

(2015) 05 PAT CK 0114
In the Patna High Court
Case No : CWJC No. 323 of 1999

Pratima Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15, 15(1)
Civil Procedure Code, 1908 (CPC) — Section 151
Hindu Succession Act, 1956 — Section 8

Citation : (2015) 4 PLJR 634

Hon'ble Judges : Ravi Ranjan, J.

Bench : Single Bench

Advocate : Surendra Kumar Singh and Praveen Prakash, for the Appellant

Judgement

Dr. Ravi Ranjan, J.—I have heard the parties and perused the records of this case. This writ application was earlier allowed vide order dated 17.3.1999 passed by a learned Single Judge of this Court. The aforesaid order was challenged by the purcha holders by preferring L.P.A. No. 989 of 1999 raising an issue that the land concerned was acquired by the State by properly making a gazette notification under section 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus) Act, 1961 (hereinafter to be referred to as "the Act") and, thereafter, they, being landless persons, were issued purchas and were put in possession, however, the purcha holders were not even made party in the writ application and, as such, no notice was ever issued and served upon them and the order impugned was passed without granting an opportunity of hearing to them. However, the Division Bench of this Court vide order dated 6.9.1999 dismissed the appeal holding that it is well settled that such a person cannot acquire any right merely because purcha has been issued in his favour. If the acquisition itself has been held to be invalid they have no option but to walk out. The matter traveled up to the Apex Court. The Apex Court after hearing the purcha holders in Civil Appeal No. 5478 of 2000, being in disagreement with the

view expressed by the Division Bench of this Court, set aside the judgment rendered by Single Bench in C.W.J.C. No. 323 of 1999 as well as the impugned judgment rendered in the concerned Letters Patent Appeal and directed that the matter would go back to the High Court for disposal of the writ petition afresh. The purcha holders were granted opportunity to make an application in the writ application to implead themselves as respondents and contest the writ application.

2. It further appears that another L.P.A. No. 356 of 2000 was also filed by the State of Bihar and others against the same very order dated 17.3.1999 which was earlier passed in the writ petition and was dismissed vide order dated 10.7.2000, however, that order was not challenged before the Apex Court. However, it is not of much relevance in view of the fact that the order dated 17.3.1999 passed in the present writ petition has already been set aside by the Apex Court in Civil Appeal No. 5478 of 2000.

3. The purcha holders, thereafter, filed I.A. No. 6668 of 2000 for their impleadment in the writ petition. They have also made statement on the merit of the case with a prayer to dismiss the writ petition.

4. The matter was heard on 1.2.2001 and the purcha holders were allowed to be impleaded as respondent Nos. 8 to 17 and the writ petition was admitted.

5. In the aforesaid background, the matter was heard at length.

6. It appears from the averment made in the writ petition that Land Ceiling Case No. 52 of 1974-75 was initiated against the respondent No. 6, Prabal Pratap Singh and others, which was later on registered as Land Ceiling Case No. 144 of 1975-76. In the said proceeding the land holders were shown in possession of 202.26 acres of Class-IV land. Five units were allowed to the land holders and they were allowed to retain 159.10 acres of Class-IV land. The remaining 43.26 acres of Class-IV lands were declared surplus and a notification under section 15(1) of the Act was published in Sasaram District Gazette on 10.1.1985. The petitioner claims that her 20.78 acres of lands, i.e., 5.03 acres in khata No. 31 and 15.75 acres in khata No. 32 situated in village Thiloi, Anchal and P.S. Bhagwanpur, District Rohtas, now Kaimur, were clubbed and while lands of khata No. 32 (area 15.75 acres) were granted in the ceiling units of the land holders, lands of khata No. 31 (area 5.03 acres) were declared surplus and acquired by the State under the Act.

7. It has been stated by the petitioner that she inherited the lands of khata Nos. 31 and 32 after the death of her father, namely, late Raghunath Prasad Singh as he died on 10.12.1956 leaving behind his widow, namely, Singari Kuer, sons, namely, Prabal Pratap Singh and Dinesh Prasad Singh, and the daughters, namely, Nirmala Devi and the petitioner (Pratima Devi).

8. It has been contended on behalf of the petitioner that she being. Class I heir had inherited the interest of her father late Raghunath Prasad Singh in view of

the provisions of section 6 read with section 8 of the Hindu Succession Act, 1956. It is further contended that Partition Suit No. 55/62 was filed in the court of the Sub-Judge, Sasaram, which ultimately ended in compromise and the suit was decreed in terms thereof. In the decree the petitioner was allotted Schedule "F" property in which her share in village Thiloi was of 23.73 acres but in the revisional survey khatiyan her share was shown as 20.78 acres. A copy of the compromise petition dated 31.8.1962 has been appended as Annexure 5 and the lands belonging to the petitioner as per the compromise decree has been described in paragraph No. 9 of the writ petition with respect to khata Nos. 31 and 32.

9. It is contended that, as the petitioner inherited the property from her father and in view of the lands given to her in the compromise decree in Partition Suit No. 55/62, the said lands belonging to her could not have been clubbed with the lands of the land holder against which Ceiling Case No. 144/1975-76 was initiated. The lands have been clubbed with the lands held by her brother Prabal Pratap Singh and part of it has been declared surplus and acquired by the State, as stated above, without initiation of any land ceiling proceeding against the petitioner. Her brother Prabal Pratap Singh filed appeal and revision and, ultimately, he filed C.W.J.C. No. 4173 of 1986 which was admitted on 30.9.1986 and the operation of the impugned order was stayed till the disposal of the writ petition, however, ultimately, the same was dismissed by a Single Bench of this court vide order dated 4.4.1997 against which L.P.A. No. 669 of 1997 was prepared which was permitted to be withdrawn with an observation that the order passed in the appeal or by the learned Single Judge or by any of the authorities under the provision of the Act will not affect the interest of Pratima Devi, i.e., the petitioner, the sister of Prabal Pratap Singh (sic--in?) view of the fact that she was not made party in any proceeding.

10. Thereafter, the petitioner filed a petition under sections 37 and 15 of the Act read with section 151 of the Code of Civil Procedure for excluding her lands in view of the observation made by the Division Bench but the same was also rejected by the Collector vide order dated 10.11.1998. In the aforesaid background, this writ application has been filed.

11. Mr. Basant Kumar Choudhary, learned senior counsel appearing for the purcha holders, i.e., respondent Nos. 8 to 17, submitted that these respondents are in possession of the land since long and; as such, their possession should not be disturbed as after acquisition of the land under section 15 of the Act purchas were distributed in favour of the aforesaid respondents. He further submits that the petitioner (Pratima Devi) never filed objection before the ceiling authority and objection filed by her brother Prabal Pratap Singh was rejected not only by the ceiling authorities while passing the original order, appellate order or revisional order but also by a Single Bench of this Court vide order dated 4.4.1997 passed in C.W.J.C. No. 4173 of 1986.

12. On appreciation of rival contentions of the parties, this Court finds the

following issue for determination in this case:--

"Whether the petitioner Pratima Devi was a separate land holder with respect to the land described in paragraph 9 of the writ petition and as such, her land ought not have been clubbed and declared surplus with the land proceeding initiated against her brother Prabal Pratap Singh?

13. In my considered opinion, this issue has to be answered in affirmative. The admitted fact is that the petitioner Pratima Devi is the daughter of late Raghunath Prasad Singh who died on 10.12.1956 leaving behind his widow, namely, Singari Kuer, sons, namely, Prabal Pratap Singh and Dinesh Prasad Singh, and the daughters, namely, Nirmala Devi and the petitioner (Pratima Devi), as there is no counter affidavit denying the aforesaid factual aspect. This is also admitted position in law that if a male Hindu dies intestate then his property shall devolve according to the provisions of section 8 of the Hindu Succession Act, 1956, i.e., firstly upon the heirs being classified in Class I. The petitioner, undoubtedly, is one of the Class I heirs of late Raghunath Prasad Singh.

14. That apart, Partition Suit No. 55/62 ended in compromise, in which the properties described in Schedule F were given to the petitioner, which are the lands described in paragraph 9 also. A copy of the compromise petition which according to the petitioner was made part of the decree has been appended as Annexure 5 to this writ petition. The aforesaid fact has also not been controverted by any of the respondents.

15. Having regard to such factual situation, one has to come to irresistible conclusion that so far the lands described in Schedule F of the compromise petition are concerned, they belong to the petitioner and they ought not have been clubbed with the land of Prabal Pratap Singh, i.e. the brother of the petitioner. Admittedly no ceiling proceeding was ever initiated against the petitioner. That apart, it is also admitted that the name of the petitioner was recorded in the revenue registers maintained by the authorities and she was paying rent to the State of Bihar regularly.

16. Having regard to the aforementioned facts, this Court would be of the view that the petitioner's lands should be excluded from the purview of Land Ceiling Case No. 52 of 1974-75 initiated against the respondent No. 6, i.e., Prabal Pratap Singh, which was later on re-numbered as Land Ceiling Case No. 144 of 1975-76. Accordingly, the District Collector, Kaimur, is directed to exclude the lands of the petitioner from the aforesaid proceeding and modify the notification made under section 15(1) of the Act. Thus, the possession of the land, if the same has already been distributed, should be restored to the petitioner. However, this order would not come in the way of the State authorities if they consider issuing fresh purcha (s) in favour of the respondent Nos. 8 to 17 in accordance with law with respect to other lands which have been vested in the State of Bihar.

17. Accordingly, this writ application stands allowed. However, there would be no

order as to costs.