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**(2004) 07 PAT CK 0139**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 12743 of 2003**

Mahendra Raswan and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 05-07-2004

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45(B)

**Citation :** (2004) 4 PLJR 148

**Hon'ble Judges :** Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

**Bench :** Division Bench

**Advocate :** Purushottam Kumar Jha, Chakrapani, Ravindra Nath Dubey, for the Appellant; S.K. Ghosh for the State and M/s Rajendra Pd. Singh, Rajeev Ranjan Singh for Respondent No. 12, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ravi S. Dhavan, C.J.—When a copy of this order is issued whoever utilizes it will be issued with orders of the court dated 19.11.2003, 5.12.2003 and 28.6.2004. The matter basically arises out of the Bihar Land Ceiling Act, 1961. The land of an ex-zamindar has been declared surplus under this Act. The surplus land was allotted to landless and settled by the State with them. These were the Parchadharies. Otherwise most of the land holders who had been given allotment, that is parchas, were members of the Scheduled Caste and the Scheduled Tribe.

2. Allocation of surplus land determined by an Act of Legislature gives sovereignty to the State that the land is not encumbered and it is free from all encumbrances. It is, thus, that the person to whom the land is allotted receives it with a clear title. The parcha holders, that is, those who received the surplus land, were otherwise in a weak position and gradually they found themselves out of occupation of the land which had been allotted to them. Their plea in the present writ petition is, to the effect, that a powerful member in politics

previously a Member of the State Cabinet now an Hon''ble Member of Parliament has ousted them from their possession. These facts are on record.

3. What is significant is that the petition has been answered by the Chief Secretary, Government of Bihar. Rather than repeat the contents the entire affidavit is reproduced:

1. That the deponent is the Chief Secretary, Government of Bihar and as per the direction of this Hon''ble Court dated 10.11.2003, the present affidavit is being filed on the basis of facts submitted by the Collector (Respondent no. 3) and the Superintendent of Police, Sitamarhi (Respondent no. 11), which the deponent believes to be true.

2. That the writ petition of which cognizance has been taken before this Hon''ble Court on the basis of letter has been read by the deponent and understood the same.

3. That as per report it is on record that Ceiling surplus land measuring 260.47 1/2 Acres of Revenue Thana No. 215, 216 and 217 of Kharka Nayatol Circle Nanpur, District Sitamarhi was allotted among 349 beneficiaries during 1976 to 1995-96. Its Purchas were given to the beneficiaries. Details of land distribution are as follows:

Sl. No. No. or Land holders

Village & P.S. No.

Area of Distributedland in Acres

Gazette Ho. &date

Nos. of Beneficiaries

1. Ram Sewak Singh

Kharka 215, 216, 217, 218

104.42

249/7.6.76

2. Ram Sakal Singh

Kharka 215

13.5

1522/12.6.76

3. Ram Swarath Singh

Kharka 215

85.46

540/12.76

227

4. Ram Shreshtha Singh

Kharka 215

07.86

5. Ram Chandra Singh

Kharka 215

00.17

Total

211.26

227

277

6. Ramsewak Singh & Ors.

Kharka 215

15.95

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1 33

7. Ramsewak Singh & Ors.

Kharka 215

07.53

8/94-95

14

8. Ramsewak Singh & Ors.

Kharka 215

11.91

1/93-94

26

9. Ramsewak Singh & Ors.

Kharka 215

10.29

1/95-96

40

10. Ramsewak Singh & Ors.

Kharka 215

03.53

9/95-96

09

Total

260.47 1/2

349

When the matter of dispossession of Ceiling surplus land came to the notice of Collector, Sitamarhi, through a petition of Sri Jogi Ram, the Collector, Sitamarhi instructed immediate action on it and as per instruction of Collector Sitamarhi the petition was sent to S.D.O. Pupari vide letter no. 36/Rev. dated 16....2001 for immediate action.

The petitions on the same issue were also received from the office of Special Secretary, Home (Special) Govt, of Bihar, National Commission for the SC & ST, which were sent to S.D.O. Pupari vide letter no. 213 dated 13.2.2001 for immediate action.

4. That a number of petitions from Sri Ramjivan Paswan, Sri Fakira Ram, Sri Gonu Ram, Sri Sogarath Paswan, Sri Dularchand Ram, Sri Mahendra Ram, Sri Ramshis Ram and Sri Indradeo Paswan were received in the office of Collector, Sitamarhi from National Commission for SC & ST. The Collector, Sitamarhi instructed SDO Pupari/Subdivisional Police Officer, Pupari, CO. Nanpur, Officer-in-charge, Nanpur P.S. vide letter no. 1898/Rev. dated 18.11.2002 to take stern action in the matter of atrocities. In addition to it vide letter nos. 630/Ref. Dated 8.6.2001, 843/ Rev. dated 10.7.2001, 1039/Ref. dated 4.8.2001, 418/Rev. dated 18.3.2002, 630/Rev. dated 13.4.2002, 694/Rev. dated 24.4.2002, 706/Rev. dated 26.4.2002, 1106/Rev. dated 6.7.2002, 1129/Rev. dated 10.7.2002, 1384/Rev. dated 17.8.2002, 1493/Rev. dated 3.9.2002, 1640/Rev. dated 28.9.2002, 1898/Rev. dated 18.11.2002, 106/Rev. dated 23.1.2003, 184/Rev. dated 8.2.2003, 210/ Rev. dated 14.2.2003, 211/Rev. dated 17.2.2003, 58 Imp/Rev. dated 21.3.2003, 428/Rev. dated 29.3.2003, S.D.O. Pupari, D.C.L.R. Pupari, C.O. Nanpur and Police officials were directed to enquire and take legal actions on this sensitive issue. In the course of the local enquiry and during Revenue Court Camp in Kharka village in the year 2001 it came to the notice of Revenue Karmcharies/Officers that most of the allottees were not in possession of the land allotted to them. The matter was enquired in detail by the C.O. Nanpur/DCLR Pupari/SDO Pupari. Spot enquiries were conducted. As per reports it was found

that of this 260.461 Acres of lands 119.87 1/2 Acres of lands was in possession of 163 Purcha holders who had got allotment of land between 1976 to 1995-96. Rest of the beneficiaries were not in possession of the land distributed to them. Despite the fact that the matter was quite old and it was difficult to locate the original records of distribution, the enquiring officers could still find the reasons behind the dispossession because of their detail spot enquiries. Broadly these reasons were found:

(a) It was found that the allottees who were from Nayatol, Hari Nagar Goglak Tol, Lochminiya Tol and Nayanagar were allotted land in such a haphazard manner that the distance between their residence and allotted land was 5 to 7 Km. That is why they were reluctant to cultivate these and it became difficult for them to cultivate on allotted land.

(b) During distribution process some private (Raiyatee) land was also distributed. Because of it the affected allottees never came in possession of the land.

(c) In different concerned ceiling cases some of the land were declared surplus more than once because of common land returns filed by the land holders. Because of this also the same land was distributed more than once. That was also the reason why some of the beneficiaries never came in possession of the land allotted to them.

5. That it is further submitted that from 2001 to 2003 a ground exercise was conducted for the benefit of the beneficiaries. In the process best efforts were made to bring the beneficiaries in possession of surplus declared land. For the purpose, wherever needed, the local revenue authorities CO/DCLR/SDO also amended the purcha of the beneficiaries so as to ensure that the beneficiaries get land in vicinity of their residence. Firstly, a total of 213.56 Acres of land were brought in possession of 328 beneficiaries. 18 beneficiaries were dead and those who had left the village and 3 beneficiaries were later found ineligible. Here one thing is to be worth mentioning that from this 260.46 1/2 acres of land 3.35 acres of land was entered in raiyatee account vide Hon"ble High Court's order in CWJC. No. 1322/80. Some 17.71 acres of land was also distributed which was not present in the gazette. This land was also deleted from the distribution list. Duplicate and Multiple distribution covered some 3.50 acres of land which was also amended. Moreover cases of dead and issueless beneficiaries, beneficiaries who had left the village and beneficiaries later on found ineligible were also corrected in new distribution scheme. In this big and complicated exercise there was a honest and genuine attempt to sort out the genuine allotment problems of the beneficiaries and put the rightful beneficiaries into possession of allotted land.

6. That it is worth mentioning here that against this ceiling surplus land allotment scheme a number of writ petitions have been filed by the local persons in the Hon"ble High Court as well as a number of Misc. Cases have been filed in the Court of the Collector Sitamarhi. Following High Court cases have been filed in this regard:-

(i) In CWJC No. 12529/2003 Ramdeo Jha vs. State of Bihar and others the petitioner has claim that 3.98 acres of land was wrongly entered in records of right as of land holder. The Hon"ble Court has passed the stay order in this case.

(ii) In CWJC. No. 12708/2003 Ram Chandra Rai vs. State of Bihar and others the Hon"ble Court has passed stay order in respect of 1.33 acres of land claimed by the petitioner.

(iii) In CWJC. No. 5506/2003 Srishtikala Mishrain vs. The State of Bihar and others also vide order dated 6.8.2003 the Hon"ble Court has passed stay order in respect of 0.51 acres of distributed land.

(iv) CWJC. No. 1965/2003 Ram Chandra Ram vs. The State of Bihar & others was filed in the Hon"ble Court on the issue of disposal of L.C. Case No. 2/73-74/9/73-74 as P.I.L. matter. As the matter was subjudice in the Govt, on the issue of re-opening u/s 45(B) of Land Ceiling Case the Court vide order dated 30.4.2003 observed not to interfere in the case on merit.

7. That it is most humbly submitted that against acquisition of surplus land in L.C. Case No. 1/73-74 State vs. Ram Sewak Singh and 2/73-74, 9/73-74 State vs. Ramswarth Singh altogether 14 Misc. cases have been filed in the Court of Collector, Sitamarhi since the initiation of drive to ensure possession to allottees.

Sl. No.

Case No.

Name of the applicant

1.

14/2002

ShriIshwar Chandra Jha

2.

16/2002

MaltiDevi

3.

17/2002

ShriVisambharSah

4.

2/2003

MandakiniDevi

5.

3/2003

JagdeoRai

6.

4/2003

ChethruRai

7.

5/2003

MangalRai

8.

6/2003

MurariRai

9.

7/2003

RajbatiDevi

10.

8/2003

ShivshankarYadav

11.

9/2003

SitaramRai

12.

10/2003

RamadharRai

13.

11/2003

Md. Muslim

14.

12/2003

KusheshwarSah

None of these application could be heard on merit because it required the

reopening of the original ceiling case. The power of reopening u/s 45B lies with the State Government. Correspondence regarding reopening of the original ceiling case has been made vide letter no. 175/Rev. dated 17.8.2002, 245/Rev. dated 18.11.2002 and 249/Rev. dated 21.11.2002 stating clear reason and grounds for reopening.

8. That it is further submitted that in the course of aforesaid exercise it was discovered that one Shri Ram Nandan Chamar, Son of Sri Badri Chamar, village-Nayatol had been allotted a total of 1.06 acres of land. Out of this the allottee is not in possession of land of Khata No. 2241 Khesra No. 4382 areas 0.24 acres, Rather on this plot pucca house of Smt. Malti Devi, wife of Sri Sitaram Yadav exists. Because of which the allottee could not get possession of this piece of land. SDO Pupari reported vide letter no. 402 dated 20.7.2002 that on this 0.24 acres of land previously there existed Kuchahri of land owner Sri Ram Swarth Singh, Son of Sri Jai Ram-Singh original land holder. He had given this land to Sri Sitaram Yadav, Son of Sri Raghunandan Yadav to live in. Because of it this land was not cultivable. Sri Sitaram Yadav sold 0.20 acres of Raiyatee land of Khata No. 2651 Khesra No. 5752 to Sri Ramnandan Chamar vide registered deed 4586 dated 3.8.2001 and Sri Ramanandan Chamar transferred 0.24 acres of land Khata No. 2241 Khesra No. 4382 of Smt. Malti Devi by way of exchange. As allottee of Ceiling Surplus land has no right to sell and transfer the allotted land the Collector, Sitamarhi declared this land transfer as void.

9. That it is worth while to mention here that in the mean time Smt. Malti Devi, wife of Sri Sitaram Yadav filed a petition in the court of Collector, Sitamarhi to denotify the notification no. 540 Imp/Rev. dated 12.7.1976 because her dwelling house on Khesra No. 4382 area 0.24 Acres. A case no. 16/2002 Malti Devi vs. State was instituted. It was necessary to reopen the concerned land ceiling case before going through the merits of the petition Smt, Malti Devi. A number of other cases were also filed in the Court of Collector, Sitamarhi to exempt the lands from acquisition. In these cases also it was necessary to dispose off the matters raised. It all required re-opening of the concerned ceiling cases. Here one thing is to be mentioned that a CWJC. No. 1965/2003 Ram Chandra Ram vs. State of Bihar and others was filed in this Hon"ble Court on the issue of disposal of L.C. Case no. 2/73-74/9/73-74 as PIL matter. As the matter was subjudice before the Govt. On the issue of reopening u/s 45(B) of Land Ceiling Case the court vide order dated 30.4.2003 observed not to interfere in the case on merits. This order of the Hon"ble Court has already been annexed as Annexure-E to this counter affidavit.

10. That as the power to reopen the case is with the Govt. A proposal was sent to the Govt, vide letter no. 175 Imp/Rev. dated 17.8.2002, 245 Imp/Rev. dated 18.11.2002, 249 Imp/Rev. dated 21.11.2002. At present this case is pending before the Govt, at department level. As soon as the sanction to reopen the ceiling case gets received in collector's office petition of Smt. Malti Devi and others will be disposed of on merit as per law. The Jamabandi of Ceiling Surplus

land Khata No. 2486 Khesra No. 8391 area 2.07 acres mutated in the name of Smt. Malti Devi wife of Sri Sitaram Yadav vide mutation case no. 119/92-93 was in the name of Smt. Malti Devi. It was cancelled vide order of DCLR, Pupari dated 5.2.2003 in case no. 01/2003-03. As this piece of land is in form of pond order to include this piece of land is Sairat list of the Government has been passed.

11. That a crop looting case on 31.3.2003 was reported. Taking prompt action CO. Nanpur sent the petition against crop loot to the officer Incharge Nanpur for necessary legal action vide letter no. 69 dated 2.4.2003.

12. That on 21.3.2003 a Dharna was staged on this issue. To ensure possession of the beneficiaries and a report in this regard the Collector Sitamarhi constituted a 7 member enquiry team to look into the matter and report. The enquiry team visited the village and casted a positive impact on possession of allotted land. C.O. Nanpur was instructed vide letter no. 59 Imp/Rev. dated 21.3.2003 to ensure actions against the person who are dispossessing the allottees and institute FIR against the accused under SC/ST atrocities Act. S.P. Sitamarhi and S.D.O. Pupari was sent the copies of the Dharna Pamphlet for necessary action vide letter no. 428/Rev. dated 29.3.2003. As far as matter related to implementation of assurance given to the participants of Dharna dated 19.6.2003 is concerned, the Collector, Sitamarhi instructed C.O. Nanpur Officer Incharge Nanpur, SDO Pupari, Sub Divisional Police Officer, Pupari vide letter no. 1207 dated 18.7.2003 to give full protection to the allottees of land and to depute required police force and Magistrate during sowing and harvesting. Copy of the letter was given to the S.P. Sitamarhi prior to this the petition of Sri Mahendra Paswan and other dated 9.6.2003 was sent to S.P. Sitamarhi vide letter no. 947/Rev. dated 12.6.2003 for legal actions on the points raised in the petition. Again on the issue raised regarding dispossession of the allottees brought under possession vide letter no. 1004/Rev. dated 21/6/2003 Collector Sitamarhi asked S.P. Sitamarhi that unauthorized dispossession of the beneficiaries is criminal act and such type of tendency cannot be stopped without police action. Hence legal actions be taken to ensure that it should not be repeated and no onward law and order problems get created in village. Vide a number of letters 52/C dated 9.10.2003, 528/C dated 11.10.2003, 539/C dated 16.10.2003, 556/C dated 23.10.2003 and 600/C dated 18.11.2003 SDO Pupari deputed Magistrate and force to give protection to the allottees during harvesting period. It is on record that the crop of 12 allottees was harvested in administrative protection.

13. That the matters raised in this writ petition has been enquired by the SDO Pupari vide letter no. 64/Aa dated 25.11.2003 SDO Pupari has reported that out of 82 signatories of this writ petition 52 of them have admitted that they have possession on the land allotted to them. 19 of the signatories are not allottees of the Ceiling Surplus land, 8 of the allottees could not appear in the enquiry because they were out of the village. Parcha of the 2 of the signatories were cancelled because they did not come within the ambit of eligible category.

14. That it is most humbly submitted that numbers of so many criminal cases

has been mentioned in the letter writ petition and to state the position of case a report of almost all cases sent by Superintendent of Police, Sitamarhi is placed on record for perusal of this Hon"ble Court.

15. That it is most humbly submitted that from perusal of aforesaid facts it is evident that entire administration is completely committed in protecting the rights of the beneficiaries and it is very effort of DM, S.D.O., D.C.L.R., C.O. and other revenue officers that a 26 years old complicated problem of such large proportions has been sorted out and land has been resorted to the allottees and continued efforts area till being made to ensure their possession and remove anomalies as and when it arises.

16. That it is further submitted that the allegation of the writ petitioners that they got possession over 150 acres of lands after 31 st Jan. 2003 at the behest of National Schedule Caste; Schedule Tribes Commission is false as in the aforesaid paragraphs it has already been stated the true facts.

4. Copies of the orders of the court in these very proceedings have been sent to the Governor of Bihar and the Chief Minister.

5. The Chief Secretary's affidavit itself places on record and on this there is no issue that the National Commission for Scheduled Caste and Scheduled Tribe has expressed serious concern that the very purpose of giving surplus land to the landless stood frustrated by a powerful man in politics. That this has happened is not in issue because the person concerned, at present an Hon"ble Member of Parliament, does take up a posture to explain why he is in occupation of certain lands which the petitioners' claim was part of the land distributed among them, after it had been certified as surplus and available for distribution and this had been done.

6. In this order, the court will not reflect on merits of rival claims. Suffice it to say that the standard of proof of claim can be no better for a person in position to detriment of a person who is in a weaker position and not in a position to exercise what is known as might is right.

7. In the circumstances, the State of Bihar is obliged to restore possession of every person (parcha holders) to whom surplus land had been allotted without let or hindrance forthwith and without any delay. This is to be done with due direction being issued by the District Magistrate concerned.

8. A copy of this order be marked down to the National Commission for Scheduled Caste and Scheduled Tribe.

9. The petition succeeds. Consigned.