

(1991) 04 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1570 of 1983

Ramavtar Prasad Yadav and Others

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45B, 5(1)

Citation : (1992) 1 PLJR 183

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Advocate : Parmeshwar Prasad and Chittaranjan Sinha, for the Appellant;
Sadanand Roy and Devendra Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—The Petitioners pray to cancel declaration of 1.75 acres of land in plot No. 135 situate in mouza Sanhnula as surplus lands of Respondent Second party in Land Ceiling Case No. 928 of 1976 by virtue of an order as contained in annexure-2 as also an order dated 31.3.1983 as contained in annexure-5, refusing to re-open the said case u/s 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 hereinafter to be referred to as the Act).

2. Shortly stated the case of the Petitioners is that they had purchased the aforementioned land, along with other lands, measuring in all 6.96 acres by a registered sale deed dated 1.7.1970 for a valuable consideration of Rs. 33,500/- from Respondents second party and consequently had come in possession. They had also got their names mutated in the Anchal and had started paying rents. In the year 1976 record of right in regard to the aforementioned lands was also finally published on 18.11.1976 as contained in annexure-1. Despite all this in a proceeding initiated under the Act against the second party for determining surplus area, their lands have been illegally treated as their and declared surplus

without any notice to them as mandatorily required u/s 5(1)(iii) of the Act, Earlier also the Petitioners had come up in C.W.J.C. No. 472 of 1982 which was by annexure-3 disposed of with a direction in them to file an application u/s 45-B of the Act.

3. A counter affidavit dated 6.8.1983 has been filed on 11.8 1983 but it is not clear from the record as to whether its copy has been served upon the Petitioners and Mr. Parmeshwar Prasad, learned Counsel for the Petitioners, states that no copy of the counter affidavit has been served on him.

4. The facts stated above have not been denied in the said counter affidavit but it has been stated therein that at no stage the Petitioners had objected nor had even the land; holder brought to the notice of the authorities.

5. learned Counsel for the Petitioner submits that Section 5(1)(iii) of the Act is i mandatory provision. That not having been done, declaration of part of the lands of the Petitioners as surplus without any notice to them was apparently without jurisdiction and thus the order as contained in anncxure-2 to so far as the lands of the Petitioners is concerned, is liable to be set aside.

6. Mr. S.N. Roy, Standing Counsel No. III, learned Counsel for Respondents Nos. 1 to 3, submits that in view of the fact that the order as contained in annexure-2 was not earlier challenged by the Petitioners, they are not entitled to the reliefs claimed for by this Court. The Petitioners were alto not found in possession by the authorities.

7. Section 5(1)(iii) of the Act is a mandatory provision which has not been complied with inasmuch as no notice was given to the Petitioners. The finally published record of Eight (annexure-1) showing the Petitioners in possession carried with it presumption of correctness and the continuity of the state of affairs both backward and forward. Thus it supports the case of the Petitioners. The fact that they have been paying rent to the State if Bihar has also not been denied. In the aforementioned view of the matter, it is difficult to uphold the validity of annexure-2.

8. For the reasons aforementioned, the Impugned order as contained in amexure-2 in so far as it relates to the land of the Petitioners is concerned, as well as annexure-5 both are held to be illegal.

9. In the result, this writ application succeeds. The impugned orders, as contained in annexures 2 and 5, in so far as it relates to the lands of the Petitioners are quashed and the case is remanded to Respondent No. 2 for proceeding in accordance with law after giving notice to the parties concerned.

10. There will be, however, no order as to cost.

11. Let a writ of certiorari issue.