

(2009) 04 JH CK 0067

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5353 of 2002

Samundri Devi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 10, 11, 11(1), 15, 15(1)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules,
1963 — Rule 44

Citation : (2009) 57 BLJR 1973

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : Vikash Kishore Prasad, for the Appellant; P.K. Verma and Awanish Shankar, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.

1 .The present writ petition has been preferred for issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing the final statement u/s 11(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) published in the District Gazette dated 16.12.1989 (Annexure-11) whereby and whereunder the lands belonging to the petitioner and purchased by way of registered documents have been declared as surplus in the hands of the land holder (respondent No. 5) without any notice or opportunity of hearing much less initiating any proceeding in terms of Section 5(iii) of the Act, although the lands in question have been in peaceful possession of the petitioner ever since the dates of their respective purchases and their names have also been mutated and also if need be, for quashing the entire proceedings of L.C. Case No. 24/73 in so far as the lands of the petitioner are concerned particularly when from the order sheet of the L.C. Case itself, it will be evident that report had been submitted

before the authorities regarding alienation made by the land holder in favour of the different persons, but even then the authorities did not take any step as required by law for giving notice to the transferee or initiating any proceeding u/s 5(iii) of the Act and proceeded ahead in gross violation of the provision of the Act, as also elementary principles of natural justice.

2. The main contention raised by the petitioner is as to whether the raiyati lands belonging to the petitioner can be declared surplus in the hands of land-holder (respondent No. 5) without giving any notice or opportunity of hearing. The next contention raised is as to whether the respondent authority has the jurisdiction to declare the lands belonging to the petitioner as surplus in the hands of the land-holder without initiating any proceeding u/s 5(iii) of the Act. It has also been contended that land in question was transferred by the land-holder on 25.7.55 i.e. much before 22.10.59 and thus the respondents had no authority or jurisdiction to declare the land as surplus. The petitioner has further submitted that similarly situated persons belonging to the same village aggrieved by the said impugned order and action had preferred a writ petition being C.W.J.C. No. 3926 of 2000(R) relating to the same land ceiling proceeding and the same was allowed in terms of the order dated 15.3.2001. A specific case has been made that the proceeding being the same and the Land Ceiling case No. 24/73 which is sought to be challenged herein has already been considered by this Court and the impugned notification was quashed and direction was issued not to give effect to the said notification and unless a final order was passed in the proceeding which may be initiated by the respondents against the petitioner u/s 5(iii) of the Act, nothing could be done.

3. Respondents in their counter affidavit have submitted that the land in question was declared surplus and the same has already been allotted to different persons and the petitioner is not even in possession of the same from the date of the acquisition of the said land since the land in question has already been settled in the year 1989-90 to different persons.

4. I have considered the pleadings and rival submissions. In the light of the order and judgment passed by the learned Single Judge relating to the same land ceiling proceeding one thing is clear that the acquisition proceeding was without any notice nor any opportunity was given to the petitioner and the fact remains that it was a raiyati land which was transferred by the land-holder on 25.7.55 i.e. much before 22.10.59 and a proceeding u/s 5(iii) of the Act was necessary and the learned Single Judge in C.W.J.C. No. 3926 of 2000 (R) vide order dated 15.3.2001 relating to the same in Land Ceiling case No. 24/73 had quashed the notification.

5. The fact remains that it has time and again been held that the transfer made prior to 22.10.1959 has to be excluded from the proceeding and cannot be treated as land of the land-holder. In a similar issue reported in 2000 (3) PLJR 780 the Patna High Court at para 21 held as under:

As I am of the view that the proceeding has to be decided afresh in the light of the provision contained under Sections 32A & 32B of the Act, it is not necessary to go into the other points raised on behalf of the petitioners. However, I would like to clarify certain legal points which have not been correctly appreciated by the revenue authorities. So far transfer made prior to 22.10.59 is concerned the same cannot be treated as land of the land holder and the same has to be excluded from the proceeding. So far the lands which were transferred after 22.10.59 but before 9.9.70 is concerned unless an annulment proceeding in terms of Section 5(1)(iii) of the Act has been initiated and the registered sale deeds have been annulled the said land can also not be treated as land of the land holder.

In 1991 (1) BLJ 708 a Division Bench of Patna High Court held that before a final publication of draft u/s 11 and notification u/s 15 under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 it is mandatory to issue notice u/s 5(1)(iii) to serve draft statement prepared u/s 10 to persons recorded as owners and non issuance of the same was held to be illegal and liable to be quashed.

6. Under the provisions of the act there are various stages contemplated under the Act and the rules framed thereunder which are set out as under:

(i) After final publication is made u/s 11(1) of the Act, notification u/s 15(1) is made whereby the surplus lands are acquired.

(ii) After the notification u/s 15(1) is made, then possession of the surplus lands is taken u/s 15(3) of the Act.

(iii) After possession of surplus lands are taken u/s 15(3) of the Act, only then the surplus land acquired, can be disposed off in terms of Section 27 of the Act.

(iv) u/s 27 of the Act, disposal of the surplus land is to be made subject to the rules made in this behalf. Detailed procedure of the mode and manner of the statement has been laid down under the Act and Rules.

(v) Chapter-XI of Bihar Land Ceiling Rules, 1963 deals with procedures for settlement of lands. According to Rule 44, settlement can be made by the Collector in consultation with the Block and Anchal Advisory Committee. Such settlement has to be evidenced by grant of Parwana which contains relevant particulars with regard to allocation, description of land and rent fixed and also a condition that the lands so settled shall be heritable but not transferable. The Form in which the Parwana is to be issued is also prescribed under Register L.C.E.2.

7. The statement made in para 6 of the counter affidavit nowhere reflects or refers as to when the acquisition notification u/s 15(1) of the Act was made and when possession u/s 15(3) was taken from the petitioner. The respondents have not even annexed any document to show that the possession was taken or settlement was made by grant of parwana. The only document which has been

annexed is register 8 as annexure A series which nowhere describe the lands under the proceeding.

8. The fact remains that any transfer made prior to 22.10.1959 has to be excluded from the proceeding and not to be treated as land of the land holder. In the instant case it is not in dispute that the land in question was transferred by the land holder on 25.07.1955 itself. Even otherwise Section 5(1)(iii) is a mandatory provision which has to be complied with before declaring lands to be surplus by the ceiling authorities. Any such declaration without any enquiry or notice to the purchaser is illegal and violative of Section 5(iii) of the Act even if the transfer has been made after 22.10.1959.

9. In the instant the transfer has been made on 25.07.1955 itself and the authorities have no right to annul such transfer and or acquire such land since it cannot be treated as land holders land for the purpose of declaration as surplus land for acquisition under the Act.

Considering the aforesaid facts and circumstances of the case, this writ petition is allowed and the proceeding under the Land Ceiling Case No. 74/03 is quashed.