

(2000) 03 PAT CK 0056
In the Patna High Court
Case No : C.W.J.C. No. 7110 of 1992

Nawal Kishore Dube and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15, 22(1)

Citation : (2000) 2 BLJR 1108 : (2000) 2 PLJR 401

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Judgement

R.N. Prasad, J.—The writ petition has been filed for restraining respondent Nos. 5 to 8 permanently from interfering with the possession of the petitioners over the disputed land, for quashing the conditions mentioned in the bail order, Annexure-7, and also for direction to produce and quash the order dated 20.8.1986 passed in Misc. Case No. 164/76-77 and also to disclose as to whether Misc., Case No. 205/80-81 initiated at the instance of the petitioners u/s 22(1) of the Bihar Land Reforms (Fixation of Ceiling Area and acquisition of surplus land) Act (hereinafter to be referred as the Ceiling Act) has been disposed of.

2. The case of the petitioners is that one Gulam Fazle Rahman was owner of C.S. Plot No. 739, khata No. 484, area 2.13 acres. Sukar Turi, Budhu, Thaclu and Bania were shikmidars of the aforesaid land. Gulam Fazle Rahman was coming in possession through the aforesaid shikmidars. During Revisional Survey the shikmidars sold their shikmi right over 1.17 acres out of 2.13 acre land appertaining to C.S. plot No. 739 in favour of Bindyachal Dubey and Bijli Dubey by registered sale-deed dated 13.12.1956. They came in possession and acquired occupancy shikmi right over the purchased land. On 26.11.1959 Bijli Dubey sold his share of shikmi interest to Bindyachal Dubey and as such he became shikmidar of entire 1.17 acres of land. However, in the Revisional Survey his name could not be entered and the land had remained in the name of Sukar Turi and others as shikmidars. Subsequently, in 1967 partition took place in the

family and 78 decimals out of disputed land fell in the share of Bindyachal Dubey and 39 decimals fell in the share of petitioner No. 1.

3. A land teiling proceeding bearing No. 164/76-77 was initiated against the wife of Gulam Fazle Rahman. The landlord voluntarily surrendered about 21.43 acres of land including C.S. plot No. 739, khata No. 484 and, accordingly, the said land was acquired u/s 15 of the Ceiling Act and on 21.8.1976 notification to the aforesaid effect was published. The petitioners had no knowledge about the aforesaid proceeding. However, in 1980 the petitioners received notice issued by the Addl. Collector in Dispossession case No. 130/80-81 initiated at the instance of respondent No. 5 and Dispossession case No. 134/80-81 initiated at the instance of respondent No. 6 to show-cause. The petitioners on receipt of notice filed a petition in original ceiling case No. 164/76-77 claiming for settlement of the disputed land in their favour u/s 22(1) of the Ceiling Act. They also filed application reiterating the same facts and praying therein to settle the disputed land u/s 22(1) of the Ceiling Act before the Addl. Collector, respondent No. 3 on which Misc. case No. 205/80-81 was registered. They also filed an application before the Collector, respondent No. 2, praying therein to cancel the order of Addl. Collector, respondent No. 3, directing to show-cause in dispossession case numbered as case No. 434/80-81. The Collector vide order dated 3.5.1981 rejected the petition. The petitioners challenged the said order before the Member, Board of Revenue which was numbered as Board case No. 201/81. The said case was dismissed by the Addl. Member, Board of Revenue on 11.9.1991 as not maintainable, Annexure-2. In Ceiling case No. 164/76, a report was called for from the Circle Officer, Katihar. The Circle Officer submitted report dated 20.2.1984, Annexure-3, before the Sub-divisional Officer, Katihar recommending for settlement of the disputed land in favour of the petitioners. In the Municipal survey, which was finally published in 1985, the names of the petitioners were recorded in the Municipal records, Annexures-4 & 4/A. No objection was made against the entry in the Municipal survey. The petitioners, thereafter, thought that the matter had been set at rest. However, on 27.6.1992 respondent No. 2 along with police officials came to deliver possession of the disputed land to respondent Nos. 5 & 6. He also informed that petition u/s 22(1) of the Ceiling Act has already been rejected on 20.8.1986 and case No. 205/81 has been disposed of on 18.6.1986. However, possession could not be delivered to respondent Nos. 5 & 6. The petitioners filed application for certified copy of orders but the same could not be supplied to them. Respondent No. 5 lodged a case against the petitioners bearing Katihar P.S. Case No. 325/92 in which the petitioners were arrested. However, they were granted bail vide Annexure-7 with a condition that they will not go over the land until the matter is decided by the Court of competent jurisdiction and as such writ petition has been filed by the petitioners for the reliefs as indicated above.

4. A counter-affidavit has been filed on behalf of respondent Nos. 5 & 6 wherein it has been alleged that land ceiling proceeding was initiated against Bilkish Jamal Begam wife of Gulam Fazle Rahman. The landholder voluntarily

surrendered 21.43 acres of land including the land under C.S. plot No. 739, khata No. 484. The notification u/s 15(1) of the Ceiling Act was also published. Thereafter, 50 dec. and 35 dec, out of the disputed land was settled in favour of respondent. No. 5 & 6 respectively Accordingly, red card was issued on 21.9.1977. They were paying rent under receipt. One of the red cards and the receipt have been annexed as Annexures-A & B respectively to the counter-affidavit. In 1980 respondent Nos. 5 & 6 were dispossessed and as such they filed petition u/s 27-A of the Ceiling Act before the Addl. Collector, respondent No. 3 on which dispossession case Nos. 130/80-81 and 134/ 80-81 were registered. After hearing the parties-order was passed on 28.1.1981 in favour of respondents and petitioners were directed to deliver possession to the respondents, Annexure-C. The petitioners challenged the said order before the Collector in Ceiling appeal No. 433/80-81 and Ceiling appeal No. 434/80-81. Both the appeals were dismissed vide order dated 28.1.1981, Annexure-D. The petitioners challenged the said order before the Member, Board of Revenue which was dismissed on 11.9.1981, Annexure-2. The petitioners filed a petition u/s 22(1) of the Ceiling Act before the Addl. Collector in Original Ceiling case No. 164/76-77 for settlement of the land in dispute and cancellation of the red card. In the said case, the petitioners managed to obtain recommendation of the Sub-divisional Officer behind the back of these respondents. However, the said petition, on consideration, was rejected by the Addl. Collector, respondent No. 3, vide order dated 20.8.1986, Annexure-E. The claim of the petitioners that they purchased shikmi right from the recorded shikmidar is to at all legal as such right is not transferable and accordingly requested for dismissal of the writ petition.

5. It is evident from the material on record that the claim of the petitioners is based on purchase of Shikmi right from the recorded shikmidar. They claimed that by virtue of purchase they came in possession and acquired occupancy right over the land in question. They constructed, the house over it and their right has been recognised by the owner of the land. Their claim is supported by Annexure-3 Inspection report. The petitioners claim that they had no knowledge of the Ceiling case No. 164/76-77 initiated against the land-holder. They learnt about the proceeding when notices were served upon them in dispossession case and as such they filed petition for settlement of land in dispute in their favour and cancellation of red cards issued in favour of respondent Nos. 5 & 6 in Original land ceiling case No. 164/76-77, According to the respondents in the said case petitioners obtained a report from the Sub-divisional Officer in their favour behind the back of these respondents. However, the said petition was rejected vide order dated 20.8.1986, Annexure-E, to the counter-affidavit, it is evident from the order, Annexure-E, that the Addl. Collector Ceiling did not consider the case of the petitioners in the light of Section 22 of the Ceiling Act rather the petition has been dismissed on the ground of order passed in Dispossession case No. 134/80-81. Section 22 of the Ceiling Act says that if any under raiyat is in occupation over the surplus land on the date of vesting of the land such raiyat may file an application for restoration of the land in question and

the authority has to decide the case in accordance with law but it appears from the order, Annexure-E to the counter-affidavit that no such finding has been recorded by respondent No. 3. Moreover," no finding has been recorded on the inspection report, Annexure-3. It also appears that inspection was made and vide letter dated 11.3.1985 direction was given to measure the land in question and submit a report which was not received in the Court and the Addl. Collector rejected the petition of the petitioners u/s 22 of the Ceiling Act.

6. The prayer for quashing the condition as laid down in bail order, Annexure-7 cannot be decided in this writ, application as separate forum is available.

7. Thus, on consideration, it is evident that the Addl. Collector without recording finding as indicated above rejected the petition of the petitioners. Accordingly, order dated 20.8.1986, Annexure-E is quashed. The application is disposed of. The matter is remitted to the Addl. Collector Ceiling, Katihar who shall be at liberty to make inspection of the land in question and shall dispose of the matter by a reasoned order in accordance with law.