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**(1998) 04 PAT CK 0024**

**In the Patna High Court**

**Case No :** C.W.J.C. No"s. 4292, 4295, 4296 4304, 4306 and 4311 of 1987

Jagdamba Prasad and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 28-04-1998

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 5(i)(ii), 5(i)(iii)

**Citation :** (1998) 3 BLJR 2125 : (1998) 2 PLJR 465

**Hon'ble Judges :** S.J. Mukhopadhaya, J

**Bench :** Single Bench

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## **Judgement**

S.J. Mukhopadhaya, J.—As in these cases, common point of law is involved and the writ petitions are interrelated, they were heard together and are being disposed of by this common judgment.

2. Since there is a short point of law involved in these cases, it is not necessary to discuss all the facts except the relevant one.

3. It appears that one Thakur Durga Shankar Singh was the land holder who had three daughters, namely, Smt. Renu Singh, petitioner of C.W.J.C. No. 4295 of 1987; Smt. Shashi Singh, petitioner of C.W.J.C. No. 4306 of 1987; and Smt. Shail Singh, mother of petitioner Hammeer Pal of C.W.J.C. No. 4304 of 1987. Initially, Land Ceiling Case No. 3/73-74 was started against land holder Thakur Durga Shankar Singh, in which after his death, Hammeer Pal Singh, son of one of the daughters was substituted. Two other Land Ceiling Case Nos. 57 and 58 of 1982 were subsequently started against petitioners Smt. Renu Singh and Smt. Shashi Singh, the other two daughters. All the aforesaid ceiling cases were decided on 23rd September, 1985, whereby and whereunder, certain lands were declared surplus.

4. The petitioners of three other writ petitions, namely, Munnar Maharaj and others of C.W.J.C. No. 4311 of 1987; Subai Sain and Anr. of C.W.J.C. No. 4292 of 1987; and Jagdamba Prasad and others of C.W.J.C. No. 4296 of 1987 are the

purchasers. While the petitioners Munnar Maharaj and others are purchasers from land holder Thakur Durga Shankar Singh, petitioners Subai Sain and another are the purchasers from the land holder Smt. Renu Singh and petitioners Jagdamba Prasad and others are the purchasers from land holder Smt. Shashi Singh. They purchased their respective lands some time in the year 1972 by different registered sale-deeds and subsequently their names were mutated in the Register No. 2 of the State of Bihar.

5. The land holders petitioners preferred Appeal Nos. 142, 143 and 145 of 1985-86 against their respective original orders, all dated 23rd September, 1985. The three other Appeal Nos. 145, 148 and 149 of 1985-86 were preferred by the purchasers against such original orders, all dated 23rd September, 1985. All the appeals were rejected by similar orders dated 28th August, 1986 or 22nd September, 1986 against which land holders as well as the purchasers preferred different Revision Case Nos. 231, 232, 233, 235 and 236 of 1986, which were also rejected by different orders, all dated 4th August, 1987. While two different nature of orders were passed in appeal preferred by land holders and purchasers, common order was passed in revision cases preferred by both the land holders and purchasers.

6. The grievance of the land holders-petitioners of C.W.J.C. Nos. 4306/87; 4295/87 and 4304/87 is similar except the petitioner of C.W.J.C. No. 4304/87, who has raised an additional question.

7. According to the land holders petitioners, the classification of lands has been wrongly shown which resulted declaration of surplus land in their cases. A verification report was submitted by the Anchal Adhikari in the year 1976 in which number of plots of land holders were shown as Class-III lands. However, subsequently, when another report was submitted by letter No. 160 dated 18th February, 1983, the classification of such lands was varied and shown as Class I lands, without any basis. The Anchal Adhikari by his subsequent report submitted vide letter No. 539 dated 5th August, 1985, though informed that the report submitted in the year 1983 was correct, but he failed to point out the illegality in the earlier report submitted in the year 1976. It was categorically pleaded by the petitioners before the authorities that there was no irrigational facility in the area as on 9th September, 1970 and even thereafter in the year 1976 and thus there was no surplus land when the transfers were made in favour of other petitioners-purchasers in the year 1972. The aforesaid pleadings made by the petitioners were rejected by the original as well as the appellate authorities.

8. The grievance of the other petitioner-Hammeer Pal Singh is that Late Durga Shankar Singh was alive as on 9th September, 1970 and report was also submitted by the Anchal Adhikari to that effect in the year 1976, but no unit was allowed in his favour.

9. So far as the land sold in the year 1972 in favour of purchasers-petitioners of C.W.J.C. Nos. 4296; 4292 and 4311 of 1987 is concerned, the grievance of the

petitioners-purchasers is that their lands were also declared surplus clubbing them with the lands of land holders, without notice to them u/s 5(i)(iii) of the Ceiling Act. Further, according to them, though there was nothing on the record to suggest that such sale-deeds were executed in the year 1972 to defeat the provisions of the Ceiling Act, but their respective sale-deeds have been annulled on mere ground that they were executed after 9th September, 1970.

10. According to the land holders-petitioners of C.W.J.C. Nos. 4306; 4295 and 4304 of 1987, though they raised all the aforesaid questions and pressed the same before the revisional authority, but the revisional authority erred in holding that these petitioners did not press the other points which is error of record. The aforesaid fact was brought to the notice of the revisional authority by petition filed subsequently after disposal of revision cases, but no order was passed thereon.

11. Counter-affidavits have been filed on behalf of the Respondents in C.W.J.C. Nos. 4292; 4295 and 4296 of 1987, but no counter-affidavit has been filed in the other writ petitions.

12. The main stand taken by the Respondents is that the classifications were rightly made and the claim instituted in the year 1972 being without prior permission in terms with Section 5(i)(ii), they were rightly annulled by the authorities.

13. From the impugned orders, passed in Ceiling Case Nos. 3/73-74; 67/82; and 68/82, it will be evident that the purchasers-petitioners of C.W.J.C. Nos. 4296, 4292 and 4311 of 1987 were not noticed nor heard. The classification of lands shown in the year 1983 was accepted and the objection of the land holders-petitioners was rejected on mere ground that the Anchal Adhikari by his report in the year 1985 stated that the classification shown vide report of the year 1983 was correct. No discussion has been made by the authority as to why the classification shown in the first report was discarded nor any detail of irrigational facility in the area as was existing in the year 1970 has been shown therein. The appellate authority while rejected the appeals also took the similar view and without discussion of relevant claim and counter-claim of the parties, agreeing with the order passed by the original authority.

14. So far as the revisional authority is concerned, it mainly decided the question relating to transfer of land made in the year 1972 and annulled all the sale-deeds. The pleadings made by the petitioners that no notice u/s 5(i)(iii) was issued to them, was taken into account as well as the Division Bench decision of this Court reported in 1979 B.B.C.J. 589, but claim of the petitioners was rejected on the ground that the land holders were heard and the sale-deeds were executed after 9-9-1970 without prior permission and in the land ceiling proceeding, it was declared to be surplus.. Thereby, such transfers deemed to have been made to defeat the provisions of the Ceiling Act.

15. In these cases, admittedly, the sale-deeds were executed by land holders in

the year 1972 i.e. much prior to the amendment of the provisions of Section 5 of the Ceiling Act. Initially, there was no such provision to declare a sale-deed purported to have been made to defeat the provision of law, but after amendment of said provision in the year 1982, the proviso to Section 5(i)(ii) was added wherein it was stipulated that the transfer of any land excess to the ceiling area admissible to land holders shall be deemed to have been made with the object of defeating the provisions of the Act, if such sale-deed was exercised after 9-9-1970. Such amendment having been made in the year 1982, according to me, said amendment is not applicable in the cases of transfer of lands made prior to such amendment but after 9-9-1970. In such cases, the transfers made after 9-9-1970 but prior to the amendment will be governed by unamended provision of Section 5(i)(ii) of the Ceiling Act.

16. In the case of Deosagar Singh and Ors. v. The State of Bihar and Ors. reported in 1979 B.B.C.J. 589; 1979 BLJ 552, a Division Bench of this Court held that even with respect to a transfer made after 9-9-1970, the provision of Section 5 (i)(iii) is to be followed as the authority is required to enquire whether such transfer was made to defeat the provision of the Act or it was a Farji transfer. In the present cases, as no such notice was issued to the purchasers-petitioners of C.W.J.C. Nos. 4292; 4296 and 4311 of 1987, the impugned orders cannot be said to be legal.

17. So far as classification of land is concerned, generally this Court do not interfere with such classification based on report submitted after due enquiry and verification. However, the petitioners-land holders having shown after placing some prima facie evidence that the classification is wrong then in that case, the authorities are required to give reasons to justify the classification as shown in the report and accepted by the authorities.

18. In the present cases, it is not in dispute that many plots and lands of land holders were classified as Class III lands vide report submitted in the year 1976. But by subsequent report submitted in the year 1983, the classification of lands was changed and shown to be Class 1 lands, for which no reason has been shown while the authorities passed the original orders in ceiling cases, nor such reason has been shown by the appellate authority. The land holders-petitioners have categorically stated that there was no irrigational facility in the area, in question, in the year 1970 and even upto the year 1976 when first report submitted. This fact has not been disputed by the Respondents by placing any evidence to counter such allegation. As the question relating to surplus land and validity of transfer is to be determined as on 9-9-1970, when transfers were made the authorities were bound to take into consideration the classification of lands as was existing at that point of time and not the classification as shown subsequently, if the nature of land changed because of irrigational facilities, if made subsequent to the transfer.

19. For the reasons stated above and there being gross irregularity in the orders, as stated above, I set aside the Revisional orders, all dated 4th August 1987,

passed in Revision Case Nos. 231236 of 1986 and remit the cases to the revisional authority to decide the question afresh after hearing the petitioners and taking into consideration the classification as shown in the first report. If the Respondents State and its authorities want to dispute the validity of the classification report of the year 1.976, they will have to give reasons for the same and the same is to be considered by the revisional authority.

20. It is needless to say that the revisional authority will decide the other issues/questions as raised by the petitioners, including the issue whether the mother of Thakur Durga Shankar Singh was entitled for a unit or not and whether the transfers made in the year 1972 were so made to defeat the provisions of the Ceiling Act and will pass a reasoned order with respect to this issue.

21. The writ petitions stand disposed of with the aforesaid observations and directions. However, on the facts and circumstances, there shall be no order, as to costs.