
(1994) 06 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4505 of 1994

Sk. Taslim and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Citation : (1994) 06 PAT CK 0001

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—What is the scope of enquiry by the State Government or the Collector in an application u/s 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (for short "the Act"), and what does expression "if it thinks fit" u/s 45-B of the Act, connote and when can this Court grant interim stay in a petition under Article 226 of the Constitution of India, particularly when the interim stay is in respect of the land, for which proceedings are pending at the initiative of the vendees u/s 45-B of the Act, are the short questions for determination in this writ petition filed by the vendees, the Petitioners, seeking the relief for issuance of a writ of mandamus directing Respondent No. 2, Collector, Purnea to dispose of the application of the Petitioners u/s 45-B of the Act, and to exclude the plots of land purchased by the Petitioners by the sale deeds dated the 23rd June, 1973, 8th September, 1979, 4th April, 1973 and 22nd of June, 1973 from the operation of the ceiling proceedings and not to disposses the Petitioners from the plots in dispute till their application before the Collector or the State Government u/s 45-B of the Act is disposed of.

2. The factual matrix of the case is that the proceedings under the said Act were initiated and Ashok Kumar. Mandal, Kaushik Mandal and Gautam Mandal, including their father, the land-holders filed objections u/s 10(2) of the said Act with the averment that their plots including lands in dispute need not be declared surplus, inasmuch as they did not hold land in excess of the ceiling area, as indicated u/s 5 of the Act. The land-holders led evidence to prove their cases but

ultimately it was held that the land-holders had surplus land to the extent of 281 acres and odd as it is clear from the notification u/s 15(1) of the Act published on 7.10.1993 (vide Annexure 2 to the writ petition). As the proceedings u/s 10 of the Act were pending, the sale-deeds, in favour of the Petitioners (vide Annexure-1) were executed, as is obvious from the dates of the sale-deeds, prior to the issuance of the notification u/s 15 of the Act.

3. The Petitioners have now filed an application u/s 45-B of the Act before the State Government or the Collector, indicating that they are vendees under the different sale-deeds and had no opportunity to contest the proceedings which were in progress u/s 10(2) of the Act. The prayer before the Collector is that the proceedings which had been concluded and in respect of which the notification u/s 15 of the Act had been issued, be re-opened and they be afforded an opportunity to contest the matter, as after the sale-deeds in their favour they stepped in the shoes of the land-holders. These proceedings are still pending and have not been decided one way or the other. During the pendency of those proceedings they have filed the present petition before this Court under Article 226 of the Constitution, seeking relief as indicated above in paragraph 1 of the writ petition to the effect that the Collector be directed by a writ of mandamus to dispose of their application in respect of their claim u/s 45-B of the Act, by re-opening the matter and the land purchased by them be declared to be exempted from ceiling proceedings and further by an interim mandamus Respondents be directed not to dispossess them during the pendency of the proceeding.

4. Mr. Arun Prasad Ambasth, learned Counsel for the Petitioners contended that the Petitioners had not been afforded any opportunity to contest the proceedings u/s 10(2) of the Act. Hence they be afforded an opportunity of hearing and the Collector be directed to allow the application u/s 45-B of the Act by re-opening the matter/proceeding which have been concluded in pursuance of the said notification u/s 15 of the Act dated 30.9.1993 (Annexure 2) and during the pendency of their application before the Collector or the State Government u/s 45-B an interim stay be granted by this Court in the present petition to the effect that the Petitioners be not ejected from the land in question during the pendency of the application u/s 45-B of the Act.

5. Reliance was placed by the learned Counsel for the Petitioners on *Ram Rup Singh v. State of Bihar* and *Ors.* 1983 P.L.J.R. 482, *Rajendra Mahto Vs. Hari Narayan Mahto*, *Sib Narain Roy Vs. The State of Bihar and Others* and a Full Bench decision of this Court in the case of *Praveen Shankar Singh and Others Vs. State of Bihar and Others*, .

6. Mr. Birehdra Prasad Verma, learned Standing Counsel, appearing for the Respondent-State has submitted that the proceedings u/s 10(2) of the Act have been concluded after affording opportunity to the land holders, predecessors-in-interest of the Petitioner-vendees. The Petitioners had obtained sale deeds during the pendency of the proceedings under the Act. The Petitioners could contest the proceedings under the Act at the relevant point of time when they purchased the

plots and obtained sale deeds dated 23.6.1973, 8.9.1979, 4.4.1973 and 22.6.1973, but they did not contest, rather when the proceedings have been concluded after acquisition of the surplus land, and relevant publication u/s 15 of the Act has been made they have filed application before the State Government or the Collector u/s 45-B of the Act to re-open the proceedings, concluded after decision on merits against the land-holders, who contested the matter. Neither any new evidence has been discovered, nor mistake or error has been pointed in the proceedings against the land-holders. Certified copies of the orders passed in the proceedings against the land-holders have also not been filed. The applications of the Petitioners u/s 45-B of the Act are just by way of fishing enquiry without showing any error or illegality in the earlier proceedings. The proceedings u/s 45-B of the Act need not be re-opened as a matter of right, rather this power has to be exercised by the State Government or the Collector very sparingly and for adequate reasons and those powers could be exercised on the basis of the new materials discovered by the Petitioners-vendors. The principal relief sought by the Petitioners was to obtain an interim stay, directing the Respondents not to dispossess the Petitioners from the plots purchased by them during the pendency of the proceedings before the State Government or the Collector (Respondent No. 2). Interim stay in a writ jurisdiction, particularly when the proceedings are pending before some other authority, need not be granted as a matter of course. Jurisdiction under Articles 226/227 of the Constitution, being discretionary, need not be exercised in favour of any person who seeks just interim relief in respect of the proceedings pending before some other authority or Tribunal. No case to exercise jurisdiction under Article 226/227 of the Constitution has been made out, directing the Collector to re-open the proceedings in pursuance of the application of the Petitioners or to grant interim stay to them in respect of the plots purchased by the Petitioners. In that view of the matter, the present petition is devoid of any merit and, therefore, it is fit to be dismissed.

7. Having scrutinised the submission of the learned Counsel for the parties, the short questions for our determination are as to on what ground the application of the Petitioners u/s 45-B of the Act can be allowed, and the proceedings which have been ultimately concluded against the land-holders, can be re-opened and what can be the meaning assigned to the expression "as it thinks fit" employed by the legislature u/s 45-B of the Act and under what circumstances interim mandamus or stay could be granted by this Court in respect of the proceedings pending before some other authority.

8. Before answering the first question, the provisions of Section 5(1)(ii), Section 9(2) and Section 45-B of the Act may be read conjointly and no part of the same is to be read in isolation. In other words no part of the section can be obliterated or stretched. Other relevant provisions of the Act and the Rules have also to be considered. We are reminded of an old Latin maxim "INGUSTUM EST NISI TOTA LEGE INSPECTA DE UNA ALIQUA. EJUS PARTICULA PROPOSTIA JUDICARE VEL RESPONDERE", which connotes that it is unjust to refer one part of the Statute

without examining the whole of it. At the same time there is another maxim "A VERMS LEGISNON EST RECEDENDUM", which means that from the word of the Statute there must be no departure. In N.M. Mulchandani's admirable treatise Legal Maxims and Phrases, there is a mention at item No. 4837, a maxim UT RES VAILAT POTIUS QUAM PERMAT which means that the Court would avoid that construction which would fail to relieve the manifest purpose of the legislation and that the legislature would enact only for the purpose of bringing about an effective result, see *The Film Exhibitors, Guild and Another Vs. State of Andhra Pradesh and Others*, . Interpretation has to be made in such a way, so that the intention of the legislature may not be treated as vain or left to operate in the air. See *Hankey v. Cleberring* (1942) 2 K.B. 326 and *Hair Frey v. Bean Front* (1946) K.B. 280.

9. In American Jurisprudence (Vol. 1 pages 838 to 839) there is a statement that the main object of construction of laws is to ascertain and carry out the intendment of the legislature, the Courts have themselves no power to legislate and amend any omission of the Acts directly and indirectly by construction. See *Guisseppi v. Walling* 324 U.S. 244 and *Teders v. Savannach* 202 U.S. (SC) 263. The Courts have no power to interpret that which has no need of interpretation. It is for the Courts to ascertain the meaning of the provisions, neither to add nor subtract, delete or distort. See *Barsky v. Board of Regents* 347 U.S. 442.

10. We would consider the provisions. Section 5(ii) indicates the consequences of a sale deed obtained without previous permission of the Collector in writing. Admittedly, all the sale deeds obtained by the Petitioners, have been obtained after (Ceiling) Amendment Act, 1972 and without any previous permission of the Collector in writing. The legal effect of such sale deeds to have be ascertained. If the Petitioners-vendees or the land holder would have applied for permission, the Collector would have got an opportunity to apply his mind as to whether the transfer was made with mala fide intention or it would defeat the purpose of the Act.

11. Two provisos have been added to Section 5(ii) of the Act. The interpretation to be assigned to a proviso is well known. The main function of a proviso is to carve out an exception to the main enactment, and it might change to some extent the very concept of the intendment of enactment by providing certain mandatory conditions to be fulfilled in order to make the enactment workable, some times the scope of the provisions covered by a proviso is so imbedded in the Act itself as to become an integral part of the enactment and thus acquire tenor of the substantive enactment itself. At the same time, a proviso cannot normally be so interpreted as to set at naught the main enactment. See *A.N. Sehgal and others Vs. Raje Ram Sheoram and others*, and *S. Sundaram v. V.R. Pattabhiram* AIR 1985 S.C. 588.

12. The first proviso to Section 5(ii) of the Act has been added to modify or clarify that even if sale deed has been made with the previous permission in writing, after enforcement of 1972 (Ceiling) Amendment Act, it shall be deemed

that the sale deed was made out of the ceiling area admissible to the land holder. What is to be emphasised is that the expressions "shall be deemed to" have been employed by the legislature. A deeming Clause is used to introduce an artificial conception to an expression or a phrase when a thing is deemed to be something else, it is for all practical purposes to be treated as if it is that thing, though in fact it is not. See *Addl. Income Tax Officer v. L. Alfred* (1962) Suppl. 1 SCR 143. Whenever expression "deemed to" is employed a legal fiction is created. Legal fiction has been explained in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 App. Cas. 109 as follows:

If you are bidding to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

12A. In *Industrial Supplies Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, it was observed:

It is now axiomatic that when legal fiction is incorporated in a statute the Court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and should be carried to its logical conclusion. The Court has to assume all the facts and circumstances which are incidental, or inevitable corollaries to giving effect to the fiction.

The legal fiction employed by the legislature has to be interpreted in the light of its correct meaning and import.

13. What first proviso to Section 5 indicates is that even if permission of the Collector was obtained before making sale, nevertheless the sale shall be deemed to have been made from within the ceiling area admissible to the land holders. In other words, even if the sale deed could have been obtained by the vendees with permission of the Collector in writing, nevertheless it would be deemed to have been made from within the ceiling area admissible to the land holders. The vendees can put their claim from that area only.

14. The proviso added to Section 9(2) makes it manifest that the land holder, apart from retaining (while exercising the option). to the extent of ceiling limit, would be entitled to an additional 2 acres of homestead land in case conditions indicated are fulfilled. Our interpretation of Section 5(ii) and Section 9(2) also finds support from the recent Division Bench decision of this Court in *Sib Narain Roy Vs. The State of Bihar and Others* wherein the Hon'ble S.B. Sinha, J. at page 300 in paragraph 30 has held as follows:

By reason of the said first proviso, the lands transferred, shall be deemed to have been made within the ceiling area admissible to the landholder. The intent

and purport of the said proviso is, therefore, clear that though the lands have been transferred by the landholder, the same would be deemed to have been made within the ceiling area admissible to the land-holder and thus, the landholder cannot claim that such transfer be excluded from the purview of the ceiling area. The intention of the legislature stands further clarified from Sub-section (2) of Section 9 of the said Act, in terms whereof the lands so transferred by the landholder would be deemed to have been selected by the landholder. It is, therefore, clear that three legal fictions have been created, one in terms of the first proviso appended to Clause (ii) of Sub-section (1) of Section 5; the second in terms of the second proviso thereof and the third in terms of Sub-section (2) of Section 9. It is now well known that a legal fiction created by reason of the provisions of the Statute, has to be given full effect.

15. In the present case the Petitioners obtained sale deeds after the (Ceiling) Amendment Act, 1972, but without written permission of the Collector. In that event a legal fiction has been created that it shall be deemed that it has been made from within the ceiling area admissible to the vendor. There is another possible inference from, such transaction that the vendor can also not claim that such transfers be excluded from the ceiling limit. Second Proviso makes it manifest that in case a sale deed has been made beyond the ceiling limit, it means that it was made to defeat the provisions of the Act Neither the vendor nor the vendees can take benefit of such sales.

16. Section 9(2) of the Act enacts a consequence of the transfers made either with or without the permission of the Collector. There is another legal fiction enacted u/s 9(2) , while exercising option to retain certain plots, to the extent of ceiling area applicable to a land holder, it shall be deemed that the land transferred either with or without permission of Collector, has been selected to be retained. In case Section 5(ii) and Section 9(2) are read together, it becomes crystal clear that the claim of the vendees in respect of the land either with or without permission is only against the land retained by the land holder within the ceiling limit. There is no doubt that the land covered by all the transfers in dispute, are within the ceiling limit.

17. As the legal fiction has been created by the legislature in its collective wisdom while enacting Section 5(ii) and two provisos and also Section 9(2), while interpreting these provisions and similar other provisions, a Court, in our humble opinion, would be justified to ascertain for what purpose the fiction has been created and after ascertaining this, the Court is to assume all those facts and circumstances which appear to be incidental or inevitable corollaries to giving effect to the fiction. See *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1951) 2 AHER 587 and in *Re. Coal Economising Gas Co.* (1875) CLD 182.

18. The scope of Section 45-B of the Act has been the subject matter of a number of decisions of this Court, including the Full Bench (consisting of the Hon"ble Mr. Justice S.S. Sandhawalia, C.J., Hon"ble Mr. Justice B. P. Jha and the Hon"ble Mr. Justice L. M. Sharma, as his Lordship then was). In *Praveen Shankar*

Singh and Others Vs. State of Bihar and Others, it was observed (at page 156 in paragraph 10) that the proceeding u/s 45-B of the Act cannot be re-opened for merely making a fishing enquiry to test the correctness of the earlier order, there must be fresh material relevant to the question which, H considered along with the existing material on the record would lead to a different conclusion. In the instant case no mistake or error has been pointed out in the earlier proceeding against the vendor land holder and there is no factual foundation to that effect. It was also not stated by the Petitioners as to what was the fresh material relevant to the question which was discovered by the present Petitioners subsequent to the earlier proceedings.

19. In Nagendra Nath Choubey Vs. State of Bihar and Others, this Court has held in Paragraph 4 that the illegalities must have been shown in the earlier proceedings, which have been concluded much earlier and in case no such illegality, was shown in the earlier proceedings, the Collector or the State Government would not be justified to re-open the proceeding n an application u/ s 45-B of the Act. In Harishchandra Singh and etc. Vs. State of Bihar and Others, , relied upon by the learned Counsel for the Petitioner, it was held by this Court (at page 991), that before an application u/s 45-B of the Act could be allowed, some illegality in the earlier proceedings must be shown and proved. In Sk. Ibrahim v. Bibi Zulekha and Ors. 1993 (I) P.L.J.R. 255 this Court held (at page 258) that the power given by the legislature u/s 45-B of the Act for re-opening the proceedings which have been concluded earlier, is to be exercised sparingly and for adequate reasons. At the same time such power be exercised only on the basis of the new material discovered after conclusion of the earlier proceedings. Nagendra Nath Choubey Vs. State of Bihar and Others, relied upon by the learned Counsel for the Petitioners, was based on different facts and it was held in that case that the power of review is creature of the statute and unless the said power was provided any order could not be reviewed in the garb of such power of review; whereas Ram Roop Singh v. State of Bihar 1983 P.L.J.R. 482 relied upon by the learned Counsel for the Petitioners, was also based on different facts, inasmuch as, in that case the question was about the scope of a writ of mandamus, or as to when a writ of mandamus can be issued against the Housing Board under the charges and whether leave could be granted to the Petitioner.

20. In our considered opinion, therefore, the power u/s 45-B of the Act could be exercised not as a matter of right, or as a matter of course, but only when some illegality was pointed out in the earlier proceedings concluded. In the present case in none of the paragraphs of the present petition any illegality in the earlier proceedings has been pointed out. In order to re-open the proceedings concluded, some fresh evidence must be collected and it must also be shown. No such evidence was available when the earlier proceedings were in progress and in case new material was considered along with material already on record in the earlier proceedings the inference and result would be entirely different. Only after satisfying these conditions, interference on an application u/s 45-B can be

made and the earlier proceedings could be re-opened.

21. Now, reverting to the next question about the meaning to be assigned to the expression "if it thinks fit" used u/s 45-B, suffice it to say that this expression does not mean that the State Government or the Collector has been given very wide power to re-open the proceedings. As Section 45-B has to be read along with Section 5(ii) and Section 9(2) of the Act, keeping in view the effect of legal fiction created by the legislature and the necessity for creating legal fiction. The legal fiction u/s 5(ii) and Section 9(2) was created to obviate that the claim of the vendees in respect of sale deed obtained after the Ceiling Amendment Act, 1972 was confined to the ceiling area admissible to the land holder. The area covered by the sale deed obtained either with or without prior permission of the Collector in writing would be deemed to be the area in respect of which the land holder has expressed his option to retain it. The another corollary is that the vendees if aggrieved can claim their rights in the plots in respect of which the land holder has expressed his option or would be deemed to have expressed his option and to no other area or land (see Section 9(2) of the Act.) The State Govt. or the Collector would not exercise its power on an application made just with a view to make a fishing or roving enquiry. The expression "if it thinks fit" ordinarily means in the discretion of the Court. The word "discretion" is derived from the word "discretion" which means science of understanding to discern between falsity and truth, between right and wrong. It would not be inapt to refer to Latin Maxim "DISCRETIA EST DISCERNERE PER LEGEM QUIDSIT JUSTUM" which means discretion is to know through law which is just and proper. The discretion to be exercised by the State Government or the Collector is to be exercised not on whims but to ascertain in law as to whether in view of the provisions u/s 5(ii) and Section 9(2) of the Act adumbrated above would it be advisable to exercise the discretion to re-open the proceedings.

22. In our opinion, therefore, the expression "if it thinks fit" does not confer unbridled power on the State Government or the Collector to act without sufficient cause. The jurisdiction u/s 45-B of the Act has to be exercised for re-opening the proceedings concluded, keeping in view the limitations imposed upon the authority. Such jurisdiction cannot be exercised as a matter of right and/or as a matter of course.

23. The last question for our determination, on the facts and in the circumstances of the case, is as to whether this Court will be justified in granting interim stay prayed for by the Petitioner of the present writ petition, during the pendency of their applications u/s 45-B of the said Act. There is no doubt that this Court can grant interim relief in a petition under Article 226 of the Constitution, but consideration for granting or refusing to grant interim relief would be different where the proceedings are still pending before the State Govt. or the Collector u/s 45-B of the Act, and in such matter one of us (B.L. Yadav, J.) has occasion to decide a case in *Zila Sahkari Bank Limited v. State of U.P. and Ors.* 1988 (57) IFLR 428 and it was observed at page 432 in paragraph 13 as

follows:

It is by now well settled that the purpose of passing interim stay in the writ petition under Article 226 of the Constitution ought to be to revive a workable formula or arrangement to the extent called for by the situation so that the unemployed workman's, agony is not extended. This is of course a delicate balance which is to be maintained after considering pros and cons of the matter so that the larger public interest is not jeopardised and the socialist, democratic republic goal under the Preamble of the Constitution and goal of bringing about social revolution and establishment at welfare state is not kept in oblivion. Further, the object of social and economic justice must be kept in mind.

In that case it was further held that it was delicate balance which was to be maintained after considering the pros and cons of the matter, so that larger interest may not be jeopardised.

24. In the case of *The State of Orissa Vs. Madan Gopal Rungta*, a Constitution Bench (consisting of the Hon^{ble} Sarvsri Kania, C.J., Patanjali Sastri, B.K. Mukherjea, S.R. Das and Chandrasekhara Aiyar, JJ.) had an occasion to declare the law on the subject about grant of interim relief/stay, when the civil suit was to be filed and the proceedings in the suit were to commence, but by the time no proceeding could be initiated by the Plaintiff, the Petitioner was granted interim stay by the High Court, to enable him to file a civil suit and nothing was decided by the High Court relating to the rights of the parties or the legal rights of the Petitioner, except the interim relief that was granted. In that connection it was held at page 14 in paragraph 6 as follows:

...The question which we have to determine is whether direction in the nature of interim relief only could be granted under Article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or direction of a like nature could be issued. In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 CPC and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the Petitioner, it might have proceeded to investigate the case on its merits and come to a decision as to whether the Petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature, and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not for the purpose of facilitating the institution of such suit, issue direction in the nature of temporary injunctions, under Article

226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld.

25. In view of the aforesaid dictum laid down by their Lordships constituting a Constitution Bench the only possible inference is that in case a proceeding is pending before some other Court or the authority and the rights of the parties, particularly that of the Petitioners have not been finally adjudicated upon or in any case the legal rights of the Petitioners have not been prima facie established and no finding to that effect has been recorded, in that event the Court exercising discretionary jurisdiction under Article 226 of the Constitution would not be justified in granting interim relief, pending disposal of the case before the appropriate authority i.e., the State Government or the Collector. In the present case u/s 45-B of the Act the proceedings are still pending and the applications of the Petitioners have been decided by the State Government or the Collector. In that event, this Court would not be justified to grant any interim relief to the Petitioners to the effect that they should not be dispossessed during the pendency of their applications u/s 45-B of the Act. The object to grant discretionary relief under Article 226 of the Constitution, particularly granting temporary injunction cannot be extended to such an extent that only interim relief can be granted and the rights of the parties need not be decided, rather they are to be decided by other authority either in a civil suit or in some other appropriate proceeding. In the instant case the right of the parties, particularly the Petitioners-vendees were yet to be determined by the State Government or the Collector u/s 45-B of the Act.

26. Under these circumstances, in our opinion, it is not a fit case to grant any interim relief to the Petitioners.

27. We may also point out that we are conscious about our ownself imposed restriction on jurisdiction under Article 226 of the Constitution. This discretionary power is not to be exercised as a matter of right and as a matter of course. It is to be exercised only when there was some error apparent on the face of the records, and the same time some injustice was done to the Petitioners and the same was proved. Even if there is some error apparent on the face of record, nevertheless if substantial justice has been done between the parties, this Court would be justified in refraining from exercise of jurisdiction under Article 226. In the present case, in our opinion, no injustice has been done to the Petitioners. They have obtained sale deeds after the Ceiling Amendment Act, 1972 during the pendency of the ceiling proceedings without any previous permission of the Collector in writing. In that event their claim was confined and would be deemed to be confined only to the extent of the ceiling limit applicable to the land holders and in any event it shall be deemed that the land holders have expressed their choice to retain the plots sold by them. In case the Petitioners have any grievance they could make the same against the land holders. Under these circumstances, in our opinion, this is not a fit case where we can exercise our

discretion, in favour of the Petitioners. There are catena of decisions of this Court in such matter. We need not multiply the same, except by making reference to the case of Sk. Ibrahim v. Zulekha and Ors. 1993 (I) PLJR 255 , (supra) at page 259 in paragraph 38; Pramod Kumar and Others Vs. The State of Bihar and Others, and Suku Mahto and Another Vs. State of Bihar and Others .

28. Our answers to the questions posed are that the scope of enquiry u/s 45-B of the Article is very limited. Jurisdiction can be exercised not on an application with a view to make fishing enquiry or roving enquiry. This can only be exercised when an illegality has been pointed out in the earlier proceedings. This power is to be exercised sparingly only when some new material has been discovered subsequent to the disposal of the proceedings by the ceiling authority, and only if it can be shown by the Petitioners that in case the new discovered material was considered along with the material available to the ceiling authority, the inference would be different and positively in favour, of the Petitioners vendees, and on proof of similar other circumstances. The expression "if it thinks fit", need not be construed elaborately, rather it has to be considered along with the limitation pointed out above in our judgment. This Court would not be justified in granting interim relief where the matter in respect of the rights of the parties has not been decided as yet, as the application of the Petitioners are pending u/s 45-B of the Act.

29. The up-shot of the discussion made hereinbefore and applying Aristotelium and Baconian reasonings, this writ petition fails and it is dismissed. But in the circumstances of the case there will be no order as to costs.

A.K. Ganguly, J.

30. I agree.