
(2020) 02 PAT CK 0204

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 909 Of 2017

Md. Shafique Alam And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act, 1961 — Section 5(1)(iii), 9, 9(2), 15(1), 15(1)(iii), 45B

Citation : (2020) 02 PAT CK 0204

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : H. P. Singh, Satish Kumar Sinha, Kamran, Rakesh Kumar Shrivastava

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and learned AC to GP 15 for the State.

2. Despite service of notice on respondents no. 5 to 10, nobody appeared on their behalf when the matter was taken up and heard.

3. The petitioners have moved the Court for the following reliefs:

"(A) The final publication under Section 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) with respect of the land of Rani Binda Devi in Land Ceiling Case No. 1854/1274/1973-74 instituted against one Pradeep Chand Lal the grand son of the said Rani Binda Devi be quashed in part in which the land purchased by the ancestors of the petitioners measuring an area of 6.59 acres has been declared surplus land of the landholder Pradeep Chand Lal.

(B) The acquisition and distribution of the surplus land if any with respect to the aforesaid 6.59 acres of land be also quashed.

(C) It is further prayed that in any event the aforesaid 6.59 acres of land be

ordered to be included in the lands retained by the landholders under the provision of Section 9(2) of the Act.

(D) It is also prayed that during pendency of the present writ application the distribution of the land purchased by the ancestors of the petitioners having an area of 6.59 acres be stayed.

(E) Any other relief/reliefs which this Hon'ble Court may deem fit and proper be also granted."

4. The brief facts of the case are as under:

5. The petitioners are the descendants of the purchasers of 6.59 acres of land through registered sale deed from the ancestors of respondents no. 5 to 10 in the year 1965. It appears that in the year 1973-74, a proceeding was started under the Bihar Land Ceiling Act, 1961 (hereinafter referred to as the 'Act') with regard to the vendors of the lands in question. In the same, the vendors i.e., the ancestors of respondents no. 5 to 10 did not disclose that 6.59 acres of the lands shown to belong to them had already been alienated by them in the year 1965. Accordingly, the ceiling proceedings were disposed off holding certain area of land to be in excess of permissible limit under the Act which, accordingly, stood acquired by the State of Bihar in which the present 6.59 acres of land of the petitioners were included. The petitioners/their ancestors not having been noticed filed an application before the Collector, Purnea which was rejected. As the application filed by the ancestors of the petitioners under Section 45 B was not being disposed off, they moved this Court in CWJC No. 9334 of 1988, in which by order dated 02.01.1989, the Collector, Purnea was directed to dispose off the application pertaining to subject matter of Miscellaneous Ceiling Petition No. 562 of 1985-86 and until then, the authorities were restrained from distributing the lands claimed by the petitioners. It appears that in terms thereof, the Anchal Adhikari, Thakurganj under letter no. 1670 dated 28.07.1990 submitted a report to the Additional Collector, Incharge District Legal Cell, Kishanganj, in view of a new district Kishanganj having been carved out of Purnea by then, in which it has been stated that the petitioners were in possession of the lands in question, which was bought by their ancestors by registered sale deed dated 09.01.1965 and in their favour Jamabandi was also created and they had paid rent from 1964-65 to 1980-81. It was further indicated that on the lands, there was orchard of trees of various varieties. However, the Collector, Kishanganj by order dated 15.04.2015 passed in Ceiling Case No. 35/1990-91 (562/86) under Section 45 B of the Act, having discussed the entire issue, remanded the matter to the Sub-Divisional Officer, Kishanganj to conduct a fresh enquiry, especially in view of the provisions of Section 5 (1) (iii) of the Act. Being aggrieved, the petitioners moved the Bihar Land Tribunal, Patna in BLT Case No. 677 of 2015, which was disposed off by order dated 06.10.2016, observing that all pending proceedings under Section 45 B of the Act stood abated. However, liberty was given to the petitioners to file application before the Collector for exercising option under Section 9 of the Act. The

petitioners thereafter moved this Court in the present writ application.

6. Learned counsel for the petitioners submitted that their sale deed of the year 1965 and subsequent creation of Jamabandi in their favour and payment of rent by them as well as their possession of the lands in question has not been disturbed till date by any order. It was submitted that initially, fraud was committed by the ancestors of respondents no. 5 to 10, who were the vendors of the ancestors of the petitioners, by not disclosing the fact that 6.59 acres of land which had already been sold to the ancestors of the petitioners in the year 1965, be excluded from the ceiling proceeding. It was submitted that thereafter the State authorities being made aware of such fact even after getting an enquiry done by the Circle Officer, still not considering the genuine case of the petitioners and excluding their lands from such ceiling proceedings and subsequent declaration of acquisition of the lands, despite the ancestors of the petitioners initially having filed application under Section 45 B of the Act and even after remand by the Collector to the Sub-Divisional Officer, a fresh report by the Anchal Adhikari, Kishanganj submitted to the Sub-Divisional Officer, Kishanganj under Letter No. 1073 dated 08.07.2015, which also is in favour of the petitioners, the authorities refusing to exempt the land of the petitioners from acquisition by the State under Section 15 (1) of the Act, is clearly illegal and arbitrary. It was submitted that the enquiries made by the authorities have not revealed that the object of such transfer was to defeat or in contravention of the provisions of the Act or were benami or farzi for retaining excess land beyond the ceiling area admissible under the Act. It was submitted that all the reports till date being in favour of the petitioners and there being no declaration of the transaction to be against law and most importantly, the sale deed not having been annulled, the right of the petitioners on the land in question cannot be taken away in such an arbitrary manner by the authorities.

7. Learned counsel for the State was not in a position to defend the orders and conduct of the authorities. The only contention raised by him was that the Collector, Kishanganj had merely remanded the matter to the Sub Divisional Officer for making enquiry under Section 15(1) (iii) of the Act. However, he was not in a position to controvert the fact that no adverse order has been passed against the petitioners by the authorities and all enquiry reports, including that of the enquiry done after the order of the Collector, Kishanganj, by the authorities themselves, are in favour of the petitioners.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the action of the authorities cannot be sustained. The petitioners grievance with regard to non-consideration of the case by the authorities stands established. Further, the Court would also indicate here that till date, neither the sale deed in favour of the ancestors of the petitioners has been annulled nor the Jamabandi created in their favour followed by issuance of rent receipt in their favour has been interfered with by any of the authorities and most importantly, there is no adverse report to indicate that such

transaction was with the object of defeating or in contravention of any of the provisions of the Act. The reports of the authorities further indicate that till date, the lands in question are in the possession of the petitioners.

9. Accordingly, the application is allowed.

10. The declaration under Section 15(1) of the Act in Ceiling Case No. 1854/1274/1973-74 in the then district of Purnea, later on Kishanganj, by which the lands in question totalling an area of 6.59 acres, after being held to be surplus land of the ex-landholder Pradip Chandra Lal, has been acquired by the State of Bihar, stands quashed as far as the lands of the petitioners are concerned, for a total of 6.59 acres.

11. The notification under Section 15(1) of the Act automatically stands modified/ corrected to the extent indicated above. The authorities are further directed to notify such exclusion by issuance of a fresh notification which may be done within one month from the date of production of a copy of this order before the Collector, Kishanganj (respondent no. 2).