

(2000) 08 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 7494 of 2000

Jugeshwar Safi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15, 15(2), 9

Citation : (2000) 3 BLJR 2217 : (2000) 4 PLJR 518

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Judgement

R.N. Prasad, J.—A land ceiling proceeding bearing No. 18/73-74 was initiated against Dharmnarain Sah @ Narain Sah, respondent No. 6. In the said proceeding the land of the land-holder including the land, in question was declared surplus. The land-holder challenged the order in different forum including in C.W.J.C. No. 11295/98 before this Court, However, during the pendency of the proceeding the land declared surplus was acquired u/s 15 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter referred to as the "Ceiling Act". After acquisition of the surplus land the land was distributed amongst the needy persons including the petitioner. The petitioner was granted Parwana in the year 1991 and since then the petitioner claims to be in possession over the land, in question. However, the Writ petition, as stated above, was disposed of on 6.1.99 (Annexure 2) wherefrom it appears that the land-holder was allowed to retain 93 acres of land and he was allowed to exercise option u/s 9 of the Ceiling Act. The land-holder exercised option and filed a petition to the aforesaid effect but his petition with respect to 31.65 acres of land was rejected.

2. The land-holder challenged the order of rejection and this Court vide order (Annexure 2) directed the authority concerned to allow the land-holder to retain the land to the extent of 31.65 acres as per his choice. Pursuant to the order of this Court, the land-holder was allowed to retain the land as per his choice.

Accordingly, the Notification to the aforesaid effect (Annexure 2/1) was published in the official gazette. The petitioner thus has filed this Writ petition for quashing the Notification (Annexure 2/1) and also for direction to allow the petitioner to retain the land which was settled with him and also for direction to the respondents to allow same type of land to the landless including the petitioner.

3. The facts, as indicated above, are not in dispute. However, learned Counsel for the petitioner contended that since the land was declared surplus, acquired by the State of Bihar and distributed to the petitioner in the year 1991, the petitioner, cannot be evicted from the said land. In this regard, it would be pertinent to mention herein that the land was acquired and distributed while the proceeding under the Ceiling Act was pending. During the pendency of the proceeding, the land declared surplus can be acquired u/s 15 of the Ceiling Act but such acquisition shall be subject to the provision of the Land Ceiling Act as has been stated in Section 15(2) of the Ceiling Act, Sub-section 3 of Section 15 has made it clear and says that it would be subject to any order made on appeal or revision. Therefore, the acquisition during the pendency of appeal/revision/proceeding before this Court would be subject to the result of the appeal/revision/proceeding before this Court. If in appeal, revision or proceeding before this Court it is held that the land-holder does not possess the surplus land then acquisition shall vanish and land-holder shall be entitled to retain the land.

4. At this juncture, it would not be out of place to mention here that the right and interest of settlee of the surplus land during the pendency of the appeal, revision or proceeding before this Court would not be better than that of the settler. If the right in the State of Bihar is extinguished by the order of appeal, revision or proceeding before this Court, the settlee of the State of Bihar cannot claim the right over the land settled to him. In the instant case, it is manifest that the landholder was allowed to retain the land as provided u/s 9 of the Ceiling Act vide Annexure 2, and pursuant to the order fresh Notification (Annexure 2/1) as required u/s 15 of the Land Ceiling Act was published in official gazette and the land-holder was allowed to retain as per his choice, therefore, the Notification (Annexure 2/1) cannot be held to be bad in law. The petitioner cannot take any advantage of the acquisition of the land and distribution thereof while proceeding was pending, as such acquisition was subject to the order passed in appeal, revision or proceeding before this Court, which has been modified pursuant to the order of this Court (Annexure 2) and the Notification to the aforesaid effect (Annexure 2/1) was published.

5. However, with regard to second grievance of the petitioner that he is landless and as such he may be allotted land from the land declared surplus, it is necessary to mention that the petitioner may approach to the authority concerned by filing a petition and in case such petition is filed, the authority concerned shall consider that the petitioner was allotted land earlier and shall dispose of the grievance of the petitioner by a reasoned order in accordance with law.

6. The Writ petition is, thus, disposed of with the aforesaid observation/direction as indicated above.