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**(2005) 07 PAT CK 0029**  
**In the Patna High Court**  
**Case No : CWJC No. 2376 of 2004**

Jiwan Jha @ Jivnath Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 20-07-2005

**Acts Referred:**

**Citation :** (2005) 4 PLJR 72

**Hon'ble Judges :** Aftab Alam, J

**Bench :** Single Bench

**Advocate :** Kali Das Chatterjee and Amlesh Kumar Verma, for the Appellant;  
Vijay Kumar Bhagat, for the Respondent

**Final Decision :** Allowed

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## Judgement

Aftab Alam, J.—Heard Mr. K.D. Chatterjee, Counsel appearing for the petitioner and Mr. V.K. Bhagat, Standing Counsel (Ceiling). This writ petition arises from a ceiling proceeding and the petitioner is aggrieved by the order passed by the authorities under the Act allowing him only one unit and declaring the remaining area of land as surplus for acquisition. The petitioner further makes the grievance that in the land ceiling proceeding held against him, the authorities wrongly included lands (i) sold by his mother as far back in the year 1962, (ii) lands belonging to strangers, and (iii) his urban lands.

2. It is contended that if all those lands wrongly shown against his name were taken out and if he was allowed two units to which he is lawfully entitled, there would not be any surplus left.

3. The facts of the case are brief and without controversy. A land ceiling proceeding, being Land Ceiling Case No. 351 of 1978-79 was initiated against the petitioner. In that proceeding, a draft statement u/s 10(2) of the Lands Ceiling Act was issued on 5.8.1983 (Annexure 1). In the draft statement, the petitioner was given two units and after leaving 60 acres of Class-IV lands (comprising two units), an area of 45.91 acres was shown as surplus in his hands. The petitioner

filed his Objection u/s 10(3) of the Act on 5.9.1983. One of the objections raised by him was that the draft statement included lands belonging to his maternal grand mother (stranger to the proceeding) which were sold by her to others. The petitioner's objections were disposed of by an ex-parte order passed on 7.1.1984. On the basis of the order dated 7.1.1984, the final publication u/s 11(1) of the Act was made on 16.2.1984 (Annexure 2). In the final publication, 50 acres of Class III land comprising two units was left with the petitioner and the balance 39.85 acres were declared as surplus. (According to the petitioner, the order dated 7.1.1984 did not take into consideration the objections raised by him u/s 10(3) of the Act). Against that order, therefore, he preferred an appeal being Ceiling Appeal No. 30 of 1983-84. The appeal was allowed by order dated 29.7.1985 passed by the Collector, the ex-parte was set aside and the matter was remitted to the Original authority for passing a fresh order after considering the petitioner's objections, in accordance with law. After remand, a fresh draft statement was issued on 16.8.1995. In this draft statement too, the petitioner was shown entitled to two units, comprising 60 acres of Class IV land and 28.97 acres were shown as surplus in his hand (Annexure 4). The petitioner once again filed his objections and the Additional Collector after considering the objections and the verification report of the Anchal Adhikari, passed the order dated 13.7.1996, by which only one unit was given to the petitioner. On the basis of the order dated 13.7.1996, another final publication was made u/s 11(1) on 1.11.1996 (Annexure 8) in which only one unit is left to the petitioner. The Additional Collector, thus, reduced the number of units earlier given to the petitioner in the final publication u/s 11(1) of the Act, dated 16.2.1984. And this position remains unchanged since the petitioner's appeal and finally his revision filed against the order of the Additional Collector were dismissed by the Collector and the Board of Revenue respectively.

4. Mr. Chatterjee submitted that the two units allowed to the petitioner in the final publication made u/s 11(1) of the Act on 16.2.1984 had attained finality and the number of units could not be reduced in the absence of any appeal or revision preferred by the State against the order dated 7.1.1984 passed earlier u/s 10(3) of the Act. Learned counsel contended that the order of the Collector, dated 29.7.1985 by which the matter was remanded to the Original authority was passed on an appeal preferred by the land holder petitioner. Hence, on remand the issues open for reconsideration were only those that were decided against the land holder and the authorities could not reopen the matter for a fresh adjudication and pass orders adverse to the petitioner on issues that were already decided in his favour. In any event, the issue of units was finally settled by the final publication made u/s 11(1) on 16.2.1984 (Annexure 2). Learned counsel submitted that on remand, even the issuance of a fresh draft statement on 16.8.1995 was superfluous, redundant and irrelevant, but at that time, the petitioner had not raised any objection since the draft statement did not reduce or change the number of units allowable to him.

5. The aforesaid facts are not denied in the counter affidavit filed on behalf of the

State.

6. Mr. Bhagat, Standing Counsel (Ceiling) as is his custom took a very fair stand and stated that the action of the authorities appeared to be quite untenable even on facts. Learned counsel pointed out that apart from one unit admissible to the petitioner, one unit was given to his parents" of whom his mother still was alive. In the proceeding after its remand by the Collector in the year 1985, the authorities had allowed only one unit for the mother but overlooked to give any unit to the petitioner who was himself the land holder.

7. Thus viewed from any angle, the denial of the second unit to the petitioner appears to be quite improper, unreasonable and unsustainable in law. The impugned orders dated 13.7.1996 (Annexure 4 passed by the Additional Collector) 28.4.2001 (Annexure 9, passed by the Collector) and 16.10.2003 (Annexure 13, passed by the Member, Board of Revenue) are accordingly quashed. Also quashed is the final publication u/s 11 (2) of the Act dated 1.11.1996 (Annexure 8) made on the basis of the Additional Collector's order dated 13.7.1996.

8. The concerned authorities are directed to allow the petitioner two units.

9. It is further directed that the petitioner may file his objections with regard to the lands, which according to his case, were wrongly included in the proceeding against him. In case such an objection is filed before the Collector within one month from today, the Collector shall examine the matter and pass appropriate orders after giving the petitioner an opportunity of hearing.

10. In the result, this writ petition is allowed. Let a copy of this order be handed over to Mr. Bhagat.