

(1999) 05 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 6275 of 1990

Jhulan Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-05-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 15(1), 27
Bihar Tenancy Act, 1885 — Section 48E

Citation : (1999) 3 PLJR 405

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Chandeshwar Jha, for the Appellant; J. Rahaman for the State and Mr. B.P. Verma, for the Respondent

Judgement

N. Pandey, J.—This writ petition has been filed for quashing the impugned orders whereby the claim of the petitioners to cancel the order of settlement in favour of respondent nos. 5 and 6 made under the provisions of Section 27 of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act (hereinafter referred to as the Act) and to grant parcha in the name of the petitioner since he is a declared under raiyat of the lands in dispute as per the provisions of section 48E of the Bihar Tenancy Act (In short "B.T. Act") was rejected. It would appear from the materials on record that on 31.3.1976 gazette notification under section 15(1) of the Act was published, declaring the land in dispute along with other lands surplus in the ceiling case no. 38/76-74, which had started against Ramdeo Choudhary & ors.

2. As would appear from Annexure 6, the order of the Subdivisional Officer, Ceiling, Supaul, dated 14.10.1976 that an application was filed by the petitioner on 18.6.1976 u/s 15(3) of the Act, raising his claim as under raiyat with respect to the land in dispute. This is not in dispute that by virtue of an order u/s 48E of the B.T. Act, contained in Annexure 5, the Deputy Collector, Land Reforms, after accepting the report of the Batai Board, had declared the petitioner under raiyat

of the lands in question. It is also not in dispute that on 31.5.1976 and 30.6.1996, the DCLR took a decision to settle the lands in dispute with respondent nos. 5 and 6 respectively.

3. It would further appear that on 14.10.1976, the SDO Ceiling held that in view of the order of the DCLR u/s 48E of the B.T. Act, declaring the petitioners under raiyat, they were entitled for grant of parcha in terms of the provisions of section 22 of the Act. But since by the order of the DCLR u/s 27 of the Act, a decision was taken to settle the lands in favour of respondent nos. 5 and 6, he directed the Anchaladhikari to submit a fresh proposal regarding settlement of the land in favour of petitioners as also for cancellation of parcha which was granted in favour of respondent nos. 5 and 6. When no further order was passed on 27.1.1984, the petitioners filed an application before the DCLR with a request that parcha be issued in their favour since an order in this regard was already passed by the S.D.O. Ceiling. But it is alleged that without appreciating the previous order passed by the authorities and the report of the Anchaladhikari dated 18.5.1983, contained in Annexure 10, the DCLR rejected the petition on the ground that order for settlement u/s 27 of the Act was already passed in favour of respondent nos. 5 and 6.

4. Though, the petitioners had preferred an appeal and revision before the higher authorities, but all the time, their claim was rejected on the ground that no appeal was preferred against the order passed u/s 27 of the Act, therefore, they would not be entitled for settlement.

5. Learned Counsel for the petitioners contained that from a bare reference to the order of the SDO, Ceiling, contained in Annexure 6, it would appear that an application u/s 15(3) of the Act was already filed on 18.6.1976, claiming interest in the property in the capacity of under-raiyat. The concerned authority had also after examining the relevant records had accepted that petitioners were declared under-raiyat of the land, therefore, it was not open to the D.C.L.R. to take decision u/s 27 of the Act for settlement in favour of respondent nos. 5 and 6. He contended that not only the SDO, Ceiling, but it would appear from Annexures 7, 9 and 10 that even the DCLR and the Anchaladhikari had also held since petitioners were declared under raiyat u/s 48E of the B.T. Act, therefore, they were alone entitled for parcha when the land was declared surplus. But ignoring the previous decision, the claim of petitioners was rejected on a wrong assumption that he had not filed any appeal against the order passed u/s 27 of the Act.

6. Learned Counsel for respondent nos. 5 and 6 and the State on the other hand contended, since petitioners had failed to file an application u/s 22 of the Act within a period of three months from the date of publication of gazette notification u/s 15(1) of the Act, they are estopped from laying claim of under raiyat. Because, the objection of the petitioners, which the SDO Ceiling had occasion to notice, was in fact u/s 15(3) of the Act and not u/s 22 of the Act.

7. It was further contended that there is no dispute that the lands in question were settled with respondent nos. 5 and 6 by the competent authority u/s 27 of the Act. Therefore, if the petitioners had any grievance against such a settlement, they had the remedy to file an appeal under sub rule (ii) of Rule 44 of the Bihar Land Ceiling Rules, 1963, before the Additional Collector or the Collector of the District. Therefore, having not availed the statutory remedy, as noticed above, the petitioner will not be entitled to make any claim over the lands in question.

8. In my view, there cannot be any dispute with regard to the legal proposition either raised on behalf of the petitioner or respondent nos. 5 and 6 nor there can be any dispute that as per section 22 of the Act, only an under raiyat of the surpuls land will be entitled to acquire status of a raiyat. According to the petitioners, since they had already made an application u/s 15(3) of the Act, before the competent authority, raising objection over in the capacity of under raiyat and after condoning the delay, the objection was allowed by the competent authority holding that the petitioners were entitled to retain the land in the capacity of under raiyat. Therefore, it may not be proper to allege that no claim was at all made by the petitioner for the land.

9. All such aspects have not at all been examined by the respondent-authorities nor any attempt was made to consider when an under raiyat was entitled to make an application u/s 22 of the Act within a period of three months from the date of the publication of gazette notification u/s 15(1) of the Act, under what circumstances even before the expiry of the said period, decision was taken to settle the lands in favour of respondent nos. 5 and 6 u/s 27 of the Act, by the order dated 31.5.1976 and on 30.6.1976, parwana was granted. In my view having regard to the period prescribed for filing objection u/s 22 of the Act, steps for settlement u/s 27 of the Act with respect to the land in possession of the under raiyat can only be taken, if no application is made within a period of three months. Therefore, after expiry of such a period alone, the authorities would be entitled to take steps for settlement u/s 27 of the Act. But as noticed above, unfortunately, all these aspects have not been considered nor any attempt was made to find out under what circumstances contradictory stand was taken by the DCLR.

10. Therefore, it would be in the interest of justice that entire matter be reexamined by the Additional Member, Board of Revenue afresh. Because from a bare reference to the order contained in Annexure 1 or the order of the learned Commissioner, contained in Annexure 2, it would appear that none of the relevant eventualities were considered. In the result, the impugned order of the Additional Member, Board of Revenue, as contained in Annexure 1, is set aside and the case is remanded back before the same authority for a fresh consideration in accordance with law. In the meantime, until final disposal, interim order of this Court, dated 15.2.1991 shall continue. However, in the facts and circumstances of this case, there shall be no order as to costs.