

(1989) 12 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 3749 of 1982

Mohan Prasad Mahto and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-1989

Acts Referred:

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

Citation : (1990) 38 BLJR 953 : (1990) 82 CTR 353

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Judgement

S.B. Sanyal, J.—In this writ petition the petitioners seek quashing the orders dated 16-1-1975 and 6-10-1975 (Annexures 1 and 6) rendered by the Additional Sub-divisional Officer, Berao, the order dated 28-3-1977 (Annexure-2) passed by the Deputy Commissioner, Giridih, the order dated 27-9-1977 (Annexure-5) passed by the Additional Member, Board of Revenue, Patna, and the order dated 16-3-1978 (Annexure-6) passed by the Member, Board of Revenue, Bihar. Patna, by which orders the acquisition of land and the publication of the notification made u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the "Act") dated 13-11-1975 has been confirmed.

2. On 18-11-1982 the petitioners obtained an order to the effect that pending final bearing of this writ petition, distribution of the lands as mentioned in Schedule I Page 24 of the writ petition would remain stayed. On 6-2-1985 a contempt petition was filed bearing M. J. C No. 85 of 1985 stating that in spite of the stay order the respondents were dealing with the lands in question. A show cause was filed on behalf of the respondents, wherein the respondents stated that the lands had already been distributed in the year 1978 and on 14-8-1982 except the Ahar (pond) situated in Plot No. 1860, which is not arable and, therefore, the authorities treated the same as a Shairat and fixed a reserved Jama for the purpose of auction. The State Government was not aware that 2 40

acres of land comprising the pond were not arable when the notification u/s 1 (1) of the Act was rendered. From the show cause it appears that on various dates the pond was put on auction as Shairat interest of the Government in which the petitioner also participated and before its final settlement petitioner No. 1 moved this Court by filing the aforesaid petition for contempt to the effect that in spite of the order of stay the respondents were acting and dealing with the property. This Court while accepting the apology ordered not to take in future any action which will be inconsistent with the stay order.

3. The petitioners' case in this writ petition is that even though they have been allowed one unit of 30 acres of land, but the said land does not belong to them and the land which actually belongs to them has been notified u/s 15(1) of the Act.

4. A counter-affidavit has been filed on behalf of the State denying the submissions of the petitioners and it has also been stated that the lands have already been distributed amongst the Harijans and landless long before. In Paragraph No. 24 of the said counter-affidavit the details of distribution have been stated with plot numbers and the number of Harijans and Adibasis to whom it has been distributed.

5. Learned Counsel for the petitioner's states that they have never got an order from the courts below on merit but their appeal and revision have been dismissed on their failure to present themselves on the date the case was fixed. I have gone through the orders and I find that the petitioners not only failed to appear in the case when the dates were fixed resulting in dismissal of their case, but they also did not take steps in filing the revision petition within the prescribed time and the courts below have refused to condone the delay. This process alone took about seven years for the petitioners to come to this Court after the publication of the notification u/s 15(1) of the Act. The persons to whom the lands have been distributed are not parties. Even the petitioners were aware of the distribution of lands as it appears from the contempt petition itself where the respondents have clearly stated about the distribution of the lands in the year 1978 and some lands in the year 1982. They, however, did not disclose this in the writ petition that the lands had been distributed. In that view of the matter, it is not possible to accede to the prayer of the petitioners in quashing the impugned orders contained in Annexures-1, 8, 2, 5 and 6.

6. However, it appears from the records of M.J.C. No. 65/85 that plot No. 1860, which, it stated in Para 7 of the show cause filed in M. J. C. 85/85 is not an arable land and out a pond, which the respondents refrained from distributing, treating, it as a pond vested in them and steps are being taken to fix a reserved Jama as a Shairat interest and put it on auction on yearly basis. The respondents themselves said that the said land is not at all arable.

7. In my opinion, the provisions of the Act do not confer power on the State Government to acquire Shairat interest as is permissible under the Bihar Land

Reforms Act. The very object of the Act is acquisition for the purpose of cultivation of land and fixing ceiling of the land that could be possessed of by a land-holder and the right to acquire the surplus land by the State and the matter connected therewith "Land has been defined u/s 2(f) of the Act, which include "even land perennially submerged under water or the homestead of a land-holder". "Homestead" has been explained as building comprising tank, library and place of worship connected with agriculture or horticulture purpose. There is no averment this pond is connected with the agriculture purpose. In that event, it could not have been acquired as surplus land and the declare it as Shairat and settled with others, and not to landless people, to whom the acquired land is required to be distributed. As I have pointed out, the main aim of the Legislature in passing the Act was to facilitate the personal cultivation of land by certain classes of raiyat and follow the under raiyats as the status of raiyat. The definition of the land is that it must be a land which is either used or capable of being used for agriculture purpose and such homestead land which is connected with agriculture operation, The Act has, therefore, no application to such lands, which are used purely for non-agricultural purpose See K. Goswami v. B. Sah 1971 BLJR 974. The pond in question is neither arable nor agriculture land nor it is connected with any agriculture purpose. It is sought to be settled with persons who may or may not be raiyats or under-raiyats, but are successful bidders in an auction irrespective of the fact whether he is a landless person or Harijan etc., on yearly basis. This does not fall within the scheme of Section 27 of the Act, as would be evident from Chapter IX dealing with the disposal of surplus land. Further, yearly settlement of a pond cannot be heritable and transferable as is required u/s 27(3) of the Act.

8. In that view of the matter, I am of the opinion that the respondents have exceeded in their jurisdiction in acquiring 2.40 acres of land, which is out and out a pond in plot No. 1860. They are directed to release that pond to the petitioners and refund to the petitioners the bid money collected till date of the said pond.

9. In the result, the writ petition is partly allowed with the directions aforesaid. There will be no order as to costs.