were filed by the landholder under Section 10(3) of the Act claiming more units for his eldest son i.e. the petitioner, besides others. As per the verification report, date of birth of the present petitioner was shown to be 15.1.1955; therefore, on the appointed date i.e. on 9.9.1970 he was minor, but the original landholder claimed that his eldest son i.e. the present petitioner was major on 9.9.1970. The objections filed by the landholder was considered by the respondent-D.C.L.R., Sadar-Madhubani, the Collector under the Act, and he passed the final order on 4.2.1977 in the aforesaid land ceiling case. On the basis of the physical appearance of the present petitioner, he was held to be major on 9.9.1970. Finally, by the aforesaid order dated 4.2.1977, the landholder was held to be entitled to retain two ceiling units i.e. one for himself, his spouse and his minor children and other for his eldest son i.e. the present petitioner. By the aforesaid order, all the lands belonging to the landholder were treated to be of Class-IV category. Finally, by the said order, after allotting two ceiling units to the landholder, he was allowed to retain 60 acres of Class-IV land for two permissible ceiling units and remaining 12.38 acres of land were declared surplus. The aforesaid facts can be borne out from the aforesaid order dated 4.2.1977/5.2.1977 passed by the respondent-D.C.L.R., Sadar-Madhubani, which has been brought on record as Annexure-1 to the writ petition. Thereafter, the original landholder was directed to exercise his option in terms of Section 9 of the Act for the purposes of retaining 60 acres of Class-IV lands, so that rest lands could be acquired under Section 15(1) of the Act. Accordingly, the original landholder exercised his option for the purposes of retaining 60 acres of land and thereafter notification under Section 15(1) of the Act was issued for acquisition of remaining 12.38 acres of lands.

3. From the materials available on the record, it is apparent that while exercising option under Section 9 of the Act, the original landholder concealed the material facts about transfer made by him in favour of different persons after 9.9.1970, though all those transfers made by him without permission of the Collector under the Act was in contravention of the provisions contained in Section 5(1)(ii) of the Act and, therefore, he was obliged to include those transferred lands within his permissible ceiling units in view of the provisions contained in Section 9(2) of the Act.

4. It further appears that the different persons having purchased the lands from the original landholder after 9.9.1970 raised their claims before the Collector under the Act that their interest may be protected and the area of lands purchased by them may be included in the lands allowed to be retained by the landholder. In above background, the respondent-D.C.L.R. made a proposal for taking appropriate steps for modification of the notification issued under Section 15(1) of the Act, so that interest of the purchasers from the landholder is protected. Thereafter, certain orders were passed by the competent authorities and a fresh notification was issued on 20.3.1990 under Section 15(1) of the Act, but again the grievances of the purchasers were not redressed. In that background, the purchasers, who are the private respondents in the present proceeding, filed Misc. Land Ceiling Case No. 3 of 1990-91 under Section 37 read with Section 47 of the Act before the respondent-District Collector, Madhubani with a prayer for release of their lands from acquisition and for including those lands in the permissible units of the landholder. The aforesaid facts can be borne out from the order dated 1.4.1992 passed by the respondent-District Collector, Madhubani, which has been brought on record as part of Annexure-5 to the writ petition. By the aforesaid order dated 1.4.1992, the landholder was restrained from transferring any land till further order and the matter was adjourned for the next date. Finally, by the impugned order dated 8.10.1996 passed by the respondent-District Collector, Madhubani, which is part of Annexure-5 to the writ petition, it was directed that 7.71 acres of lands of Village-Harishbara, which were transferred by the landholder after 9.9.1970 in contravention of the provisions of the Act, shall be included in the lands allotted to the landholder for his permissible ceiling units and equal area of 7.71 acres of land of Village-Sarabe, which was earlier allowed to be retained by him, shall be acquired under Section 15(1) of the Act. Accordingly, a gazette notification under Section 15(1) of the Act was issued on 25.10.1996, which has been brought on record as Annexure-C to the counter affidavit filed on behalf of the respondent No. 2. Against the aforesaid order dated 8.10.1996, the petitioner preferred aforesaid Revision Case No. 7 of 1997 before the Board of Revenue, Bihar, Patna, as in the meantime, his father, the original landholder Nagendra Narain Singh, is said to have died sometime in the year 1996, as per the submission made by the learned counsel for the petitioner. The aforesaid revision case has been dismissed by the impugned order dated 14.3.2000 (Annexure-6). Hence, the present writ petition.

5. The learned counsel appearing on behalf of the petitioner, while assailing the impugned orders, submitted that once a notification under Section 15(1) of the Act was issued on 1.9.1977, then the respondent-D.C.L.R. could not have made a proposal for modification of the aforesaid notification by the order dated 14.1.1978 (Annexure-2) and, therefore, according to him, the respondent-D.C.L.R. has practically re-opened the ceiling case. He further submitted that a fresh proceeding was required to be started in terms of Section 32-B of the Act and that has not been done. In that view of the matter, according to him, the

entire land ceiling case is required to be decided afresh. It was also contended that an enquiry was required to be held under Section 5(1)(iii) of the Act and only thereafter direction could have been issued for inclusion of the aforesaid transferred lands made after 9.9.1970 in the units of the landholder. In support of his above contentions, he placed reliance on judgments of this Court in the case of Deosagar Singh & Others vs. The State of Bihar & Others , (1979 BBCJ 589) [: 1979 PLJR 551] as also Shivashankar Prasad Jaiswal & Others vs. The State of Bihar & Others (1980 BLJ 211).

6. Per contra, the learned G.A.-XII appearing on behalf of the official respondent Nos. 1 to 4 has submitted that the present writ petition is completely misconceived and is fit to be dismissed. According to him, so far the original landholder Nagendra Narain Singh is concerned, he accepted the finality of the orders passed in the ceiling case by the Collector under the Act that he is entitled to have only two ceiling units i.e. one for himself, his spouse and his minor children and other for his eldest son namely the present petitioner and his family. Therefore, he was allowed to retain only 60 acres of Class-IV lands and remaining 12.38 acres of lands were declared surplus, but, while exercising his option, it is contended that the landholder committed fraud by giving those 12.38 acres of lands for the purposes of acquisition, which he had already sold in contravention of the provisions of the Act. According to him, since all those transfers were made by the landholder after 9.9.1970; therefore, those lands are required to be clubbed in the permissible units of the landholder, so that the interest of the purchasers is protected. He further contended that since all those transfers were made after 9.9.1970; therefore, enquiry under Section 5(1)(iii) of the Act was not required to be conducted, as has been held by a Division Bench of this Court in the case of Sib Narain Roy vs. The State of Bihar [, 1994(1) PLJR 294]. He next contended that, so far allotment of two ceiling units to the landholder is concerned, that was never questioned either by the landholder or by the State of Bihar and its functionaries and that has attained its finality. The only issue before the District Collector was for inclusion of the transferred land in the permissible ceiling area allowed to be retained by the landholder. It was submitted that, in the given facts of the case, orders impugned are fit to be affirmed. In support of his above contentions, he has further placed reliance on judgments of this Court in the case of Arun Kumar @ Arun Kumar Singh vs. State of Bihar & Ors. [, 1997(1) PLJR 657] as also Md. Salim Uddin & Ors. vs. The State of Bihar & Ors. [, 1998(1) PLJR 38].

7. The learned counsel appearing on behalf of the private respondents has adopted the submissions made by the learned GA-12. He simply added that the lands purchased by the private respondents from the landholder are required to be included in the permissible ceiling area of the landholder, which according to him, has been done by the impugned order passed by the District Collector. In support of his above contentions, he has also placed reliance on a judgment of this Court in the case of Dr. Sushil Kumar Verma & Ors. vs. The State of Bihar & Ors. [2011(4) PLJR 575].

8. Before reverting to the rival submissions made by the learned counsel for the parties, it would be appropriate to reproduce Section 5(1)(ii) and Section 9(2) of the Act, which reads as follows:--

"5(1)(i)-----

5(1)(ii). No landholder holding land in excess of the ceiling area shall from the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 and till the publication of notification under Section 15, transfer any land held by him except with the previous permission in writing of the Collector, who may refuse to give such permission if he is satisfied for the reasons to be recorded in writing that the transfer is proposed to be made with a mala fide intention of defeating the object of this Act:

Provided that the transfer of any land made, with the previous permission of the Collector, shall be deemed to have been made from within the ceiling area admissible to the landholder:

Provided also that the transfer of any land beyond the ceiling area admissible to the landholder shall be deemed to have been made with the object of defeating the provisions of the Act."

"9(1).-----

9(2). Where the land held by the landholder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of sub-section (1) of Section 5, the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 shall to the extent of the ceiling area admissible to the landholder, be deemed to have been selected by him for retention within the ceiling area; and where the total area of such land is less than the ceiling area admissible to him, the landholders shall select the balance of ceiling area from his remaining land:

Provided that where the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 is equal to or more than the ceiling area admissible to him and if because of the selection under sub-section (2) of the land-holder's homestead cannot be retained within his ceiling area, the landholder may be permitted to hold his homestead subject to a maximum limit of two acres only."

9. From the conjoint reading of Section 5(1)(ii) and Section 9(2) of the Act, it is apparent that the transfer made by the landholder after 9.9.1970 without previous permission of the Collector under the Act shall be treated to have been made with an object to defeat the provisions of the Act; therefore, the same shall be held to be illegal. However, transfer made after 9.9.1970 either in accordance with the provisions of the Act or in contravention of the provisions of

the Act is required to be treated to have been made from the permissible ceiling area of the landholder. In the present case, all the transfers made by the land holder in favour of the private respondents were made after 9.9.1970 without obtaining permission from the Collector under the Act. Therefore, the entire area of lands transferred by the landholder shall be deemed to have been selected by the landholder within the permissible ceiling area allowed to be retained by him. Unfortunately, the original landholder as also the present petitioner concealed the material facts about the transfers made by them in favour of the private respondents after 9.9.1970, and by committing fraud they surrendered those lands for the purposes of acquisition, which they had already sold in favour of the private respondents. This Court further finds that the issue regarding allotment of two ceiling units to the landholder stand concluded and that issue was never questioned either by the landholder or by the State authorities. Therefore, this issue cannot be permitted to be reopened/re-agitated at such a belated stage. Furthermore, the original landholder Nagendra Narain Singh, the father of the petitioner, as per the submissions made by the learned counsel for the petitioner, died sometime in the year 1996 and he did not challenge the final order passed by the Collector under the Act on 4.2.1977 (Annexure-1) allotting him two ceiling units and declaring 12.38 acres of land as surplus.

10. As per the case of the petitioner himself, notification under Section 15(1) of the Act was issued on 1.12.1977. By the order dated 14.1.1978, the respondent-D.C.L.R. made a proposal for the purposes of correction of notification issued under Section 15(1) of the Act, so that the mandate of Section 9(2) of the Act is complied with and interest of the purchasers i.e. the private respondents is protected. The respondent-D.C.L.R. has never re-opened the proceeding. The submission made by the learned counsel for the petitioner regarding re-opening as also non-compliance of the Section 32-B of the Act are not only misconceived, rather they are irrelevant submissions in the factual matrix of the case. Either before the District Collector or before the Board of Revenue such things were never raised. The judgments relied upon by the learned counsel for the petitioner have been held to have been passed sub-silentio and have been rendered per-incuriam and does not create any binding precedent by a subsequent Division Bench of this Court in the case of Sib Narain Roy vs. The State of Bihar (supra). Hence, the submissions made by the learned counsel for the petitioner by placing reliance on two overruled judgments are misconceived and have to be rejected.

11. From the plain reading of the impugned orders, as contained in Annexures-5 and 6, it is apparent that while passing the aforesaid orders by the competent authorities the mandate of Section 9(2) read with Section 5(1)(ii) of the Act have been implemented for the purposes of protecting the interest of the purchasers, without disturbing the finding of fact that the landholder is entitled to have two ceiling units. For the reasons recorded above, this Court does not find any good ground to interfere with the impugned orders, as contained in Annexures-5 and 6. The writ petition is devoid of merits and is, accordingly, dismissed, but without costs.