

(2009) 07 PAT CK 0116
In the Patna High Court
Case No : CWJC No. 3372 of 2003

Mahant Vijay Narain Das, Chela late Mahant Braj Kishore
Das, Basuwara Asthal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 11(1), 15(1)

Citation : (2009) 4 PLJR 384

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Farooque Ahmad Khan and Md. Sufiyan, for the Appellant; Rajnish Kant for the State, for the Respondent

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioner as well as the State. Writ petitioner seeks quashing of part of Annexure-1, which is a notification u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as "Act").

2. It is contended on behalf of the petitioner, who has described himself as Chela of late Mahant Braj Kishore Das, that a ceiling proceeding was initiated against the erstwhile Mahant treating him to be the landholder. In the proceedings, three units were allowed to be held by the authorities—two for the deities, namely. Shri 108 Mahabirji and Shri 108 Radha Kishanji of Basuwara Asthal, and one for the land-holder himself, and thereafter final publication u/s 11(1) of the Act was made. The landholder exercised option for the purpose of the land to be retained by him and such option was allowed by the ceiling authority, which is manifest from Annexures-6, 7 and 8. Thereafter, an appeal was preferred by certain transferees and upon hearing the parties, the Collector, disputing the allotment of three units, set aside the order and remanded back the matter to the Collector

under the Act to determine the same afresh. However, once again three units were allowed and subsequently, notifications u/s 11(1) of the Act and 15(1) of the Act were made. In the aforesaid notification u/s 15(1) of the Act the lands earlier allowed to be retained by the petitioner had been included to the extent of 30.85 acres, which stands described in the schedule of this application. Learned counsel for the petitioner further submits that the case was remanded back only on the point of objection raised by the transferees as well as whether three units were admissible to the landholder or not. The lands of the transferees were adjusted in the units of Mahant concerned and three units were again allowed to be held. In that view of the matter, contention is that the option exercised earlier was not disturbed at all since units to be held by the landholder remained undisturbed and thus, the option exercised by him, which was accepted earlier, should have been considered and such lands should not have been declared surplus. Learned counsel for the petitioner also submits that that the subsequent events remained unknown to the petitioner, as the earlier Mahant died and after the notification u/s 15(1) of the Act, when the lands were at the verge of being distributed, it came to the knowledge of the petitioner compelling him to file this application.

3. State has filed counter affidavit refuting the claim of the petitioner that the proceedings were unknown to him and further, that he had an option to move before the revisional authority even after notification made u/s 15(1) of the Act, but he has directly come to this Court. However, the counter affidavit is silent so far the claim of the petitioner that option exercised by him and earlier allowed by the ceiling authority should have been kept undisturbed. Learned counsel for the State was not in a position to demonstrate that such claim of the petitioner was not correct.

4. In view of the aforesaid, I am of the considered opinion that the option exercised by the petitioner for retaining the land of his choice, which was earlier allowed by the ceiling authority, should not have been disturbed as the units allowed remained undisturbed even in the fresh proceeding after remand. As such, the part of Annexure-1, which is the notification u/s 15(1) of the Act to the extent of the land as described in the schedule of the writ application measuring about 30.85 acres of land appertaining to different plot numbers, is set aside and the matter is remitted back to the Collector under the Act to consider the option earlier exercised and allowed by the ceiling authority, of course, after protecting the right of the transferees, if any. It is further made clear that the decision of the authorities allowing certain units to the landholder is not being disturbed by this order, as this remand is only for the limited purpose to enable the petitioner to retain the lands of his choice within the lands, which have been allowed to be retained by him. With the aforesaid observations and directions, this application stands allowed. However, there will be no order as to costs.