

(1999) 07 PAT CK 0123
In the Patna High Court
Case No : C.W.J.C. No. 5840 of 1991

Narayan Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 15(1), 5(1)

Citation : (2000) 2 PLJR 515

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Kumar Lalan Singh, for the Appellant; Dinu Kumar, for State and Arun Prasad Ambastha, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The present writ application has been filed for quashing the order dated 20.12.1984 passed by the Charge officer, Purnea in Case No. 68/73-74 annulling the sale deed dated 24.2.1956 executed by Pratap Narain Chand in exercise of power u/s 5(1)(iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter to be referred to as the Act). The order dated 7.7.1985 passed by the Additional Collector in the aforesaid case affirming the aforesaid order passed u/s 5(1)(iii) of the Act, the appellate order dated 18.9.90 passed in Ceiling Appeal No. 312/85-86 of the Collector dismissing the appeal of the Petitioner against the aforesaid order and the resolution of the Board dated 31.5.1991 in Revision Case No. 119 of 1990 dismissing the revision against the appellate order. Copies of the said orders have been annexed as annexures 1 to 4 respectively.

2. The Petitioner's case is that he purchased 15.79 acres of land comprising plot No. 1918 of Khata No. 209 and plot No. 1920 of Khata No. 210 in village Tharhi Raju, P.S. Dhandaha, district Purnea by a registered sale deed dated 24.2.1956 from late Pratap Narayan Chand and thereafter he came in possession over the

same and his name was mutated in the records of State of Bihar and rent is being paid by him. He has further stated that he is a resident of Saharsa District and agriculture operation with regard to the lands in question is being managed by local laborers.

3. It is admitted position that the Petitioner is the son of sister of Bir Narayan Chand-landholder against whom a proceeding was initiated being Case No. 68/73-74. In the said proceeding an enquiry was held u/s 5(1)(iii) of the Act and order was passed for issuance of general notice. No personal notice was sent to the Petitioner though the ceiling authorities have knowledge about the transfer of the land to the Petitioner. The ceiling authorities decided the matter u/s 5(1)(iii) of the Act and annulled the sale deed while disposing of the matter.

4. After issuance of draft statement u/s 10(2) of the Act, the landlords and others including the Petitioner filed an objection and the Additional Collector while disposing of the matter rejected the claim of the Petitioner also on the ground that already a finding has been arrived at that the sale in favor of the Petitioner is not genuine. Thereafter the Petitioner filed an appeal before the Collector which was also dismissed and the appellate order was also affirmed in revision as stated above. 5. Learned Counsel for the Petitioner stated that the Petitioner purchased the land on 24.2.1956 prior to coming into force the Ceiling Act itself and as such the ceiling authorities have no power to determine the genuineness of the sale deed u/s 5(1)(iii) of the Act. Elaborating his submission he stated that u/s 5(1)(iii) of the Act the Collector has power to make an enquiry in respect of transfer of land by the landholder between 22nd October, 1959 and the appointed date and he after being satisfied that the transfer has been made in contravention of the provision of the Act with a view to retain land in excess of the ceiling area, may annul the transfer after giving opportunity of hearing to the parties concerned. He has no power under the said provision to annul the sale deed executed prior to 2.10.1959. He further submitted that even if the authorities have power to make an enquiry, the main ground given for annulling the sale deed is wholly irrelevant. The Petitioner purchased the land, his name was mutated in the Government records and he is paying rent to the State Government. In that view of the matter, the transfer made in his favor cannot be termed as invalid only on the ground that he was not present at the time of verification by the authorities.

6. Mr. Dinu Kumar appearing on behalf of the State, on the other hand, submitted that in spite of notice having been served upon the Petitioner he did not appear during enquiry and the Ceiling authorities after having gone through the material on record found that the transaction was only a paper transaction and this Court in the writ jurisdiction cannot re-appraise the material to take a different view in the matter.

7. After hearing counsel for the parties, I am of the view that both the submissions advanced on behalf of the Petitioner are well founded and are accepted for the reasons stated hereinafter.

8. Once it is found that the transfer has been made prior to 22.10.1959, the ceiling authority has no power to make an enquiry with regard to the transfer made prior to 22.10.1959. u/s 5(1)(iii) of the Act the Ceiling authorities have power to make an enquiry in respect of any transfer of land by a landholder whether by a registered instrument or otherwise made after the 22nd October, 1959 and if it is satisfied that the transfer was made with the object of defeating or in contravention of the provision of the Act. In this case, admittedly the transfer in favor of the Petitioner was made by a sale deed on 24.2.1956. In that view of the matter, the Ceiling authority has no power to annul the sale deed in exercise of power u/s 5(1)(iii) of the Act.

9. Even assuming that the Ceiling authority has power to make an enquiry with regard to the deed executed prior to 22.10.1959, the transfer cannot be annulled only on the ground that at the time of verification of the spot the landholder was not present. Admittedly, the Petitioner is a resident of Saharsa district. No notice was served upon him. Only general notice was issued in the Katihar district. In such a situation, if the Petitioner was not present it cannot be said that the land does not belong to him and he is only a name lender. Thus the Ceiling authorities have erred in treating the land of the Petitioner as the land of landholder.

10. Accordingly, the orders contained in annexure 1 to 4 so far it relates to the Petitioner's land are quashed and it is held that 15.79 acres of land purchased by the Petitioner by virtue of sale deed dated 24.2.1956 from Late Pratap Narayan Chand cannot be treated the land of the landholder against whom Ceiling Case No. 68/73-74 was initiated. If the said lands have been included in the notification u/s 15(1) of the Act, then the same should be excluded from the same as the same were wrongly treated as the lands of the landholder of the said Ceiling Case.

11. In the result, this writ application is allowed.