

आदेश की क्रम सं०  
औरतारीख  
1

आदेश और पदाधिकारी का हस्ताक्षर

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

### **BOARD OF REVENUE, BIHAR, PATNA.**

Revision (Land Ceiling Surplus) Case No. - 01/2009  
Dist.- Katihar

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

Prakash Kumar Jha & Others	- Petitioner/Appellant
Vs.	
The State of Bihar & Others	- Opposite Party

#### **Appearance:**

For the Appellant/Revisionist	: Sri Siddharth Harsh
For the State	: Sri Nirmal Kumar, Special G.P.

### **ORDER**

01.03.2017

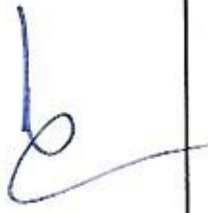
This is a ceiling surplus case in which Revision application was filed on 04.02.2009 against the order passed by the Learned Collector, Katihar on 23.12.2008 in Ceiling Appeal No. 598/1995. Since the case hit by limitation, a limitation Petition was filed by the Petitioner. Finally, the case was admitted for hearing and the Lower Court Records were called for on 03.01.2015.

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	<p>The case came up for final hearing on 20.02.2017 where upon the Learned Advocate of the Petitioner was heard in great detail. The Learned Special GP was also heard on behalf of the State. Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, a Ceiling Proceeding No. 24/1979-80 was instituted against the landlord. It was held that 84 acres of land was in the municipal area of Katihar district and therefore, vide order dated 15.07.1982, the then Learned Additional Collector dropped the proceeding finding that there is no surplus land with the landholder.</p> <p>Subsequently, amendments came in the Ceiling Act in the year 1982 wherein Section 32A and 32B were inserted. In light of the above, the Learned Additional Collector started a proceeding de novo and passed an order on 26.04.1991 holding 126.73 acres as surplus. Of this, 84 acres were in urban area and remaining were in rural area. The Learned Additional Collector also issued a notification under Section 15(1).</p> <p>Aggrieved, the Petitioner went to the Hon'ble High Court in CWJC No. 8445/1991. The Hon'ble High Court, vide order dated 09.03.1995, quashed the proceeding and directed the Learned Additional Collector to proceed afresh from the stage of Section 10 of the Act.</p> <p>Pursuant to the order of the Hon'ble High Court, the Learned Additional Collector reheard the matter and passed an</p>	

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	<p>order on 13.12.1995 holding that 48.37 acres of the urban land is being held under agricultural occupation and hence declared surplus. Additionally, the land holder was given 1<sup>1</sup>/<sub>10</sub> units.</p> <p>Further aggrieved, the landholder then approached the Learned Collector in appeal, who however, vide order dated 23.12.2008, dismissed the appeal. Thus, the Petitioner filed this Revision application and hence this proceeding.</p> <p>Continuing his arguments, the Learned Advocate of the Petitioner raises the points of law that the Learned Additional Collector had erred in not drawing a fresh proceeding under Section 10. No draft statement was prepared and old documents were relied upon by the Learned Additional Collector. Knowing that maximum land is in the municipal area, still, it was declared surplus in the garb of an enquiry which was done behind the back of the Petitioner. Therefore, the Petitioner was not a party to this field inquiry.</p> <p>Moreover, both the Learned Lower Courts passed the order based on Government Circular dated 15.03.1995 which says that urban lands can be brought under Ceiling Act if it is being used for agricultural purposes.</p> <p>The Learned Advocate further pleads that out of 84 acres in the urban area, 47.84 have already been acquired by the Central or State Government and only 37.06 acres is with the Petitioner but yet, the Learned Additional Collector held that he has</p>	




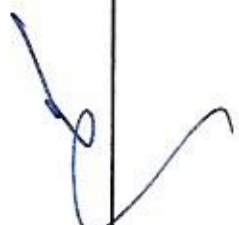
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में दिप्पणी तारीख सहित 3
	<p>48.37 acres of surplus land without mentioning about the land that has been acquired.</p> <p>In the year 1982, when the proceeding was dropped against the landholder, he was given two units- one for landholder's mother and other for landholder.</p> <p>As per the Learned Advocate, he wanted two more units as his two sons were major as on 09.09.1970 and in proof thereof, he has filed a Medical Certificate and School Leaving Certificate. However, all these documents were not considered by the Learned Additional Collector.</p> <p>Concluding his arguments, he draws the attention of this Court to Para 11 of Revision application and says that the Petitioner retains the land as per the statement, according to which, total area being held by the Petitioner is 62.26 acres, of which 37.06 acres lies in the urban area. He further pleads that the order of the Hon'ble High Court has been misinterpreted by the Learned Additional Collector as is evident from Page 4 of his order.</p> <p>I also heard the Learned Special GP on behalf of the State who mentioned that the Learned Additional Collector has considered each and every aspect. Regarding the issue of the four sons of landholder being major as on 09.09.1970, an enquiry was conducted and no sons were found to be a major as on 09.09.1970 and hence no units were given. Furthermore, the land so declared surplus was done so in the light of the Government Circular dated</p>	

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	<p>15.03.1991 as all the lands were being used for agricultural purposes. There was no residential or commercial activity going on.</p> <p>Moreover, as per the Learned Special GP, the land has already been distributed amongst 17 persons and they are in peaceful possession of the same.</p> <p>To this, the Learned Advocate of the Petitioner interjected saying that the land has not been distributed and some land has been sold voluntarily by the landholder with due permission.</p> <p>Thus having heard the Learned Advocate of the Petitioner and having heard the Learned Special GP on behalf of the State and having perused the material available on record as well as Lower Court Records, my own findings on the issue are as under:-</p> <p>(a) I find that primarily there are two issues which are under dispute. These can be summarised as under:-</p> <ol style="list-style-type: none"> <li>i. Those of Petitioner's surplus land which lie in urban area cannot be taken under the Bihar Land Ceiling Act as per the Government Circular of the year 1991.</li> <li>ii. The landholder wants additional units on account of his major</li> </ol>	

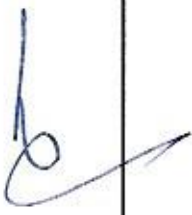
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	<p>sons. If he gets four units, as is his demand, then there will no surplus available with him.</p> <p>(b) I find that in the year 1982, when the ceiling proceeding against the landholder was dropped, it was held that the landholder did not have any surplus land given the fact that the said order of the Learned Additional Collector dated 15.07.1982 granted him two units.</p> <p>(c) Once the case was closed as per the aforementioned order, it was not reopened due to the amendment in 1982. It was reopened under Section 45B and against which the Petitioner had gone to the Hon'ble High Court in CWJC No. 3507/1987. In the said writ, the Hon'ble High Court gave an order on 11.07.1990 holding that said initiation of proceeding under Section 45B is quashed.</p> <p>(d) Subsequently, in the light of the amendment in the year 1982, the Revenue Authorities proceeded to publish the draft publication, against which, the Petitioner filed another writ namely CWJC No. 8445/1991 wherein,</p>	

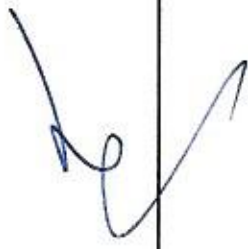



आदेश की क्रम सं० औरतारीख 1	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>vide order dated 09.03.1995, the Hon'ble High Court dismissed the writ application with certain observations which necessitated the Learned Additional Collector to pass an order dated 13.12.1995.</p> <p>(e) The aforementioned order was appealed by the Petitioner before the Learned Collector who, vide order dated 23.12.2008, dismissed the appeal and therefore this Revision application.</p> <p>(f) I have perused the order of the Learned Additional Collector dated 13.12.1995 wherein I find that the Petitioner was given only 1 <math>\frac{1}{10}</math> units against two units given in the year 1982.</p> <p>(g) I find that the Learned Additional Collector has not misinterpreted the order of the Hon'ble High Court dated 09.03.1995. Rather, the said judgement of the Hon'ble High Court is not in the favour of the Petitioner by any stretch of imagination. The said order of the Hon'ble High Court only indicates that any homestead land of the landholder or lying within the municipal limits, has to be covered under Section 10 of</p>	

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	<p>the Act. For all other lands, there is no need to start the proceeding under Section 10 as, to quote Para 27 of judgment, <i>'no useful purpose would served and it will unnecessarily cause harassment to the parties'</i>.</p> <p>(h) Therefore, in so far homestead land of the landholder or the land lying in the municipal area is concerned, the Court observed that such decision has to be taken by the Learned Collector. Whether a proceeding under Section 10 would be under taken or not has to be decided by the Collector.</p> <p>(i) Nowhere in the said judgement of the Hon'ble High Court, it has held that all urban areas should <u>necessarily</u> be excluded from the land ceiling proceeding. It only mentioned that this is best left to the wisdom of the Learned Collector who should decide the matter in light of Section 4 of the Act.</p> <p>(j) I also find that during the pendency of the appeal before the Learned Collector, the Petitioner filed another writ before the Hon'ble High Court in CWJC No. 11391/2004 in which two observations were</p>	



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	<p>made by the Hon'ble High Court. One was dated 21.09.2004 wherein the Hon'ble High Court restrained the Revenue Authorities from distributing the surplus land and issuing notification under Section 15(1).</p> <p>(k) By another order on 14.03.2008, the Hon'ble High Court directed that the appeal pending before the District Collector be disposed off within three months of the date of the order. With this direction, the above writ was disposed off.</p> <p>(l) Therefore, by the said analysis of the judgement of the Hon'ble High Court, the Learned Additional Collector rightly held that no purpose would be served by initiating the process under Section 10 of the Act. I would also tend to agree with interpretation of the Learned Additional Collector.</p> <p>(m) Now coming to the issue of granting units to all the major sons of the landholder, I find that the Learned Additional Collector has held that all the four sons were minor as on 09.09.1970. No evidence has been given by the landholder either before the Learned</p>	



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	<p>Collector or before this Court to intervene in favour of the landholder.</p> <p>(n) I see that there is a certificate given by the Civil Surgeon in respect of Sri Prakash Kumar Jha and Prabhat Kumar Jha dated 01.07.1987 who has, on the basis of x-ray report and dental report, pinpointed the age as 37 years and 36 years respectively. I would not like to trust this report as this has not been ratified by the duly constituted Medical Board. Moreover, no Medical Board or Medical Officer can pinpoint, with such accuracy, the age of a person. To the knowledge of this Court, all ossification reports which are more scientific, at best can suggest an age of a person with a margin of 3 to 5 years. This would also include a Bone Densitometry Test. If we presume the error range of 3 to 5 years, then, both these persons are likely to be minors as on 09.09.1970.</p> <p>(o) In the instant report of the Civil Surgeon, only x-ray and dental reports have been relied upon, to give such an accurate age. In fact, in my opinion, the Civil Surgeon has exceeded his brief and broken all medical ethics when he issued these certificates. The</p>	

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	<p>then Learned Collector should have initiated disciplinary action against him.</p> <p>(p) Notwithstanding above, I come to the other evidence of age. I find that there is Circle Office's verification report which is based on school leaving certificate and the janamkundali. This again, is no evidence on which the age of person can be determined. I fail to see why the Petitioner has not submitted the matriculation certificate in support of the age.</p> <p>(q) Moreover, all these certificates are given only in respect of two sons and not four sons, which means that, with regard to the other two younger siblings, even the Petitioner concedes that they are minors.</p> <p>(r) That be the case, I find that the Petitioner has been unable to prove that the four sons of landholder were major as on 09.09.1970. In the absence of any documents, I find that the order of the Learned Additional Collector giving Petitioner 1 <sup>1</sup>/<sub>10</sub> units is correct and to that extent, the order of the earlier Learned Additional Collector in the year 1982 giving two units was wrong.</p>	



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	<p>(s) I now come to other issue of the land falling in the urban area. As per the inspection report of the Revenue Authorities, it was found that 48.37 acres urban land was being used for agricultural purposes. Now the onus is on the landholder to convince the Revenue Authorities that what was he doing with the huge urban land of 48.37 acres. Even if he allows the land to remain parti (fallow), it does not give him an excuse that since there is no agricultural activity being carried out (because the land is parti), Ceiling Act is not applicable on these 48.37 acres.</p> <p>(t) It would be unimaginable to believe that the entire 48.37 acres is being used for commercial, residential or some non agricultural activity. The defence of the Petitioner is that the land is not being used for any agricultural activity but is lying parti, is not acceptable. The idea is that the land should have been under use for any non-agricultural purposes. Any landholder cannot be allowed to hoodwink the ceiling law and to defeat the Government Circular of 1991 by keeping his land fallow and thus claiming exemption under the Ceiling Act.</p>	

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	<p><b>Conclusion:-</b></p> <p>From the aforementioned findings, it is clear that the landholder has not been able to provide any documents in support of the age of four sons to enable this Court to give additional unit.</p> <p>Even the papers that have been submitted by the landholder were with respect to only two sons. With regard to other remaining two sons, no papers can be found in the Lower Court Records. The paper submitted with respect to Sri Prabhat Kumar Jha and Prakash Kumar Jha cannot be relied upon as these are certificates issued by Civil Surgeon and Anchal Office. I have already explained in my findings above as to why these papers cannot be accepted.</p> <p>I also tend to agree with the observation of the Learned Collector that the landholder's averment that 48.37 acres of land is not being used for agricultural purposes in the urban area cannot be believed. Particularly, when the inspection done by the Revenue Authorities proved that the land is cultivable.</p> <p>The defence of the Petitioner that this inspection was carried out behind his back is also not tenable. It is difficult to believe that such huge area of land was surveyed and the Petitioner was not even aware of this fact. Moreover, something which is visible to an eye cannot be denied.</p> <p>The Petitioner, if he was serious in challenging the report of the Revenue Authorities, should come up with evidence to</p>	

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	<p>suggest that these 48.37 acres are not being used for agricultural purposes. In the absence of any concrete evidence, it is not possible for this Court to intervene in favour of the Petitioner.</p> <p>Having said that, I find there is no procedural infirmity in the orders passed by both the Learned Lower Courts. There is no misinterpretation by the Learned Additional Collector of the judgment passed by the Hon'ble High Court on 09.03.1995. I reiterate that the said judgment is not at all in favour of the Petitioner.</p> <p>All the Judgement elucidates is that it is the Collector who should decide what should be done of lands that lie within the municipal area under the Bihar Land Ceiling Act, 1961. In terms of the said observation, the Learned Additional Collector rightly did not initiate any step under Section 10 of the Act.</p> <p>That be the case, I find no reason to interfere with the order passed by the Learned Additional Collector dated 13.12.1995 or by the Learned Collector dated 23.12.2008.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="295 1612 742 1993"> <p><b>Dictated &amp; Corrected</b></p>  <p><b>K.K.Pathak</b> Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="766 1612 1228 1993">  <p><b>(K.K.Pathak)</b> Additional Member Board of Revenue, Bihar.</p> </div> </div>	