

(1999) 01 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 4295/98

Sri. Darogi Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 15, 15(1), 45B
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 PLJR 622

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

Bench : Single Bench

Advocate : Jagdish Prasad Bhagat, for the Appellant; Raghib Ahsan, for State and Shabbir Ahmad, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—By this writ application under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for quashing of the Gazette Notification dated 16th September, 1985 by which the land of the Petitioner has been included and declared surplus in a proceeding initiated against Respondent No. 4 being Ceiling Case No. 1584/1274 of 1973-74.

2. Shortly stated the case of the Petitioner is that the land appertaining to old khata No. 217, plot No. 733 new khata No. 284, plot No. 206, 207 and 210 measuring an area of 1.28 acres is the ancestral land of the Respondent No. 5, Sikandar Hussain, who was in peaceful cultivating possession of the land throughout. During the re-visional survey the land in question was wrongly recorded in the name of the grand mother of the Respondent No. 4, Pradip Chand Lal, in the khatian. It is stated that against the wrong entry made in the khatian the Respondent No. 5, being the only last legal heir, filed a suit which was registered as Title Suit No. 469 of 1958 before the Munsif Sadar, Purnea wherein the grand mother of Respondent No. 4, Rani Binda Devi, was made

Defendant therein. In the aforesaid suit pursuant to the notice issued, the Respondent No. 4 inducing the grand mother appeared and filed a compromise petition. On the basis of the joint compromise petition the suit was decreed and the title was declared in favour of Respondent No. 5 with respect to the disputed land. A copy of the compromise petition as well as the decree passed in the aforesaid suit are made Annexures-1 and 1/1 respectively to this writ petition. Zamabandi was then created in his name. Thereafter the Petitioner purchased the land, in question, through registered sale deed dated 21st November, 1973 from the Respondent No. 5. After the purchase the name of the Petitioner was mutated with respect to the purchased land and he came in possession since the date of purchase and the rent receipts are being paid by the Petitioner since then. Admittedly no ceiling proceeding was ever initiated at any point of time against Respondent No. 5, as he did not possess any surplus land of the ceiling area. Further stands admitted that there is no relationship between the Respondent No. 4 and 5 and the land, in question, is a raiyati land of the family of the Respondent No. 5. It is stated that the Petitioner was not aware of the proceeding initiated under the Act against the Respondent No. 4 in the year 1973-74, and, as such, he did not appear before the Respondent authorities of the aforesaid ceiling case. Ultimately when the purchased land of the Petitioner was included in the notification issued u/s 15 of the Act, he came to know that his land has been declared surplus in a proceeding initiated against the Respondent No. 4. Accordingly, he has filed the instant writ application for setting aside the Gazette notification, copy of which is made Annexure 2/1 to this writ petition. It appears that by order dated 21.6.88 the interim order was passed directing the Respondent authority not to dispossess the Petitioner from the land in question. It is submitted that the Petitioner is still in possession of the land in view of the interim order passed by this Court.

3. In this case a counter affidavit has been filed on behalf of the State Respondents wherein a peculiar stand has been taken, inasmuch as, it is stated that the Respondent authority is not bound by the civil court's decree. It is further stated that the Respondent authorities were not aware of the land having been purchased by the Petitioner as no material was produced before the Respondent authority. It is further stated that the Respondent authority while deciding such proceeding is not supposed to look into the government record and it is the duty of the parties to produce the documents for consideration by the Respondent authorities. The Respondent authorities have not denied the bonafide purchase of the raiyati land from Respondent No. 5. However, it is stated that since no material was available before the Respondent authority in support of the claim of the Petitioner, and as such, the Petitioner is not entitled to any relief at this stage.

4. From the facts stated above, it is apparent that the Petitioner has purchased the land from a person who did not possess the land in excess to the ceiling area. The proceeding in terms of Section 45B of the Act was never initiated against the Respondent No. 4 and, as such, the Respondent authorities were not

justified in clubbing the land of the Petitioner, particularly having regard to the civil court decree wherein the title of the land, in question, was declared in favour of the Respondent No. 5. The only material before the Respondent authority was the entry made in the khatian and on the said basis the land was treated to be the land of Respondent No. 4. As stated above the said entry was set aside by the civil court and the title of the disputed land, was confirmed in favour of the Petitioner in the aforesaid title suit. That apart, after purchase of the land the name of the Petitioners was mutated with respect to the land in question, the Respondent authority could have easily ascertained the real owner of the disputed land before declaring it surplus.

5. Heard the learned Counsel for the parties and perused the materials on record. I am of the view that the Petitioner is a bonafide purchaser of the land, in question, from the Respondent No. 5 against whom no proceeding was ever initiated. No notice was issued to the Petitioner at any stage of the proceeding either. Accordingly part of the Gazette notification issued u/s 15(1) of the Act by which the land of the Petitioner, appertaining to plots, in question, is hereby quashed.

6. In the result, this writ application is allowed, but not cost.