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**(2011) 02 PAT CK 0080**  
**In the Patna High Court**  
**Case No : CWJC No. 12680 of 2004**

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|-------------------------------------|------------|
| Mahendra Nath Chaudhuri and Another | APPELLANT  |
| Vs                                  |            |
| The State of Bihar and Others       | RESPONDENT |

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**Date of Decision :** 14-02-2011

**Acts Referred:**

**Citation :** (2011) 2 PLJR 646

**Hon'ble Judges :** Kishore K. Mandal, J

**Bench :** Single Bench

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## Judgement

Kishore K. Mandal, J.—Heard.

2. Petitioners raise a grievance against the notification dated 31.8.2004, issued u/s 15 (1) of the Land Ceiling Act, arising out of land ceiling proceeding bearing Ceiling Case No. 2/84-85 State v. Prem Kishori Devi. The said notification is Annexure-2. Genealogy table has been set out in para 5 of the writ petition. It appears that Baidyanath Chaudhuri was the Son of Late B. Chatranath Chaudhari who was the Son of Late Babu Budhhinath Chaudhari. Babu Budhhinath Chaudhari had two sons. Petitioner No. 1 is grandson of Late Taraknath Choudhary, whereas Petitioner No. 2 is the granddaughter-in-law of aforesaid Taraknath Choudhary being daughter-in-law of Karmanath Chaudhuri. It is the stand of the Petitioners that in the year 1956 itself there was a partition by way of a registered deed whereby certain lands were allocated to the share of Late Taraknath Choudhary (son of Budhhinath Chaudhari). It is further the case of the Petitioners that 6.86 acres of land located in Mauza-Mohammadpur, appertaining to Khata No. 202, Plot No. 1681 were acquired by way of a registered sale deed executed in the year 1965. The grievance of the Petitioners is that, without initiating any land proceeding against them or their ancestor (Late Taraknath Choudhary) the lands owned by them have been acquired and notification in terms of Section 15 (1) of the Act have been issued acquiring those lands.

3. It appears, a land ceiling proceeding was initiated against one Bardeshwari Devi Chaudhari (widow of Babu Chatranath Chaudhari), being and Ceiling Case

No. 76/73-74. Another and Ceiling Case No. 77/73-74 was initiated against Most. Prem Kishori Devi Chaudhari Wife of Late Baidyanath Chaudhari, who was the Son of Chatranath Chaudhari. Returns were filed on behalf of aforesaid landholders namely, Bardeshwari Devi and Prem Kishori Devi Chaudhari in the aforesaid land cases separately. On the basis of returns, enquiries were made and after verification of the genealogy, it was found that the landholder (s) was/were entitled to only two units. Out of 363.1 and 1/2 acres of lands possessed by the family, certain lands were found surplus. It appears that final notification in respect of the lands declared surplus could not be made. In the meanwhile the Act was amended and by reason of Sections 32 (A) and 32 (B) of the Act, all the proceedings stood abated, and fresh proceeding was initiated from the stage of Section 10 of the Act. Accordingly, Land Ceiling Case No. 2/84-85 was started against Most. Prem Kishori Devi Wife of Late Baidyanath Chaudhuri, Village-Durgaganj. A total area of 430.61 and 1/2 acres of land was shown possessed by the family and, as such, certain lands were found surplus in their hands and accordingly notice was issued to aforesaid Smt. Prem Kishori Devi. On notice, aforesaid Prem Kishori Devi filed returns/ objection giving details of the land available/possessed by the family. Further enquiry and verification was made by the concerned authorities under the Ceiling Act in presence of landholder. Records of rights-of the land standing in the name of Late Bardeshwari Devi Chaudhari and Prem Kishori Devi were also perused. After conclusion of the enquiry as provided under the Act, Respondent-Additional Collector directed for issuance of notice to the public at large. After issuance of such notice the Circle Officer also made spot verification and it was found that recorded tenants Smt. Renu Chaudhari Wife of Late Karmanath Chaudhuri alongwith other members, namely, Sheshnath Chaudhuri and other held some lands in the village. Those lands were also treated to be the lands belonging to the landholder (s) and included in the proceeding. On a consideration of the entire matter brought on the records of the said proceeding, 156.73 and 1/2 acres of land were found and held surplus in the hands of the landholder (s) and impugned notification u/s 15 (1) of the Act (Annexure-2) was issued and published after deducting the lands to which the landholder (s) was/were found entitled to. This was preceded by notification issued in terms of Section 11 (1) of the Act. Said notification issued u/s 15 (1) of the Act (Annexure-2) has been impugned in the present application.

4. It is the case of the Petitioner that lands belonging to Petitioner Nos. 1 and 2 as set out in Para 7 have been wrongly included in the said proceeding and declared surplus. It is also the case of the Petitioner that 6.86 acres of land purchased by Petitioner No. 1 through sale executed in April, 1957, but registered on 13.7.1965 appertaining to Khata Nos. 252, 201, 213 and 254 situated in Mauza-Mohammadpur, as also lands appertaining to Khata No. 358, Plot No. 823, measuring an area of 0.87 acres have been wrongly clubbed and declared surplus in the said proceeding. It is the stand of the Petitioner that in respect of those lands, the application for mutation was allowed by proceeding initiated in 1976-77 and 1998-1999. It is thus contended that without initiating a

proceeding under the Land Ceiling Act and thereby giving them an opportunity of raising claim/ objection those lands have been declared surplus treating them to be the land (s) of the landholder viz. Prem Kishori Devi. Petitioners after having become cognizant of the aforesaid facts, approached this Court for setting aside notification issued u/s 15 (1) of the Act (Annexure-2), in so far as they relate to the lands claimed by the Petitioners.

5. A counter affidavit has been filed on behalf of the State-Respondents. The stand of the Respondents is that a ceiling proceeding in respect of the entire land held by the family was initiated in the name of Late Babu Chatranath Chaudhari, who was the eldest son in the family. After his death, the land proceeding was continued in the name of his widow namely," Bardeshwari Devi Chaudharin and subsequently in the name of Most. Prem Kishori Devi Chpudharin widow of Son of Babu Chatranath Chaudhary. Claim of partition by registered deed in the year 1956 is a new claim raised before this Court which cannot be accepted. Claim of purchase of certain pieces of land from Bindeshwari Choudharin in the year 1965 also cannot be accepted as per the writ Petitioners, mutation in respect thereof was/were applied after conclusion of land ceiling proceeding.

6. Having heard the parties and on a perusal of the pleadings on record, this Court finds that order-sheet of Land Ceiling Case No. 2/84-85 have not been enclosed by the writ Petitioners in order to show that such issue was raised earlier in the said proceeding wherein entire land belonging to the family of landholder was made subject matter of adjudication. This Court in view of deficient pleadings on record cannot grant any relief. Course open to the Petitioners would be to seek reopening of the said land ceiling proceeding in terms of Section 45B of the Act for redressal of their grievance (s).

7. This Court, thus, grants liberty to the writ Petitioners to approach the competent-authority under the Act for reopening of the proceeding within 5 weeks from today. If any such application is filed within the aforesaid time, the same shall be considered and disposed of in accordance with law expeditiously. Having regard to assertion (s) made in the application and the previous order, this Court directs that for 5 weeks from today the authority under the Act shall not take any coercive step for dispossessing/evicting the Petitioners from the lands claimed by them. It will thereafter be open to the Petitioners to seek any such relief from the Court/Authority where the said application is to be lodged.

8. With the observations/directions above, the writ application is disposed of.