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**(2007) 05 PAT CK 0138**  
**In the Patna High Court**  
**Case No : CWJC No 8689 of 1988**

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|--------------------------------|----|------------|
| Lal Mohan Choudhary and Others | Vs | APPELLANT  |
| The State of Bihar and Others  |    | RESPONDENT |

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**Date of Decision :** 10-05-2007

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(1), 5(1)(iii)

**Citation :** (2007) 3 PLJR 609

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

**Bench :** Single Bench

**Advocate :** Nand Kishore Prasad, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Aftab Alam, J.—Heard Mr. Nand Kishore Prasad, Counsel for the petitioners and the J.C. to S.C. III representing the State. This writ petition arises from a land ceiling proceeding and the petitioners seek to challenge the orders passed by the authorities under, the Act by which the sale deed executed by the land holder in favour of the respective fathers of the seventeen petitioners was annulled in exercise of powers u/s 5(1)(iii) of the Bihar Land Ceiling Act.

2. A land ceiling proceeding being Case No. 116 of 1973 was held against respondent No. 5, Choudhary Bindeshwari Rai Sharma (hereinafter referred to as the land holder). In the draft statement prepared u/s 10(1) of the Act, an area of 111.04 acres was shown surplus in his hands.

3. According to the petitioners, by a registered sale deed, dated 17.6.1962 the land holder had sold an area of 4.09 acres (1.10 acres from plot No. 152, 88 decimals from plot No. 152 and 2.09 acres from plot No. 558) situate at village Khairahi, P.S. Dumraon in the district of Bhojpur to Shankar Dayal Chaudhary, Parsuram Chaudhary and Sokha Dayal Choudhary, the respective fathers of the 17 petitioners.

4. The petitioners accordingly appeared in the Ceiling proceeding being held against their vendor, the land-holder and filed a separate objection praying for exclusion of the lands claimed by them from the draft statement prepared in his name. The Subdivisional Officer, Buxar before whom the proceeding was pending considered all the objections together and rejected all of them by order, dated 4.7.1984. He considered the case of the petitioners in a brief paragraph (at page 37 of the brief). He noted that Shankar Dayal Chaudhary claimed to have purchased 4.09 acres by a registered sale deed for a consideration of Rs. 7,000/-. In proof of possession, he produced rent receipt for the year 1974-75 and another receipt upto the year 1981-82. The Subdivisional Officer further observed that it was not known whether the rent receipts were obtained just like that or those were issued following mutation in the revenue records. The consideration for the transferred land was much lower than the market value. Accordingly, he declared the sale as illegal u/s 5(1 )(iii) of the Act. This was all the consideration by the Subdivisional Officer before he annulled the sale deed executed by the land-holder in the year 1962.

5. The petitioners took the matter in appeal before the Collector, Bhojpur, Ara which was dismissed by order, dated 2.12.1985. Before the Collector, the Government Pleader argued that the Subdivisional Officer had passed a detailed order that did not require any interference. He further submitted that the petitioners had purchased the land from a person who was not authorized to transfer it. He further submitted that all the transfers were farzi and were made only with a view to defeat the purpose of the Ceiling Act. The Collector wrote in the order that he considered the arguments of both the parties, perused the petitions and also the lower court records. He went on to say that he agreed with the learned Government Pleader that the Subdivisional Officer had passed a very detailed order dealing with all the objections of the opposite parties and there was nothing for him to interfere in the matter.

6. The petitioners then took the matter before the Board of Revenue in revision (District Bhojpur) No. 521 of 1985. It appears that a number of revisions arising from the same proceeding came up before the Board at the same time; some arose from the objections with regard to the gifts made by the land holder in favour of his daughters; other revisions related to transfers of different kinds made by the land holder in favour of different people. All the revisions, including Revision No. 521 of 1985 filed by the petitioners were heard together and were dismissed by resolution, dated 8.8.1988 by the Additional Member of the Board. In the impugned resolution, the revision filed by the petitioners was noted in paragraph 5, in three lines, which are as follows:--

In revision case No. 521 the petitioner purchased the land from the original land holder in 1962 through registered kewala.

7. The resolution then proceeded to note the arguments of the learned A.G.P. In the impugned resolution, the Additional Member focussed all his attention to show that the gifts made by the land-holder to his daughters were sham and

farzi and were made to defeat the provisions of the Act. I went through the order very carefully, but I am unable to find any discussion or consideration with regard to the case of the petitioners in Revision Case No. 521 of 1985

8. Mr. Nand Kishore Prasad, Counsel for the petitioners submitted that the Subdivisional Officer was completely wrong in passing the order of annulment of sale simply on his personal assumption that the consideration money was much lower than the market value of the land. In support of the submission, he relied upon an old decision of a Bench of this Court in *Bachchan Singh vs. The S.D.O. & Ors.*, 1977 BBCJ 728 : 1978 PLJR 375. In paragraph 6 of the decision, it was observed as follows:--

The second circumstance taken into consideration is that consideration money in respect of these transactions are wholly inadequate. We have not been able to find any material on the basis of which this inference could be drawn. No evidence was adduced before the Subdivisional Officer to show as to what was the true value of the lands of the same quality as were transferred under the documents in question. In this connection, we may usefully refer to a decision of the Supreme Court in *Rukmanand Bairoliya vs. The State of Bihar and Others*. In that case in exercise of powers u/s 4(h) of the Act certain settlement was annulled. The ground for annulling the settlement was that the rate of rent fixed by the settlement in question was low. The conclusion was arrived at by the authorities under the Act without there being any material in support of the finding. The Supreme Court held that the factor which weighed with the authorities was thus on pure assumption and conjecture and could not be availed as basis for annulling the settlement. Since no material has been brought to our notice in support of the conclusion that the consideration in respect of transfers in question was low we are of the view that this factor should not have weighed with the authorities in coming to the conclusion that the transfer was not bona fide.

9. The submission made by Mr. Prasad is well founded and the Bench decision in *Bachchan Singh* fully supports the submission.

10. Mr. Prasad next submitted that the order of the Collector was equally passed on a patent error of record. He submitted that the Government Pleader was completely wrong in making the submission that the petitioners' fathers had purchased the land from someone who was not authorized to transfer it and the Collector accepted the submission even without verifying the facts from the record. He invited the Court's attention to Annexure 4 which is a Photostat copy of the registered sale deed, dated 17.6.1962. From the sale deed, it is evident that it was executed by none else than Choudhary Bindeshwar Rai Sharma, the land holder.

11. Mr. Prasad also submitted that after purchasing the land, the vendees had got their names mutated on the basis of the order passed in Mutation Case No. 12 of 1965-66. After mutation, they paid rent for the land against rent receipts,

copies of which are at Annexure 6 series. He further submitted that in course consolidation operations, the names of the petitioners were duly recorded in respect of the lands in the Consolidation Khatian. A copy of the Consolidation Khatian is at Annexure 7. In support of the case that the consideration money of the land was reasonable, the petitioners also produced copies of the sale deeds of the year 1963 in regard to certain lands adjoining the land purchased by their fathers. Mr. Prasad also invited the Court's attention to Annexure 9 which is the list of documents filed before the Board of Revenue. From the list, it appears that all the aforesaid documents were duly filed before the Board.

12. On hearing Counsel for the petitioners and the State Counsel and on going through the materials on record, I have no hesitation in holding that the orders passed by the authorities under the Act are completely bad, illegal and unsustainable. The orders show a patent lack of application of mind and a determination to grab the land of anyone on any pretext. It is unfortunate that the valuable rights of the common man are left at the mercy of officers who do not seem to have any respect for the provisions of the Act and the law laid down by the Court. The facts of the case are such that the petitioners' objection ought to have been allowed at the first stage by the Sub-Divisional Officer himself but they were dragged into a protracted litigation from one Court to another till they came to this Court.

13. In light of the discussions made above, the impugned orders passed by the Board of Revenue, the Collector, Bhojpur, Arrah and the Subdivisional Officer, Buxar are set aside insofar as they relate to the land, 4.09 acres, in area as claimed by the petitioners.

14. It is directed that the land of the petitioner be excluded from the land ceiling proceeding held against the land holder and from any notifications issued in that proceeding. In the result, this writ petition is allowed but with no order as to costs.