


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
/15.02.2017	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Surplus) Case No. – 42/2016 Dist. - Nalanda</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Kallashpati Mahto - Petitioner/ Appellant</p> <p style="text-align: center;">Versus</p> <p>The State of Bihar &amp; Others - Opposite party</p> <p>=====</p> <p><b><u>Appearance:</u></b></p> <p>For the Appellant/Revisionist : Shri Dineshwar Mishra</p> <p>For the OP :</p> <p>For the State : Shri Nirmal Kumar, Special G.P.</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>This is a ceiling surplus case in which a Revision application was filed on 29.09.2016 against the order passed by the Learned Divisional Commissioner, Munger on 06.10.2010 in Ceiling Appeal No. 49/2010.</p> <p>The delay was condoned and the case was admitted for hearing on 09.12.2016. Notices were issued to the Respondents who are the heirs of the landlord. Both the parties agreed that there is no need to call for Lower Court Records. This gesture was appreciated by this Court as this saved valuable time.</p> <p>The case was posted for final hearing on 03.02.2017. On that date, the Learned Advocate of the Petitioner (who is a purchaser of the land) was heard as well</p>	

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	<p>as the Learned Advocate of OP No. 2 to 8 (who are the heirs of the landlord) was also heard. The Learned Special GP was also heard on behalf of the State. Thus concluding the hearing, this order is being passed today.</p> <p>Before discussing the arguments of the Learned Advocate and before going into the merits, it is essential to give a brief background of this complicated case so as to bring the facts in a perspective and in chronological manner.</p> <p>The father of the Petitioner purchased the disputed land in 1926 vide registered Sale Deed No. 5094 dated 27.11.1926 from the widow of the khatiani raiyat. He files a Hindi translation of the said sale deed as Annexure-II in the Revision application. The total area of the land is 1.46 acres from Khata No. 28 and 10.20 acres from Khata No. 29, thus totalling 11.66 acres. The land belonging to Khata No. 28 was <i>nagadi</i> (cash rent) whereas the land belonging to Khata No. 29 was <i>bhawli</i> (produce rent).</p> <p>In 1947, he filed an application against the ex-landlord Sri Girjanandan Singh for commutation of his other plot from <i>bhawli</i> to <i>nagdi</i>. This case was contested by the landlord but was allowed in Petitioner's favour.</p> <p>The Petitioner, then filed a mutation case in 1979 which was filed before the Circle Officer, Sarmera. An enquiry report was called for and the said report was in his favour. The Circle Officer referred the mutation case to the Learned DCLR who however rejected his case. Aggrieved, the Petitioner went in appeal before the Learned Additional</p>	

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	<p>Collector, Nalanda in Appeal Case No. 30/1980. The Learned Additional Collector, vide order dated 18.03.1982, allowed the appeal in favour of the Petitioner and set aside the order passed by the Learned DCLR.</p> <p>Aggrieved at the order of the Learned Additional Collector, the ex-landlord filed a Revision vide Case No. 49/1982 where in the Learned Collector, vide order dated 01.01.1985, directed that the status quo be maintained till the disposal of the ceiling case as the said land has already been included in the ceiling proceeding.</p> <p>Parallely, the Ceiling Proceeding No. 49/1975-76 which was initiated against Girjanandan Singh was decided by the Learned Additional Collector on 30.09.1982. In this ceiling proceeding, the Petitioner had filed an objection that his land has been wrongly included. However the Learned Additional Collector rejected this objection of the Petitioner as he had not filed any documentary evidence in support of his contention.</p> <p>Against this order, the Petitioner went in appeal before the Learned Collector and the Learned Collector, vide order dated 21.03.1983, rejected the appeal. Further aggrieved, the Petitioner filed a Revision Case No. 362/1983 in the Board of Revenue who was pleased to dismiss the Revision, vide order date 06.04.1985, being hopelessly time barred.</p> <p>Further aggrieved, the Petitioner approached the Hon'ble High Court in CWJC No. 2744/1985 wherein the</p>	



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	<p>Hon'ble High Court, vide order dated 30.10.1996, remanded the matter back to the Learned Collector for action under Section 45B of the Bihar Land Ceiling Act, 1961.</p> <p>In pursuance to this order, the Petitioner filed a miscellaneous application before the Learned Collector, Sheikhpura in Ceiling Proceeding No. 7/1996-97. The said Petition was dismissed by the Learned Collector vide order dated 01.07.2010. Thus aggrieved, the Petitioner then approached the Hon'ble Divisional Commissioner, Munger in Land Ceiling Appeal No. 49/2010. His appeal was rejected by the Hon'ble Divisional Commissioner vide order dated 06.10.2010.</p> <p>Thus further aggrieved, the Petitioner again approached the Hon'ble High Court in CWJC No. 3039/2011 wherein the Hon'ble High Court, vide order dated 26.08.2016, allowed the Petitioner to seek alternative remedy of Revision under Section 32 of the Act and hence this present proceeding.</p> <p>The Learned Advocate of the Petitioner was heard in great detail and he recounted the above background. He says that his land has been wrongly included in the ceiling surplus proceeding. He had been in dispute historically with the landlord Sri Girjanandan Singh. He wants an adjudication of the matter as he is fighting the case since 1979.</p> <p>I also heard the Learned Advocate of the behalf of the OPs who are the heirs of the landlords. He says that</p>	

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	<p>this is case relating to title and therefore the Petitioner should approach the Civil Court as this Court has no jurisdiction.</p> <p>I also heard the Learned Special GP on behalf of the estate. The Learned Special GP was of the view that this is a private dispute of the title between the two parties. The matters of mutation had gone up to the Board of Revenue where it was rejected. The Learned Special GP draws the attention of this Court to the order passed by the Hon'ble High Court dated 30.10.1996 and pleads that this is a matter where a case under Section 45b is being reopened, which is not possible as the said section has already been repealed recently by an amendment in the Act.</p> <p>Having heard the Learned Advocates of the Petitioner and the OPs as well as the Learned Special GP and having perused the material available on file, my own findings on the issue are as under:-</p> <p>(a) It is important to note that the Petitioner has been paying the rent to the ex-landlord since 29.05.1948, after he won the commutation case of converting his land in Khata No. 29 from <i>bhawli</i> to <i>nagdi</i> and fixation of rent was done. But the Petitioner has not enclosed the any rent receipts so issued by the landlord. All that the Petitioner has enclosed is a khatian showing the khatiani</p>	

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	<p>raiyyat from whom his father had allegedly purchased the land.</p> <p>(b) It also appears that the Petitioner's father was a raiyyat under the ex-landlord as is evident from the report of the halka karamchari dated 12.05.1976.</p> <p>(c) The Petitioner has annexed certain reports of the halka karmachari and the Circle Inspector of the year 1975, 1976, 1977 and 1980 showing that the land is in his possession.</p> <p>(d) I find it surprising that ever since the abolition of Zamindari since 01.01.1956, the Petitioner remained silent till the year 1979, a period of 23 years which is unexplained. If he was indeed in the possession of the land since 1926 then why it took him 23 years for creation of jamabandi when he filed a mutation case 1/1976-77 before the Circle Officer, Sarmera.</p> <p>(e) Moreover, in all these 23 years, the Petitioner made no attempt to get the mutation done or remove the entry from the Register-II regarding Plot No. 28 and 29 which was still showing the name of the ex-landlord.</p>	

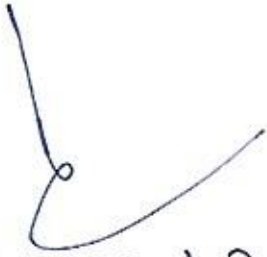



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	<p>(f) I also note that there is another significant delay that the Petitioner has not been able to explain. This delay is regarding the filing of commutation of rent case. If the Petitioner had purchased the land in 1926 then why it took him 21 long years to file a rent commutation case in the year 1947.</p> <p>(g) In nutshell, since the year 1956 (when Zamindari was abolished) till date, the Petitioner has not been successful in starting his jamabandi with regard to Plot No. 28 and 29 or getting his name entered in the Register-II. This failure, if I may say so, is largely unexplained. One explanation could be that the land in question has been included in the ceiling proceeding.</p> <p>(h) All the Petitioner has in his support is a sale deed written in Urdu which he claims is the evidence that he had purchased the land from the widow of the khatiani raiyat. No inference can, therefore, be drawn on the basis of this document.</p> <p>(i) It is also not clear that if there was indeed a dispute which the petitioner had with his ex-landlord, then why he did not file a title suit in all these years.</p>	

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	<p>(j) I also note that the ex-landlord had contested the case of rent commutation on the ground that the Petitioner were in the service of the landlord and the land actually were <i>bakasht malika</i> and in active possession of the landlord.</p> <p>(k) The reports annexed in the Revision application submitted by the karamchari and Circle Inspector are quoting repeatedly that whenever this revenue functionary went to the landlord to collect the rent, (as the land was still in the name of the landlord), the landlord always mentioned they will not pay the rent as they were not cultivating the land. This does not mean that the land does not belong to the landlord.</p> <p><b>Conclusion:-</b></p> <p>From the aforementioned findings, it is clear that apparently the Petitioner was in title dispute with the ex-landlord since 1948. It is surprising that if the Petitioner has actually purchased the land in 1926 they why did he not file a rent commutation application immediately and waited for 21 long years.</p> <p>Similarly, he waited for another 23 long years, from 1956 to 1979, to file a jamabandi case to start jamabandi in his name. Due to this delay, the result was that the disputed plots remained to be shown in the name of ex-</p>	



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	<p>landlord all these years and this resulted in the land been taken under the ceiling proceeding against the ex-landlord Girjanandan Singh.</p> <p>Perhaps the mutation case was filed by the Petitioner as an afterthought once he realise that the said land has been included in the ceiling proceeding which started in the year 1975 itself. So therefore there are significant gaps which are unexplained in the so called continuous possession of the land by the Petitioner. Moreover, if we calculate the ownership since 1929, then there are at least 80 years of the land been under so called ownership of the Petitioner but the Petitioner had not filed rent receipts of all these years.</p> <p>Moreover, it is also clear from the Revenue Authorities' reports around the year 1976 to 1980, (as is evident from the Annexure submitted by the Petitioner in his revision application) that the said land has not been fetching any rent as the land is not in the possession of the landlord. The Petitioner, therefore, could not successfully create his jamabandi after 1975, when ceiling proceeding started against the said land. However, he could have enclosed certain rent receipts for the period 1929 to 1956 (the year in which Zamindari was abolished) as an evidence that he was owning the said land and paying rent receipts.</p> <p>It is evident that the ex-landlord too had contested the right of the Petitioner as the owner of the land</p>	

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	<p>way back in the year 1948 itself, where he has clearly disputed the ownership right of the Petitioner.</p> <p>Thus, the Petitioner has not been able to prove before any of the Revenue Authorities that the said land is owned by him. Moreover, this appears to be a clear case of title dispute between the Petitioner and ex-landlord in whose Estate Petitioner's father was once a raiyat. This Court therefore, would not be competent to go into the title of the land and would largely confine itself to the ceiling proceeding in dispute.</p> <p>Given the fact that the disputed lands have been shown in the name of the ex-landlord, the Revenue Authorities were correct in including the said in the ceiling proceeding. That be the case, I see no reason to interfere with the order passed by the Learned Divisional Commissioner on 06.10.2010 or the Learned Collector on 01.07.2010.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">   <b>Dictated &amp; Corrected</b>  15/2/13  <b>K.K.Pathak</b>  Additional Member  Board of Revenue, Bihar. </div> <div style="text-align: center;">   15/2/13  <b>(K.K.Pathak)</b>  Additional Member  Board of Revenue, Bihar. </div> </div>	