

(2005) 09 PAT CK 0102
In the Patna High Court
Case No : CWJC No. 4829 of 2002

Mohammad Kajimuddin and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Citation : (2005) 4 PLJR 718

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—Heard Ms. Pallavi Mishra, counsel for the petitioners and Mr. Abbas Haider representing the private respondents. Mr. Dinu Kumar, Standing Counsel (Ceiling) is also present. In C.W.J.C. No. 4829 of 2002, there are nine petitioners and in C.W.J.C. No. 4848 of 2002, there are two petitioners. All the eleven petitioners in these two cases are purchasers of certain pieces of land from one Ainul Haque (now deceased) who was impleaded as respondent No. 5 and after whose death, his heirs and legal representatives have been substituted in his place. The details of the lands purchased by the nine petitioners in C.W.J.C. No. 4829 of 2002 is given in Annexure 2 to that writ petition and the details of the lands purchased by the two petitioners in C.W.J.C. No. 4848 of 2002 is given in paragraphs 10, 11 and 12 of that writ petition.

2. All the petitioners are aggrieved by an order passed by the Collector by which the lands purchased by the petitioners have been taken out from the lands falling in the unit allowed to the vendor and have been made part of the surplus land in his hands and consequently acquired by the State Government. The petitioners also challenge the notification issued u/s 15(1) of the Land Ceiling Act, issued in consequence of the Collector's order and published in the District Gazette, Araria dated 30.7.2002 insofar as it includes the pieces of land purchased by them from the landholder.

3. The facts of the case are brief and without any controversy. A land ceiling case bearing No. 162 of 1973-74 was held against Ainul Haque (the vendor of the

petitioners) originally impleaded as respondent No. 5 in the two writ petitions. By an order passed by the Deputy Collector Land Reforms on 30.7.1986 in that proceeding, the landholder Ainul Haque was allowed one unit for himself and 1/10 unit for his minor son(s). On the basis of the unit assigned to him, he was allowed to hold 33 acres of land and the remaining approximately 32 acres in area was declared surplus. On the basis of the order of the Deputy Collector Land Reforms dated 30.7.1986, a notification u/s 11(1) of the Act was also issued on 24.12.1987. In the notification u/s 11(1) of the Act, the lands sold by him (i.e. those claimed by the petitioners) were made part of the 33 acres of land left in his possession and those were not made part of the 32 acres of land declared as surplus.

4. The landholder Ainul Haque apparently did not take the matter in appeal or revision, but he allowed it to rest at that stage. Later on, he filed a petition for reopening the proceeding u/s 45B of the Act. That petition was dismissed by the Collector by order dated 16.1.1989. Against that order, the landholder came to this Court in C.W.J.C. No. 1550 of 1989. That writ petition was dismissed by judgment and order dated 16.12.1998 subject to the observation made in paragraph 6 of the judgment which is as follows:-

"6. The counsel for the petitioners at this stage prayed to direct the respondent to allow the petitioners to opt for land according to their choice. They are so permitted if no land has been distributed in favour of one or other red card holders in the meantime. In this respect the petitioners may move before the District Collector, Purnea."

5. Taking advantage of the High Court's observation, the landholder made a petition before the Collector praying that the lands transferred by him be taken out of the unit left to him and be made part of the surplus land. On that petition, the Collector has passed the impugned order allowing the prayer made on behalf of the landholder. It is that order that comes under challenge in these two writ petitions.

6. Not much argument is required to see the illegality and infirmity of the Collector's order. It is illegal because it is contrary to the provision of Section 9(2) of the Lands Ceiling Act and it is infirm and bad on grounds of equity as well. This Court is unable to justify the order on any count.

7. Counsel for the private respondents (substituted heirs and legal representatives of the landholder) submitted that it was not known whether or not the sale deeds were genuine and whether the sale deeds were executed by their father, the original landholder, on payment of any consideration.

8. Those aspects of the matter can only be gone into by a Civil Court in a properly constituted suit. So far as the present proceeding is concerned, the claim of the petitioners is supported by a duly executed and registered sale deed and the provision of Section 9(2) of the Land Ceiling Act is very clear on this.

9. Section 9(2) of the Ceiling Law provides as follow:-

"Where the land held by the landholder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of subsection (1) of Section 5, the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5, shall to the extent of the ceiling area admissible to the landholder, be deemed to have been selected by him for retention within the ceiling area admissible to him, the landholders shall select the balance of ceiling area from his remaining land:

Provided that where the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 is equal to or more than the ceiling area admissible to him and if because of the selection under subsection (2) the landholder's homestead cannot be retained within his ceiling area, the landholder may be permitted to hold his homestead subject to a maximum limit of two acres only."

10. It is thus clear that even if those transfers were made in contravention of the provisions of Section 5(i)(ii), those lands would go to the share of the landholder and shall not form part of the surplus liable to be acquired by the State.

11. In view of the aforesaid facts and circumstances, the impugned order passed by the Collector (Annexures 5, 6 and 7) in both the writ petitions are set aside. Consequently, the notification issued u/s 15(1) of the Act is also set aside to the extent it includes the lands of the petitioners and the matter is remitted to the Collector to pass a fresh order in the light of this order. These two writ petitions are disposed of subject to the aforesaid observation.