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 – 10/2017
Dist. – Arwal

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

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State of Bihar through Collector, Arwal - Petitioner/ Appellant

Versus

Ramadhar Sharma & Others - Opposite party

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Appearance:

For the Appellant/Revisionist : Shri Nirmal Kumar, Spl. G.P.
For the OP : Shri Dronacharya

ORDER

16.05.2017

This is Revision application filed by the State Government of Bihar against the order passed by Learned Additional Collector, Arwal on 28.11.2014 in Ceiling Appeal Case No. 28/AC/2011. The case was admitted for hearing and the delay was condoned on 21.03.2017 and the Lower Court Records were called for which was received in time.

On subsequent dates, it was informed to this Court that OP No. 2 has died. The Learned Special GP mentioned that the OP has deliberately refused to furnish the legal heirs of the dead person and hence he could not file a substitution Petition.

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	This Court observed that there are only two OPs and both are real brothers. Hence, the karta of the HUF is aware of the proceeding and therefore we need not waste further time on the issue of substitution. This Court also observed that in the Lower Court below, both the Opposite Parties were represented by a single Advocate. Moreover, as per the recent amendment in the Bihar Land Ceiling Act, 1961 any Revision application has to be disposed within a period of three months. In light of this, there is no useful purpose will be served in further delaying the proceeding. I heard the Learned Special GP on behalf of the State, who is the Petitioner. I also heard the Learned Advocate of the OP No. 1 on 02.05.2017. Thus concluding the hearing, this order is being passed today. As per the Learned Special GP, the order passed by the Learned Additional Collector on 28.11.2014 was ex-parte. The State was not heard yet the order was passed. Moreover, the Learned Additional Collector passed his order on 28.11.2014 whereas he was about to retire on 30.11.2014. The Learned Additional Collector also did not assign any reason for setting aside the order of the Learned SDO passed in Land Ceiling Case No. 28/1973-74 dated 12.12.2008. Hence, the Learned Special GP termed the order being arbitrary and asked that the same may be set aside. I also heard the Learned Advocate of the OP No. 1. He claimed that the averment made by the Learned Special	

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	GP is incorrect. He draws the attention of this Court to the last page of the order passed by the Learned Additional Collector wherein the Learned Additional Collector has noted that the Second Party, meaning thereby the State, were issued numerous notices from the Court yet the State chose to remain absent. Thus, the Learned Additional Collector had no option but to pass the order ex-parte. Continuing his arguments further, the Learned Advocate of the OP No. 1 mentioned that he is a purchaser of the land from the original landlord Sri Ram Rajeshwari Prasad Ojha. He purchased the land in two periods. First purchase was made on 13.10.1966 measuring an area of 2.3 acres. This land was purchased from the original landlord Sri Ojha himself. The second purchase was made from Smt. Sakuntala Devi, who is the daughter-in-law of Sri Ojha. The OP purchased the second piece of land on 30.12.1971 measuring 4.84 acres. He draws the attention of this Court that altogether five units were given to the original landlord Sri Ram Rajeshwari Prasad Ojha wherein his daughter-in-law also got one unit. He is the genuine Purchaser of the land from the landlord and therefore his land should be excluded from the ceiling proceeding. The landlord should be made to compensate the land from his share and not him, who is the valid Purchaser.	

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	Concluding his arguments, he further mentioned that this case is hopelessly time barred and should not have been entertained. Having heard the Learned Special GP and the Learned Advocate of the OP and having perused the documents available on file as well as the Lower Court Records, my own findings on the matter are as under:- a. I would first like to address the issue of limitation. The Learned Special GP has quoted a judgement of the Hon'ble Supreme Court in Civil Appeal No. 8577/2014 wherein the Hon'ble Supreme Court had condoned the delay of 1373 days in filing the second Appeal. He further mentioned that since the State is the Petitioner, it took time for the District Administration to take internal approvals from the Government. b. I also note that the Learned Collector had already taken up this matter with the State Government i.e. the Department of Revenue and Land Reforms, against these orders passed by the Learned Additional Collector just few days before his retirement. Thus, it can be said that the State was not sitting idle all this while. c. I also note that the Second Party in the Revision application was the Appellant	

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	before the Court of the Learned Additional Collector. In that court also, the Appellant filed his Appeal Petition approximately one year after the order of Learned SDO was passed. The delay then was condoned by the Learned Additional Collector in the interest of justice. Accordingly, I don't see any reason why, in public interest, the State's application for Revision be rejected just on account of the fact that it is hit by limitation. d. Coming to the merit of the case, I see that the order, although passed ex-parte, but there were numerous notices sent to the State by the Learned Additional Collector. From the perusal of the case records of the Court of Learned Additional Collector, it is clear that notices were sent to the State since the year 2009. However, the State chose to remain absent. That be the case, any court would have no option but to pass an order ex-parte. Therefore, I don't see any infirmity in the order just because it is ex-parte. e. However, why the order was passed just three days before the retirement is an issue which the State may like to take up administratively.	

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	f. Now coming to the issue at hand regarding inclusion of the land of the OP in the Ceiling Proceeding even though they have been purchased genuinely form the landlord, I see that the earlier order of the Learned SDO passed on 12.12.2008 does not mention anything about the concerned plots of the land of the OP. g. It is the order of the SDO dated 04.05.1996 which mentioned about the case of the OP Ramadhar Sharma. Para-15 of that order mentioned that the OP along with many others, had filed claims that they are an actual cultivating possession over their respective lands since more than 30 years, after getting oral settlement from the landlord Sri Ram Rajeshwari Prasad Ojha. Land measuring 14 decimals of Khata No. 105, Plot No. 711 was purportedly settled by the Jamindar to Sri Ramadhar Sharma. The Learned SDO, however, did not agree with their claim as no reliable papers were submitted in their support. h. However, the above claim indicates that there is some link between Ramadhar Sharma and the landlord Sri Ram Rajeshwari Prasad Ojha. It also indicates that Sri Ramadhar Sharma was perhaps one	

of the many persons who is set to be in possession of the land on account of an oral arrangement between him and the landlord. I am quoting this to underline that, apart from the contention of the OP that they had ***'purchased'*** the land in the instant proceeding from the landlord and his daughter-in-law, there were some lands which were ***'settled'*** to them by the landlord.

i. Now coming to the instant dispute regarding the land measuring 4.84 acres and 2.3 acres (totalling 7.14 acres), I find a detail observation of the Learned SDO at Para-19 of his order dated 04.05.1996. In the said judgement, the Learned SDO has rejected the claim of the transfer of 4.84 acres as the said transfer was made after the due date of 09.09.1970. Since the said transfer did not have the approval of the Learned Collector, therefore, this was rightly not accepted by the Learned SDO.

j. Therefore, I see no reason to agree to the transfer of 4.84 acres land which, as per the admission of the OP himself, was purchased on 30.12.1971, much after the due date of 09.09.1970.

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	k. Coming to the transfer of the land measuring 2.30 acres which, as per the OP, was purchased from the original landlord on 13.10.1966, I find that any reference to this purchase has not been made in the order of the Learned SDO dated 04.05.1996. Apparently, either the land was not in the dispute then or the OP had not raised the objection before the Learned SDO. l. The OP has not filed before this Court, the copy of the sale deed vide which he came to be in possession of the said land which he claims to have purchased in the year 1966. However, I had the benefit of perusing the sale deeds from the Lower Court Records of the Learned Additional Collector where the OP had filed both sets of sale deeds, namely one of 1966 and one of 1971. These sale deeds would be analysed in subsequent paragraphs. m. In this Court, he, however, has filed certain rent receipts which do not indicate the Khata Khesra relating to 2.3 acres. The OP has also filed the order passed by the Consolidation Officer, Arwal. The said order is dated 18.06.1984 and it says that Plot No. 570 having an area of 1.18 decimals be entered in the name of the OP No. 1 and 2. However,	

no other papers have been submitted by the OP with regard to the other plots.

n. It may be noted that the land which the OP alleges to have purchased from the landlord in the year 1966 has the following details:-

Mauza	Khata	Plot	Area A.D
Lodipur	97	573	0.39
	96	572	0.63
	94	570	1.18
	93	566	0.10
			2.30 acres

o. From the above table, it is clear that out of the four plots involved, the OP has submitted his papers relating to only one plot and that too an order of the Chakbandi Officer. Moreover, if the land was purchased in 1966, why did the OP take 20 long years to file a Petition before the Chakbandi Court? Moreover, the rent receipts submitted by the OP are also not indicating that he has been paying rent regularly.

p. There is also enough evidence available in the case record of the Learned SDO that the said lands continue to be in the possession of the original landlord Sri Ram Rajeshwari Prasad Ojha and the OPs are merely a front for the landlord. This fact has been admitted by the OP himself at Para-12 of his affidavit

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	that the Circle Officer's report claiming that the landlord is in the possession of the disputed land need not be relied upon as a statutory report. q. Therefore, there have been no reliable documents submitted by the OP to enable this Court to exclude the land from the Ceiling Proceeding. r. Now coming to the two sale deeds of 1966 and 1971, I note with interest that both the sale deeds are neatly typed and typed by the same typist, indorsed by the same deed writer and typed from the same computer, notwithstanding the gap of five years between them. s. This I find difficult to believe. It is hard for this Court to believe that sale deeds were so neatly typed in 1966, that too in a rural Registry of Jehanabad. The Learned Additional Collector should have looked into these aspects before holding these documents genuine or otherwise, and setting aside the order of the Learned SDO. While, I appreciate the fact that for five or six years, the typist and the deed writer may remain same, however, the typing, the grammatical error and spelling mistakes should at least be	

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	different. This shows that both these set of documents were made in a single period of raises sufficient suspicion regarding their validity. t. These sale deeds, therefore, need to be verified by the Learned Collector, Arwal from the Jehanabad Sub-Registry as Arwal then was part of Jehanabad district. **Conclusion:-** From the above findings, it is clear that the OP has not produced any papers to enable this Court to exclude the lands purchased either in the year 1966 or in 1971. Moreover, it is also established that the said lands were in the possession of the original landlord, namely, Sri Ram Rajeshwari Prasad Ojha. I also find from the case records of the Learned Additional Collector, in whose Court the sale deeds for the lands purchased in the year 1966 and 1971 have been filed, that the sale deeds are typed. The sale deeds, on face of it, are not reliable and have been perhaps created much after the due date of 09.09.1970. These two sale deeds should have been sent for verification by the Learned Additional Collector who chose to ignore the simple aspect as to how come, typed sale deeds existed in the year 1966 in a small place like Jehanabad, whereas in most places in the State, till very recently, most of the sale deeds were hand written by the deed writers.	

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Therefore, I find that the Additional Collector did not go deep in to the matter and had quashed the order of Learned SDO dated 12.12.2008 without applying any mind. He has not given any reasons for his quashing the order of the Learned SDO.

That be the case, I find it difficult to support the order passed by the Learned Additional Collector dated 28.11.2014. I, accordingly, uphold the order passed by the Learned SDO dated 12.12.2008.

The Learned Collector is directed to proceed further with the distribution of surplus land, if not done so already.

I also direct the Learned Collector, Arwal to get the two sets of sale deeds, one of 1966 and one of 1971, both part of record of the Court of the Learned Additional Collector, be verified regarding their genuineness.

Revision Allowed.

Dictated & Corrected

16/5/17

K.K.Pathak
Additional Member
Board of Revenue, Bihar.

16/5/17

(K.K.Pathak)
Additional Member
Board of Revenue, Bihar.