
(2019) 12 JH CK 0156

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 395 Of 2018

State Of Jharkhand And Ors

APPELLANT

Vs

Rekha Agarwal

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) (Amendment) Act, 1972 — Section 4A, 5, 6, 7, 8, 9, 10, 10(3), 11, 15
Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act, 1961 — Section 15

Citation : (2019) 12 JH CK 0156

Hon'ble Judges : Dr. Ravi Ranjan, C.J.;Sujit Narayan Prasad, J

Bench : Divison Bench

Advocate : Atanu Banerjee, Ganpat Trivedi, Madan Mohan, Pallavi Pandey, Birendar Kumar

Final Decision : Dismissed

Judgement

1. The instant intra-court appeal is under Clause 10 of the Letters Patent against the order dated 10.01.2018 passed in W.P.(C) No. 4963 of 2014

whereby and whereunder the order dated 24.07.2014 passed by the Deputy Commissioner, Koderma in Miscellaneous Case No. 11 of 2001 has been

quashed with a direction upon the respondent State to de-notify the land of the petitioner from acquisition and further, the petitioner may file fresh

application for correction of Jamabandi and issuance of rent receipt before the Circle Officer, Koderma after issuance of the order of de-notification

which shall be dealt with by the Respondent No.6 in accordance with law.

2. Before entering into the merit of the issue, it is relevant to enumerate certain factual aspect which is necessary to come to the rightful conclusion.

The case of the writ petitioner in the writ petition was that by virtue of registered

sale deed No. 916 dated 31.01.1979, he purchased the landed property pertaining to Khata No. 40, Plot No. 1250, Area 2.52 acres, Khata No. 4, Plot No. 1251, Area 1.90 acres, Khata No. 25, Plot No. 1249, Area 2.03 acres and Khata No. 57, Plot No. 1252, Area 1.00 acres in Mouza Moriyawan from the recorded raiyats namely Prayag Modi, Raghav Modi and Ram Krishna Modi.

According to the writ petitioner, in the record of rights, Khata No. 25 stands in the name of Ghanshyam Pandey and others whereas Khata No.40 stands in the name of Naro Gope and others while Khata No. 4 stands in the name of Annachch Gope and others whereas Khata No.57 stands recorded in the name of Bhikho Gope and others.

It is the further case of the writ petitioner that the legal heirs of Naro Gope and others namely Jagi Gope sold 2.52 acres of land in Khata No.40, Plot No. 1250 by registered sale deed No. 12683 dated 21.07.1976 to Prayag Modi, Raghav Modi and Ram Krishna Modi. Similarly, vendors purchased the land of Khata No.4, Plot No. 1251, area 1.90 acres from Bhikhan Gope, legal heirs of Annachch Gope and others by virtue of registered sale deed No. 12684 dated 21.07.1976. Similarly, legal heirs of Ghanshyam Pandey and others namely Anuj Pandey sold the land of Khata No. 25, Plot No. 1249, area 2.03 acres out of 2.74 acres by registered sale deed No. 12685 dated 21.07.1976 to vendors and legal heirs of Bhikhan Gope and others namely Babun Gope sold the land of Khata No. 57, Plot No. 1252, area 1.00 acre by registered sale deed No. 12686 dated 21.07.1976 in favour of vendors of the petitioner from whom the petitioner has purchased 7.45 acres in four khatas and four plots mentioned above and is in continuous possession over the land since the date of purchase.

The petitioner has applied for mutation before the Circle Officer, Koderma, in the year 1989 but the same was rejected on the ground that the land in question has been declared as surplus land of one M/s. C.M.I. Limited, Domchanch.

The petitioner, thereafter, had filed one release case being Release Case No. 11 of 2001 before the Deputy Commissioner, Koderma narrating the entire facts but was rejected on the ground that the lands were declared as surplus land of M/s C.M.I. Limited, Domchanch. The vendors of the petitioner had preferred writ petition for de-notification being C.W.J.C. No. 3026

of 1998 (R) which was allowed vide order dated 01.05.2009 directing to de-notify the lands in question.

According to the writ petitioner, her case is squarely covered by the decision of the High Court passed in C.W.J.C. No. 3026 of 1998 (R) but without appreciating factual aspects, the application has been rejected.

Further case of the writ petitioner is that in similar facts and circumstances aforesaid writ petition was allowed and as such, the present writ petition is also fit to be allowed, since facts herein are also exactly similar.

The learned Single Judge, by putting reliance upon the order passed by this Court in C.W.J.C. No. 3026 of 1998 (R), has been pleased to quash the order dated 24.07.2014 passed in Miscellaneous Case No. 11 of 2001 with a direction to de-notify the land of the petitioner from the acquisition which is the subject matter of the present appeal.

3. The respondent State of Jharkhand, assailing the aforesaid order, has taken the ground of non-appreciation of the factual aspect as also the plea of continuous possession of the State and the fact leading to the case of C.W.J.C. No. 3026 of 1998 (R) is different to the fact of the present case.

4. Mr. Ganpat Trivedi, learned senior counsel assisted by Mr. Madan Mohan have put their appearance to represent the sole respondent.

5. Learned counsel for the respondent has submitted that there is no error in the order, rather the order has been passed basing upon the finding recorded in C.W.J.C. No. 3026 of 1998 (R) contending that there is no difference in the fact as would be evident from the order passed by the

learned Single Judge since no rebuttal reply has been filed before the writ court to substantiate that the factual aspects leading to filing of the writ petition being C.W.J.C. No. 3026 of 1998 (R) is same to that of the present one.

6. This Court, having heard learned counsel for the parties and going across the material available on record, deem it fit and proper first to refer certain provisions which are relevant for proper adjudication of the issue involved in this case.

The Act applicable in this case is the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the Act, 1961).

It is not in dispute that the Act, 1961 has been enacted to provide for fixation of

ceiling, restriction on sub-letting and resumption by certain raiyats, for personal cultivation of land, acquisitions of status of raiyat by certain under-raiyats and acquisition of surplus land by the State in the State of Bihar and matters connected there with.

Under Chapter-II, the procedure has been provided for fixation of ceiling area under which ceiling area of land for one family consisting of not more than five members for the purposes of this Act has been provided.

Section 4A provides for re-determination of ceiling area in order to meet out the situation where the ceiling area of the land for any family or any

member of the family constituting the family on the appointed day has been determined by any order passed by any authority in accordance with the

provisions of this Act prior to the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)

(Amendment) Act, 1972.

Section 5 provides, no person to hold land in excess of the ceiling area.

Section 6 provides public notice upon certain land holders to submit returns.

Section 7 provides provision for collection of information through other agencies.

Section 8 provides provision of penalty for non-submission of return in compliance with special notice.

Section 9 provides option of family to select its ceiling area.

Section 10 provides preparation of draft statement.

Section 11 contains the provision for final publication of draft statement.

Section 15 contains provision for acquisition of surplus land.

The process starts from the stage of preparation of draft statement as provided under Section 10 and in consequence of the said provision, the final

publication of draft statement would be made after dealing with the objection as per the provision contained under Sub-Section (3) of Section 10.

Section 15 provides acquisition of surplus land to be notified in the official Gazette of the district as also a notification to be sent to the landholder

concerned by registered post with acknowledgement due.

7. The specific case of the respondent/writ petitioner that no such proceeding has either been initiated under Section 10 nor draft statement has been

published as required to be published under Section 11 as also no notification

has been gazetted in the Gazette notification about acquisition of the land in question.

8. The writ petitioner has further contended that for the piece of land pertaining to Khata No. 15, this Court has already passed an order in C.W.J.C.

No. 3026 of 1998 (R) and, therefore, there was no occasion before the learned Single Judge to differ with the said order since the fact leading to the present case is squarely the same to that of the case of Smt. Jasoda Rani Sharma and Others [C.W.J.C. No. 3026 of 1998 (R)].

The State respondents have contended that on facts the judgment passed in C.W.J.C. No. 3026 of 1998 (R) will not be applicable.

9. It further requires to refer herein that the factum of non-publication of notification in official Gazette as required to be published under Section 15 of the Act, 1961 has not been disputed by the learned State counsel and so long as there is no notification having been published in the official Gazette, there cannot be any acquisition of the surplus land.

10. This Court, in order to examine these factual aspects, has gone across the order passed by this Court in C.W.J.C. No. 3026 of 1998 (R), which is

annexed as Annexure-4 to the writ petition, wherefrom it is born out, more particularly from paragraph 12, that there has been no final publication as

required under Section 11 of the Act. There is nothing on record to show that the land in question of Khata No. 251, Plot No. 1249 for a total area of

2.74 acres was transferred to M/s. C.M.I. Company. No final publication under Section 15 under the Act, 1961 has been published in the official

Gazette. For ready reference, paragraph 12 of the aforesaid judgment is being reproduced here in below :-

12. In the instant case there has been no final publication as required under Section 11 of the Act. The fact remains that the petitioners

are bonafide purchaser of the lands in question which was recorded in the name of Late Ghanshyam Pandey and were granted rent receipt

and even zamabandi was in their favour. There is nothing on record to show and prove that the land in question of Khata No.25, Plot No.

1249 for a total area of 2.74 acres was transferred to C.M.I. Company. No final publication under Section 15 under the Bihar Land

Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 has been published and the ancestors were settled Raiyat and

after passing of the Bihar Land Reforms Act. The Raiyat interest was never be changed and the same was also recorded in cadastral survey

itself and thus the purchase from the descendant of settled Raiyat late Ghanshyam Pandey appears to be bonafide and genuine more so

when there is nothing on record to show that in the Khatiyani or in the Cadastral Survey land was ever acquired or was in the name of

C.M.I. Company. Even, the authorities below have given reasoned order upholding the contention of the petitioners which has neither been

challenged nor set aside instead a technical plea has been raised with regard to power of Collector which also is devoid of any merit.â??

11. The authority while passing the impugned order has also not appreciated the order passed by this Court in C.W.J.C. No. 3026 of 1998(R).

The learned Single Judge, while going across the impugned order dated 24.07.2014, has considered the finding recorded by this Court in C.W.J.C. No.

3026 of 1998 (R) and on appreciation of the factual aspects involved in the present case, has come to the conclusion that no final publication of draft

statement under Section 11 of the Act having been made or final notification under Section 15 having been published in the official Gazette and

further, the present case since also pertains to Khata No.25, Plot No. 1249, which was the subject matter of C.W.J.C. No. 3026 of 1998 (R), would

be squarely covered by judgment dated 01.05.2009.

12. It further transpires from the impugned decision that the land was acquired in the year 1976 but the Jamabandi continued in the name of recorded

tenants till 1991 and after 25 years, the Jamabandi running in the name of recorded tenants was cancelled that too without issuing any notice to the

petitioner who was a bonafide purchaser.

13. This Court, therefore, is of the view that when the learned Single Judge has come to the conclusive finding by travelling to the factual aspects

leading to the case of C.W.J.C. No. 3026 of 1998 (R) by recording finding to the effect that the present case also pertains to Khata No.25, Plot No.

1249, there was no reason for him to take a view contrary to that taken by the Court in C.W.J.C. No. 3026 of 1998 (R).

14. In view of such factual aspects, we are of the considered view that learned Single Judge, while quashing the order dated 24.07.2014 passed in

Miscellaneous Case No. 11 of 2001, has not committed any error.

15. Accordingly, this appeal, being devoid of any merit, is dismissed.