
(2014) 11 PAT CK 0062
In the Patna High Court
Case No : CWJC No. 16555 of 2013

Jagarnath Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 11, 15(1) — Bihar Land Tribunal Act, 2009 - Section 15, 9

Citation : (2015) 2 PLJR 450

Hon'ble Judges : Shivaji Pandey, J.

Bench : Single Bench

Advocate : Jitendra Prasad Singh, for the Appellant; Mankeshwar Tiwary, for the Respondent

Final Decision : Allowed

Judgement

Shivaji Pandey, J. Heard learned counsel for the petitioners and the respondents. In this case, petitioners are challenging the notification dated 22nd April, 1985 issued under Section 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter, in short, referred to as the "Act") for acquisition of surplus land and also the order dated 31st October, 1985 passed by the Collector by which he has refused to reopen the case of petitioners under the provisions of Section 45-B of the Ceiling Act.

2. As it appears from the record that Land Ceiling Case No. 46 of 1975-76 was initiated against Shyam Sundar Mahto, father of Ramesh Prasad and Umesh Prasad, respondent Nos. 4 and 5 by the LRDC, Bettiah and the final Notification u/s. 11 of Ceiling Act was published declared as surplus land, comprising the lands of father of Respondent Nos. 4 and 5, even including the land of petitioners.

3. After issuance of notice under Section 11 of the Land Ceiling Act finally a notification dated 22nd April, 1985 was issued under Section 15(1) of the Act in which land of father of petitioners was also clubbed with land of father of Respondent Nos. 4 and 5 and same was declared as surplus. When father of

petitioners could know about the notification under Section 15(1) of the Act, he filed an application under Section 45-B of the Land Ceiling Act which was registered as Land Ceiling Misc. Case No. 36 of 1985. The Collector, vide order dated 31st October, 1985 rejected the application and refused to reopen the proceeding in favour of petitioners.

4. It has been mentioned that Ramfal Mahto had three sons, namely, Jhagru Mahto, Yugal Mahto and Sukhu Mahto. Jhagru Mahto died leaving behind two sons, namely, Shyam Sundar Mahto (father of respondent Nos. 4 and 5) and Laxman Mahto (father of petitioners). Grand-father of both the branches was Ramlal Mahto, all lands were recorded in his name. Land notified as surplus included the land of father of petitioner was treated as the land of Shyam Sundar Mahto.

5. Against the order of Collector, father of petitioner filed writ petition vide CWJC No. 5822 of 1985 and this Court vide order dated 9.1.1996 directed the State to file a counter affidavit. In the meantime distribution of land was stayed as State was directed to take instruction, ultimately the case was dismissed for default vide order dated 28th January, 1994. When the petitioners heard a rumour for distribution of the land from the Office of the Anchal Adhikari, they could know about" the dismissal of the writ petition and filed the present writ petition challenging the notice issued under Section 15(1) of the Land Ceiling Act as well as order impugned passed u/s. 45(B) of the Act. The reason for delay in filing writ application has been assigned by the petitioners that the father of the petitioners was pursuing the case honestly which is apparent from the fact that CWJC No. 5822 of 1985 was filed. This Court has granted stay of distribution of the land. During the pendency of writ petition father of petitioners died; as having no knowledge about the pendency of the writ petition, the writ petition was dismissed for default, submitted that there is no laches on the part of the petitioners. The State has argued that the present case is not maintainable in view of delay and laches. The explanation assigned by the petitioner cannot be believed to be true as during aforesaid period petitioner had attained majority. In support of his contention relied on the judgment reported in C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, .

6. The second objection has been raised that the State of Bihar has created an appellate forum under the Land Disputes Tribunal Act, 2009 and power has been conferred upon the Tribunal to adjudicate the ceiling dispute arising from the Act. In view of Section 9 read with Section 15 of the Bihar Land Tribunal Act, 2009, the present writ application is not maintainable, instead of pursuing the matter before this Court, the petitioners should be directed to approach the Tribunal under the Bihar Land Tribunal Act.

7. Having considered the rival contention of the parties, the first objection with regard to delay and laches that has been raised by the State, it emerges from the pleading of writ petition, the father of the petitioners against the order of the Collector filed writ application and was pursuing the case diligently.

8. The State has not denied the fact that during the pendency of the writ petition i.e. CWJC No. 5824 (sic--5822?) of 1985, father of the petitioners died. The ground that has been taken is that by the time the petitioners had become major they were supposed to know about the pendency of the said case. It is very unnatural that his father was pursuing the case and the petitioners were not knowing about the same. The reasons assigned that it was not possible to know about the pendency of the case is not acceptable and the same is liable to be rejected.

9. As the case was continuing before this Court, the same was dismissed for default on 28th January, 1994. It is far fetched argument that petitioners were knowing about the pendency and dismissal of writ as because petitioners were major. It is submitted that land of the father of petitioners was clubbed with the lands of his own brother treating the same belonging to his brother. The Collector while passing the order has not dealt with the matter and without appreciating the fact and law, rejected the application.

10. So far the judgment cited above, it is not applicable to the facts and circumstances of the present case. It was given in different facts and circumstances. In the present case father of petitioners was pursuing the case upto the High Court but due to his death the case was dismissed for default and, as such, this Court is of the view that this petition cannot be rejected on the ground of delay and laches.

11. So far alternative remedy is concerned, in view of creation of the Tribunal under the Bihar Land Tribunal Act, 2009, as the matter was pending before this Court, on account of death of father of the petitioners, the case was dismissed for default. It will be travesty of justice to ask the petitioner to approach the Tribunal, as such, the objection raised by the State cannot be accepted.

12. This Court feels as the Collector has not considered the fact that the land of the father of petitioners was clubbed with the land of his brother, treating his land and wrongly declared it as surplus. This Court is of the view that the Collector should have decided the case on merit by a reasoned order. Before parting with the judgment, this Court cannot refuse to notice the fact in Para-16 of the petition where it is stated that in the month of May 2013 the petitioners heard a rumour for distribution of the land from the Office of the Circle Officer on search he could know the dismissal of writ, but in the counter affidavit it has not been replied by the State.

13. In this view of the matter let the order passed by the Collector dated 31st October, 1985 (Annexure-2) is hereby quashed and the matter is remitted back to the Collector to rehear the matter under Section 45-B of the Land Ceiling Act and decide it within three months from the date of receipt/production of copy of this order.

14. This Court is remanding the matter back knowing well about the amendment of Ceiling Act at the relevant time the Collector was the authority under the Act

and as such, this Court is of the view that it is the Collector who has jurisdiction to decide the application. With the above observations/directions, this petition is allowed.