

आदेश की क्रम सं०
और तारीख
1

आदेश और पदाधिकारी का हस्ताक्षर
2

आदेश पर की गई
कार्रवाई के बारे में
टिप्पणी तारीख सहित
3

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Surplus) Case No.:- 01/2010
Dist.:- West Champaran

PRESENT :- K.K. Pathak, I.A.S.,
Additional Member

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Kawal Mukhiya and Others

- Petitioner/ Appellant

Versus

The State of Bihar & Others

-Opposite party

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Appearance:

For the Appellant/Revisionist

:Shri Arun Kumar Ambastha

For the OP

:Shri Dhananjay Kumar Gupta

For the State

: Shri Nirmal Kumar, Special G.P.

ORDER

25.01.2017

This is ceiling surplus case in which a Revision application was filed on 11.02.2010 against the order passed by the Learned Collector, West Champaran on 30.10.2009 in Ceiling Appeal Case No. 20/2001. The case was admitted and delay condoned on 08.09.2010. The Lower Court Records took time to reach. Since then, the case remained part heard on many dates. Finally, the case came up for hearing on 24.01.2017.

The Learned Advocate of the Petitioner was heard in great detail and the hearing was concluded and the order is being passed today.

As per the Learned Advocate of the Petitioner, he is challenging the order of the Learned

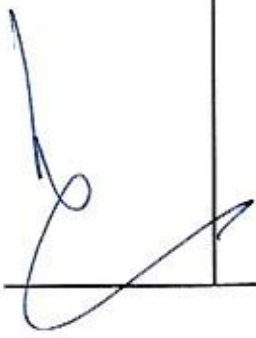
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	<p>Collector Betia dated 30.10.2009 whereby the Learned Collector has set aside the order passed by the Learned Additional Collector on 01.09.1998 as well as the final Statement under Section 11 (1) of the Bihar Land Ceiling Act, 1961.</p> <p>Giving a background of the dispute, the Learned Advocate mentioned that a Land Ceiling Proceeding No. 99/1980 was started against Sri Ali Mohammad (now deceased) with respect to 58.43 acres. Thereafter, the draft statement was published declaring 45.76 acres as surplus, allowing in the process, the landholder only 12.67 acres.</p> <p>The landholder submitted objections mentioning that these 45.76 acres belong to others and not to him. Drawing the attention of this Court to the genealogy of the landholder, the Learned Advocate mentioned that the original ancestor Late Hazi Abdul Razzak died leaving behind four sons. The landholder is the youngest son of the eldest son of the ancestor.</p> <p>These 45.76 acres belonged to the other relatives of the landholder and these relatives have also, in turn, transferred these lands to various other people from time to time.</p> <p>Elaborating the issue further, the Learned Advocate of the Petitioner further argued that Petitioners</p>	

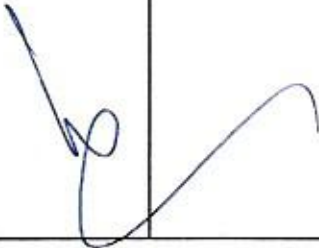
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	<p>are 56 in number and they are also the transferees. Meaning thereby that the Petitioners themselves have purchased land from different heirs of the ancestors. They have purchased a total area of 23.35 acres. Some of the land was purchased before the appointed date of 09.09.1970 and some after 09.09.1970. In some cases, mutation has also happened and in some cases mutation did not take place.</p> <p>The Learned Advocate while continuing his argument mentioned that the Petitioners (purchasers) are small marginal farmers and this land has been wrongly included in the ceiling proceedings.</p> <p>In the said Ceiling Proceeding, a notification under Section 15(1) was issued on 24.11.1986. The land was subsequently acquired and distributed to the OP No. 2 to 19. The Petitioner Revisionist filed an application under Section 45B of Bihar Land Ceiling Act, 1961 in 1984 (Case No. 234/84) before the Learned Collector.</p> <p>The said application was filed prior to the distribution of the land. However, the Learned Collector dismissed the application on 23.02.1986 treating it as the appeal without taking into consideration any of the documents submitted.</p> <p>Aggrieved at this order, the Petitioner approached the Board of Revenue who vide order dated</p>	

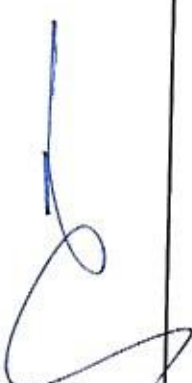
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	<p>17.07.1986 dismissed the Revision on the ground that 40 persons cannot file one Revision application and there is a possibility that these transfers being Benami.</p> <p>Further aggrieved at this order of the Board of Revenue, the Petitioner approached the Hon'ble High Court in CWJC No. 5918/1986. The Hon'ble High Court vide order dated 06.02.1998, set aside the order of the Board of Revenue, the Learned Collector as well as the notification under Section 15 (1) and remanded the matter back to the Learned Collector.</p> <p>Learned Collector then transferred the matter to Additional Collector (Land Ceiling) for disposal who, by order dated 01.09.1998, held that the land measuring 23.35 acres belonging to the Petitioner did not belong to the land holder and should be excluded. The Learned Additional Collector also held that the Parchas issued to the OP should be cancelled.</p> <p>Aggrieved at this order, the Parcha holders filed an appeal before the Learned Collector who, vide order dated 30.10.2009, allowed the appeal and set aside the order of the Learned Additional Collector dated 01.09.1998. The Learned Advocate points out that no enquiry under Section 5 was done in the land ceiling proceeding. Moreover, the Learned Collector has ignored the fact that the four brothers of the ancestors of</p>	

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	<p>the landlord had under gone a formal partition through a registered deed on 20.07.1965.</p> <p>Thus aggrieved, the Petitioner has approached the Board of Revenue and hence this proceeding.</p> <p>I find that notices were issued to the OPs as well and on some dates the OPs have filed their presence but at later stage, they have been continuously absenting themselves. On the date of hearing also, they were absent. However, their counter affidavit is on the record.</p> <p>This Court finds no reason to further adjourn the matter as the case has been going on since 1984.</p> <p>I have perused the counter affidavit filed by the OP 2 to 19 who are the Parchadharis. They have argued that the Learned Additional Collector, while passing his order dated 01.09.1998, did not issue the notices to the Parchadharis and ordered the cancellation of the Parchas. Moreover, the Learned Additional Collector is not competent to conduct cases under Section 45B of the Bihar Land Ceiling Act, 1961. Only Collector has the power to adjudicate a proceeding under Section 45B.</p>	

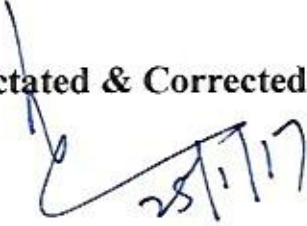

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	<p>The OPs also claimed that the land so declared surplus has already been distributed and they are in peaceful possession of the said land.</p> <p>Thus having heard the Petitioner and having perused the material available on record as well as the Lower Court Records, my own findings on the issue are as under:-</p> <p>(a) I find that there are 56 Revisionists and 18 OPs who are the Parchadharis. During the course of the proceedings, many persons from both sides have died and have been duly substituted. This fact has come out in the order of the Learned Collector also.</p> <p>(b) I will not go in to the order passed by the Learned Collector and the Learned Additional Member Board of Revenue in the year 1986 as the same has been set aside by the Hon'ble High Court vide its order dated 06.02.1998.</p> <p>(c) Coming to the order passed by the Learned Additional Collector on 01.09.1998, I find that the Learned Additional Collector did not hear the OPs who are the Parchadharis. In fact, from the perusal of the order sheet, it appears</p>	

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	<p>the Learned Additional Collector did not even issue the notices to the Parchadharis. In his urge to dispose of the matter within one month (as directed by the Learned Collector) he, after having received the record on 04.08.1998, disposed of the matter and passed the final order 01.09.1998. While the speed of the disposal was appreciable, the fact that Parchadharis are not heard, in spite of specific direction of the Hon'ble High Court, does not find support with this Court.</p> <p>(d) It is an admitted fact that the land in disputed is located in village Majhariya of Adapur Anchal.</p> <p>(e) It is established fact that the disputed land was in the name of the land holder and Jamabandi is also in name of the landholder. The same has been proven by the report of the Circle Officer.</p> <p>(f) It is an admitted fact that the numerous sale deeds in question, by which the Petitioner claim to be the transferee from the heirs of the ancestor of the landholder,</p>	

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	<p>belong to period before and after 09.09.1970. In fact, if court notes the detail given in Annexure 2, wherein it appears that, out of 43 sale deeds so executed, only 2 belong to a period before 1970. All the remaining sale deeds are dated after 09.09.1970. Even out of these 41 sale deeds executed after 09.09.1970, many sale deeds belong to the period after 1981. Given the fact that the ceiling proceeding started in the year 1980 itself, it was the duty of the heirs of the land holder who should have taken the permission of the Collector for selling such lands after the year 1980. It will not be acceptable to this Court that the heirs of the landholder were not aware that the ceiling proceeding had already started.</p> <p>(g) Thus, it is fact that 99 percent of the land alleged to have been transferred to the Petitioners was transferred after the appointed date of 09.09.1970. This therefore, leaves substantial doubt in the mind of any person, including this Court, that the said transactions were done with</p>	

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	<p>the mala fide intention in order to defeat the ceiling law.</p> <p>(h)I have also perused the report of the Anchal Adhikari Adhapur dated 11.06.2002 confirming that the land is in the possession of the Parchadharis. However, the landlord is still disturbing them and as a result the land is presently fallow. It is interesting to note that the Circle Officer has used the word <i>Bhuswami</i>. In the said report, he has not mentioned anything about the said land being sold to this huge number of 56 Petitioners. Had the land been actually sold to the 56 Petitioners and had these 56 Petitioners been actually in possession, then this fact would have come in the report of Circle Officer as late as in the year 2002. In fact the Circle Officer has mentioned that the dispute is still on between the 'landholder' and the Parchadharis (OP in the present Revision Case). This proves that the land is still being looked after by the landholder and he has a direct stake in it. The Petitioners are actually nowhere in picture.</p>	

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	<p>Conclusion:-</p> <p>From the above findings, it is clear that the land in dispute did belong to the landlord. As a matter of careful and abundant precaution, he deliberately did not himself appear in the ceiling proceeding. There was a conscious attempt by the landlord who gave an impression that this land does not belong to him but to the Petitioners, who are 56 in number, and who are the owners by virtue of such sale deeds most of which are admittedly executed after 09.09.1970.</p> <p>Of those sale deeds, some belong to the period after 1980 of which time the ceiling proceeding had started. In that case, it was the duty of the heir of the landholder to take prior permission of the Learned Collector which was not done at all.</p> <p>This precisely had prompted the earlier Collector to rule in the year 1986 that the aforementioned sale deeds are nothing but Benami transactions. That order of the Learned Collector was quashed by the Hon'ble High Court.</p> <p>However, the revised finding of the Learned Collector in the year 2009 was also same that these transactions are Benami and cannot be accepted.</p>	

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	<p>That be the case, I see no reason to interfere in the order passed by the Learned Collector West Champaran dated 30.10.2009 and the same is hereby reaffirmed.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  Dictated & Corrected K.K.Pathak Additional Member Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member Board of Revenue, Bihar. </div> </div>	