

(1980) 03 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3443 of 1979

Jitin Jha and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-03-1980

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15A
Constitution of India, 1950 — Article 226, 227

Citation : (1984) PLJR 148

Hon'ble Judges : Chaudhary Sia Saran Sinha, J; B.P. Jha, J

Bench : Division Bench

Advocate : Rash Bihari Singh, Narbadeshwar Pandey and Ashok Kr. Singh, for the Appellant; R.S. Roy (S.C. III) and Prakash Roy (J.C. to S.C. III) for the State, for the Respondent

Judgement

B.P. Jha, J.—In an application under Articles 226 and 227 of the Constitution these petitioners pray for issue of writ of mandamus directing the respondents not to treat the lands covered by Annexure-6 as land surrendered u/s 15A of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (hereinafter referred to as the Act). A notice, vide Annexure-1 was issued to the petitioners directing him to appear on 29th June, 1976 before the District Collector for implementing the twenty-point programme. In pursuance of the notice, he appeared and it is alleged in the writ petition that he was compelled to surrender the lands covered by Annexure 6. The surrender was made under the provisions of section 15a of the Act.

2. The point for consideration is, whether it is a valid surrender in the eye of law or not?

3. Section 15A requires that in every case of surrender the authority shall give a notice to any land holder or to all land holders calling upon him or them to surrender to the State (Sic) (land) which according to him or them is in excess of

the ceiling area. In pursuance of such notice, the land holders shall appear and shall file an application to the Collector in the prescribed form offering to make such surrender.

4. In the present case a counter affidavit, has been filed by the State. It is nowhere stated in the counter affidavit that a notice was issued to the land holders (petitioners) or to all-land holders generally calling upon him or them to surrender to the State any excess land which is in his or their possession. The onus was upon the State to show that a notice requiring the land holder to surrender the excess land was issued u/s 15A(1) of the Act. After issuing the notice the ceiling authority gets jurisdiction to get the excess land from a land holder. In the absence of such notice the authority under the Act cannot direct a person to surrender the land.

5. In the present case notice was issued to the petitioners, vide annexure-1 to appear before the District Collector on 29th June, 1976 for implementing twenty point programme. In my opinion it is not a notice as envisaged u/s 15A(1) of the Act. The form of the public notice which is required to be issued u/s 15A(1) is mentioned in form L.C. I-A. There is nothing on the record to show that such notice was ever issued to the petitioners for directing them to surrender the land. There is also nothing to suggest that any general notice was issued to all land holder under form L.C. I-A to all the land holders to surrender the land. If no such notice has ever been issued, then the surrender itself is illegal.

6. After the issue of such public notice, the land holder shall appear and file an application in form No. L.C. 2A. The land holder shall also file a return which will be annexure to form L.C. II-A. In the return the land holder shall mention all the lands which the land holder possesses. After looking into the return, the District Collector shall decide the excess of land held by the land holder.

7. In view of the infirmity that no public notice, as required u/s 15A(1) of the Act was ever issued to the petitioner or to all the land holders generally, I hold that the alleged surrender made by the petitioners on 29th June, 1976 before the District Collector, Sitamarhi, in respect of the land covered by Annexure-6 is illegal. Learned counsel for the State. Shri R.S. Roy, contends that the lands have already been distributed amongst the landless persons and they are in possession of the same.

8. In view of the fact that the surrender has been in accordance with law, the alleged distribution is also illegal.

9. In the result the petition is allowed and the alleged surrender on 29th June, 1976 and distribution made thereafter in respect of the lands covered by annexure-6 are declared illegal. The authorities are directed to proceed in accordance with law.

Chaudhary Sia Saran Sinha, J.

10. The alleged surrender, as observed by my learned Brother, is illegal for want

of the notice as contemplated in section 15A of the Act. The assertions made in the writ application by the petitioners and the relevant statements made in the counter affidavit, when read together also lend colour to the contentions of learned counsel for the petitioners that the surrender, besides being illegal, was involuntary. The notice (Annexure-1) which was issued to the petitioners and in pursuance of which he was said [(Sic) (asked)] to appear on 29th June, 1976 before the Collector, when he made the surrender, is also threatening in terms. It alleged actions against the petitioners against the twenty-point programme and directed them to show cause why he should not be punished for those actions. Nothing is known as to what those actions on the part of petitioners were and what action was taken against him except that in the chambers of the Collector the petitioners had to make the surrender. There has been delay on the part of the petitioners in coming to this court in this writ application. This delay has resulted in the distribution of the lands said to have been surrendered to certain persons. No specific objections appear to have been taken in the counter affidavit as to the maintainability of this writ application for non-joinder of those persons. This apart, as observed by my learned brother, when the surrender itself is illegal the distribution is also liable to be quashed. I agree to the order proposed by my learned brother.