

(1999) 01 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 9670/88

Saryug Thakur and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(2), 15(1), 5(1), 9(2)

Citation : (1999) 2 PLJR 1

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : B.N.P. Singh, Radha Mohan Sharma and Jagdish Pd. Singh, for the Appellant; B.P. Verma and Birendra Mohan Singh, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this case the Petitioners have prayed for the following reliefs:

That the petition is directed against the entire proceedings started by the Respondent No. 3 by his order dated 23.8.1986 as contained in Annexure-1 and the order dated 3.10.1988 (Annexure-3) passed by the Collector of the District and is further for the direction to the Respondents not to distribute the Petitioner's land alleged to have been declared surplus in case No. 113/1976 The State of Bihar v. Bhup Narain Singh

Learned Counsel for the Petitioner has challenged the order firstly on the ground that after amendment the proceeding should have been initiated at the stage of Section 10 of the Bihar Landn Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the Act) but in the instant case the proceeding was initiated in terms of Section 10(2) of the Act as a result the Petitioner was not given any opportunity to substantiate the case before the Respondent authority. It is further submitted that the Petitioner Nos. 1 to 5 are the bonafide purchasers from his vendor against whom no ceiling proceedings was ever initiated or was pending when the Petitioner purchased the land in the

year 1970. Admittedly, the Petitioner Nos. 6 and 7 had purchased the land from the land- holder Respondent Babu Nandan Mishra against whom Ceiling proceeding was initiated being Ceiling Case No. 113/76. Admittedly, all these Petitioners except Petitioner No. 1 have purchased the land after 9.9.70. It is submitted that Petitioner No. 1 has purchased the land in the year 1943 and the purchased land is Khatiyani land of Petitioner No. 1. So far Petitioner No. 2 to 5. are concerned, they have purchased the land after 1970. Admittedly no permission was obtained as envisaged u/s 5(1)(ii) of the Act. How-ever, purchased land of the Petitioner was notified as surplus u/s 15(1) of the Act. The Petitioners filed a petition for opening of the case before the Respondent Collector. The Respondent Collector by the impugned order has rejected the prayer of the Petitioner, hence this writ application.

2. Learned Counsel for the Petitioners have assailed the orders under challenge mainly on the aforesaid two grounds as stated above. Mr. Verma, learned Counsel appearing on behalf of the State on the other hand, submits that since the Petitioners have purchased the land after the cut off date i.e. 9.9.70 and as such, the said purchase is void ab initio and as such, the claim of the Petitioner is not tenable in the eye of law. However, so far as Respondent Nos. 6 and 7 are concerned, it is submitted that they have purchased the land from the land holder and accordingly they are entitled to protection in terms of Section 9(2) of the Act. Having regard to the order proposed to be passed in this case, it is not necessary to give positive finding on the submissions made by the respective parties. Suffice it to say admittedly the proceeding was initiated at the stage of Section 10(2) in contravention of the provisions of the Act, as a result the Petitioners have been un-able to substantiate their case before Respondent authority. Accordingly, without going into the merits of the case, at this stage the notification issued u/s 15(1) of the Act so far the lands of the Petitioners including the orders passed by the Respondent Collector are hereby quashed and the case is remitted back to the Collector of the district who will consider the case of the Petitioners with reference to the materials that may be produced by the respective parties and pass a fresh order in accordance with law without being prejudiced by the order of this Court. Since the matter is an old one it is desirable that the Respondent Collector should dispose of the matter within three months from the date of receipt/production of a copy of this order. It goes without saying that the Petitioner must co-operate with the proceeding, failing which the Respondent Collector will be at liberty to dispose of the proceeding ex-parte. In order to expedite the matter, I direct the parties to appear before the Respondent Collector on 22nd February, 1999, at 11 A.M. in his Chamber when the Respondent Collector will fix a date of hearing of the proceeding. This writ application is accordingly allowed to the extent indicated above.