

(1997) 09 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 10859 of 1996

Md. Salim Uddin and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-1997

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 11(1), 15(1), 5(1), 9, 9(2)

Citation : (1998) 1 PLJR 38

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Advocate : Umesh Prasad Singh, Rajiv Ranjan Prasad and Amod Kumar, for the Appellant; H.P. Singh and Satyendra Kumar Sinha, for the Respondent

Judgement

B.N. Agrawal, J.—This writ application has been filed for quashing final publication made u/s 11(1) and gazette notification issued 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") in relation to Ceiling Case No. 8/74-75/5/74-75 started against Haji Samuddin Rahman, father of Respondent Nos. 4 and 5. Immediately after starting of the said proceeding, the said landholder died on 23.6.1974 leaving behind his five legal heirs, which include aforesaid two Respondents, two daughters of the landholder, namely, Bibi Badura Khatoon and Bibi Jubedan Khatoon besides his widow. It has been stated that after death of original land-holder, referred to above, only Respondent No. 5 was brought on the record as heir and legal representative.

2. All the Petitioners claim to be purchasers of the lands, which had been acquired in the aforesaid ceiling proceeding, and details of their claims have been set out in paragraph No. 5 of the supplementary affidavit filed on their behalf. Paragraph No. 5 of the supplementary affidavit to the instant writ application runs as follows:

5. The Petitioners are furnishing the following details of the land purchased by

them:

Petitioner no. Khata no. Khashra no. Area A.D. Course of purchases from

1 2 3 4 5

1. (ii)1062 (ii) 835 3041 243 0.84 0.93 (i) Purchased on 26.6.1973 from the Ex-landlord.

244 0.38 (ii) Bibi Jubeda, vide sale deed dated 25.9.74 who acquired it from her father by way of Gift vide deed of gift dated 17.12.70.

2. 1062 3041 1.44 (i) Ex-landlord vide sale deed dated 25.1.1974.

1062 3041 0.84 (ii) Ex-landlord tale deed dated 21.4.71.

3. 991 209 0.78 1.78 (i) Purchased by Raina Khatoon on 11.2.70 who purchased it from Ex-landlord vide sale deed dated 24.11.59.

4. 848 922 0.79 (i) Vide sale deed dated 11.12.64 from ex-landlord.

5. 1062 3041 1.211/2 (i) Ex-lands vide sale deeds dated 6.5.71, 25.1.74.

6, 7, 8, 9, 10,11 and 12 984 288 0.64D 0.29 (i) Gauri Das vide sale deed dated 16.11.74 who got it by a deed of exchange from Ex-landlord vide Regd. deed dated 6.6.1961.

834 284 1.191/2 (ii) Bibi Badru Nissa sold vide deed dated 10.9.75.

511 3897 3892 3889 3890 1.191/2 Purchased in the name of moth Bibi Dilasan by Ex-landlord vide sale deed dated 21.10.67.

834 284 1.191/2 Purchased in the name of Mohd. Idris, the father vide sale deed dated 10.9.75 from Mohd. Habibur Rehman, who purchased it from Bibi Jubeda on 25.9.74.

13. 511 3897 3886 0.46 0.54 Purchased from Ex-landlord vide sale deed dated 26.12.1965 and 21. 10. 1967.

14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 30,31, 34, 38, 39, 40, 41 and 47 511 1160 1162 3910 10.75.4 3.99.43 094 All the, Petitioners purchased from 1st purchaser of Ex-landlord, who purchased the land vide sale deed in the year 21.11.1956 itself and 23.1.1963.

23. 853 874 0.97 Purchased in the name of mother from first purchaser on 21 .6.1984.

25. 848 922 1.58 Purchased in the name of father vide sale deed datad 28.10.78 from Hazi Ishaque who purchased it from Ex landlord vide sale deed dated 1.12.64.

26,27, 28, 29, 37 853 839 877 874 933 871 1.85 0.80 0.971/2 0.21 D 0.45 Purchased from first purchaser in the year 1975 one sale deed in 1973 after

permission from Ex-landlord. Purchased by Pet. No. 37 from Ex-landlord on 31.3.1970.

32. 853 877 0.461/2 Purchased from first purchaser on 6.2.89.

33. 855 3140 3156 0.211/2 531/2 Purchased from ex landlord vide sale deed dated 1.6.64

42. 848 922 1.58 Purchased in the name of father from first purchaser who acquired it vide sale deed dated 1.12.1964.

43. 991 209 1.78 From Bibi Rahina vide sale deed dated 24.6.1981 who had purchased it from ex-landlord vide sale deed dated 24.11.1969.

44. 991 148 0.54 Purchased from Ex-landlord vide sale deed dated 22.2.1959

45. 511 3910 1.251/2 Purchased from Bibi Marium vide sale deed dated 8.2.1968 who had purchased it from Ex-landlord vide sale deed dated 8.3.1963.

46. 39 1160 1162 2.10 Purchased from first purchasers who had purchased from Ex landlord in 1956 itself

3. It is well settled that with regard to the transfer made prior to 22.10.1959 under registered sale deed a ceiling authority has no jurisdiction to make any sort of enquiry and it is bound to exclude such lands from the ceiling proceeding. But if the transfer is made orally coupled with acceptance of rent and grant of rent receipt, an enquiry is required to be made under law after giving reasonable opportunity to the parties to adduce evidence on the question as to whether, in fact, transfer was made before 22.10.1959 or thereafter. If it transpires from the enquiry that the transfer was made before 22.10.1959, the ceiling authority has to exclude such a land from the proceeding, but in case it is found that the same was made after 22.10.1959, then an enquiry u/s 5(1)(iii) of the Act has to be made after giving opportunity of hearing and adducing evidence to the transferee, the land-holder and the State.

4. It is also well settled that if any transfer is made after 22.10.1959 and prior to 9.9.1970 a ceiling authority has jurisdiction to make enquiry u/s 5(1)(iii) of the Act after giving opportunity of hearing and adducing evidence to the transferee, land-holder and the State. If such transfers are found to be genuine, those lands are required to be excluded from the ceiling proceeding. In case, such transfers are annulled the authority should consider whether in terms of Section 9 of the Act such lands can be included in the lands to be retained by the land-holder.

5. With regard to the transfer made after 9.9.1970, it is well settled that only question which a ceiling authority is required to consider, is as to whether on the date of transfer the transferor was holding land in excess of ceiling area or not and in case, the answer is in the affirmative, such transfer shall be ignored for the purposes of acquiring surplus land, but the authority should consider the matter of statutory option in terms of Section 9(2) of the Act. If it is found that it is not possible to grant statutory option wholly or partially in view of the area to

be retained by the land-holder and the area covered by such transfer, then so much area of land, with regard to which it is not possible to grant option, may be acquired as surplus land. In case, it is found that on the date of transfer the transferor was holding land within the ceiling area, the transfer cannot be ignored on the ground that the same was made after 9.9.1970. In such an eventuality, even with regard to such a transfer a ceiling authority has jurisdiction to make an enquiry u/s 5(1)(iii) of the Act after giving opportunity of hearing and adducing evidence to the transferee, the land holder and the State.

6. It is further well settled that if a person has purchased from daughter of the land-holder out of the lands gifted to her by him within the grace period, the said land has to be excluded from the ceiling proceeding of the land-holder and in a ceiling proceeding started against the daughter and/or her spouse if the authority finds that at the time of sale by the daughter she and/or her spouse were holding land within the ceiling area, such transfer made by her has to be excluded from that ceiling proceeding. If, however, it is found that at the time of making the transfer, she was holding land in excess of ceiling area, then the said transfer has to be ignored and the only question, which is required to be considered in the said proceeding, would be the grant of statutory option to such a purchaser in terms of Section 9(2) of the Act.

7. There may be a case, where such lands are included in a ceiling proceeding about which a person claims to have purchased after 9.9.1970 from a person, who purchased the same from the land-holder after 22.10.1959 and before 9.9.1970. In my view, an enquiry u/s 5(1)(iii) of the Act is required to be made in relation to such a transfer made by the landholder in favour of vendor of the purchaser. If upon enquiry, it is found that transaction was not genuine, then further question, which is required to be considered, is as to whether in terms of Section 9 of the Act such lands can be included in the category of lands to be retained by the land-holder. If it is found that it can be so included, then final publication, if made, and gazette notification if issued, should be suitably amended by deleting these lands therefrom. In case, it is found that it is not possible to include these lands in the category of the lands to be retained by the land-holder, then such purchase made after 9.9.1970 from such a transferee from land-holder shall be completely ignored and no amendment is required to be made in the final publication and gazette notification. In case, it is found that transfer, made by the landholder, in favour of vendor of the purchaser during the aforesaid period, was genuine in the enquiry made u/s 5(1)(iii) of the Act, such lands claimed by a person on the basis of his purchase after 9.9.1970 from such a purchaser from the land-holder shall be excluded from the ceiling proceeding of the present landholder and in the proceeding started against the vendor or his spouse, it may be considered as to whether on the date of making the transfer after 9.9.1970, the transferor was holding land in excess of ceiling area or not. If it is found that he was holding land within the ceiling area, the said transfer cannot be ignored and the land covered by it has to be excluded from that ceiling proceeding. But, if it is found that he was holding land in excess of the ceiling

area then further question which has to be considered would be the grant of statutory option in terms of Section 9(2) of the Act.

8. From the facts disclosed by the Petitioner of this writ application, referred to above, it would appear that, transfers made in their favour would come under all the categories, referred to above.

In view of the aforesaid facts, I give following directions to Additional Collector, Land Ceiling, Araria, Respondent No. 2:

(i) If the Petitioners file a petition before Respondent, No. 2 setting forth their aforesaid claims within a period of six weeks from today, they shall not be dispossessed from the lands claimed by them, so long the said petition is not disposed of by Respondent No. 2;

(ii) with regard to the transfers made prior to 22.10.1959 the Petitioners should along with the petition file photostat copy of the sale deed from its original and produce the original sale deed if required by the authority at the time of argument or they may file certified copy of such a sale deed, in case original has been lost or not available with the Petitioner. If such deeds are produced the authority shall exclude those lands from the ceiling proceeding and make suitable amendment in the final publication made u/s 11(1) and gazette notification issued u/s 15(1) of the Act by deleting these lands therefrom;

(iii) with regard to the transfers made after 22.10.59 and before 9.9.1970 the petition filed by the Petitioners, referred to above, shall be treated to be a show-cause in enquiry u/s 5(1)(iii) of the Act and the Petitioners should state in the petition as to why such transfers be not annulled. The authority is not required to issue notices to the Petitioners in this regard. So far the land-holders are concerned, the Petitioners undertake to serve copy of the petition to be filed by them before Respondent No. 2 upon the land-holders and take receipt from them, which shall be enclosed along with an affidavit to be filed before Respondent No. 2 within a period of one week from the date of filing of the petition before Respondent No. 2. In case, it is not possible to effect personal service, then notice shall be served upon the landholder by publishing the same in one of the local newspapers circulated in the locality in which the land-holder is residing at the cost of the Petitioners, as undertaken by them. All the parties shall be allowed to adduce evidence in support of their respective cases in the said enquiry. If the authority finds that it is a case for annulment, no further action is required to be taken in relation to such lands, and in that event, the authority will consider the case of the Petitioners in terms of Section 9 of the Act whether it is possible to include such lands in the category of lands to be retained by the land-holder. If such direction is given in favour of the Petitioners, then the final publication and gazette notification shall be, accordingly, amended. If, however, it is found that the transfers were genuine, then the said lands shall be excluded from the ceiling proceeding by making amendment in the final publication and gazette notification, from which these lands should be deleted;

(iv) with regard to the transfer made after 9.9.1970, as prayed for on behalf of the Petitioners, it is directed that the authority shall consider case of the Petitioners in terms of Section 9(2) of the Act and if their claim is disallowed, no further steps should be taken, but, in case, the claim is allowed either wholly or partially by including those lands in the category of lands to be retained by the land-holder, suitable amendment shall be made in the final publication and gazette notification by deleting such lands therefrom;

(v) in relation to the category of transfers, claimed by the Petitioners and referred to in paragraph Nos. 6 and 7 of this judgment, the authority shall act in accordance with law laid down therein; and

(vi) the authority is directed to dispose of the petition filed before it within a period of four months from the date of its filing and all the parties shall cooperate the authority in disposal of the petition within the aforesaid time. In case, the Petitioners do not co-operate in disposal of the petition within the aforesaid time, the authority concerned shall record an order to that effect and from the date of recording such an order, the interim order, referred to above, shall stand automatically vacated.

9. With aforesaid directions, the writ application is disposed of.