


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												
22.02.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Surplus) Case No. – 03 & 04/2009 Dist. – West Champaran</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table><tr><td>Rajeshwar Rao and Others</td><td style="text-align: center;">Versus</td><td style="text-align: right;">- Petitioner/ Appellant</td></tr><tr><td>The State of Bihar & Others</td><td></td><td style="text-align: right;">- Opposite party</td></tr></table> <p>=====</p> <p><u>Appearance:</u></p> <table><tr><td>For the Appellant/Revisionist</td><td>:Shri Siya Ram Shahi</td></tr><tr><td>For the OP</td><td>:</td></tr><tr><td>For the State</td><td>: Shri Nirmal Kumar, Special G.P.</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a ceiling surplus case in which a Revision application has been filed on 23.03.2009 against the order passed by the Learned Collector, West Champaran on 30.01.2009 in Ceiling Appeal No. 58/1988. The case was dismissed for default on 09.06.2009. Subsequently, a Restoration Petition was filed and the case was restored on 18.10.2010. The case was admitted for hearing on 19.11.2014. The Lower Court Records took time to reach.</p> <p>In the meantime, the case remained part heard on many dates. Finally, the case came up for hearing on 10.02.2017. On that date, the Learned Advocate of the Petitioner was heard in great detail. The Learned Special GP</p>	Rajeshwar Rao and Others	Versus	- Petitioner/ Appellant	The State of Bihar & Others		- Opposite party	For the Appellant/Revisionist	:Shri Siya Ram Shahi	For the OP	:	For the State	: Shri Nirmal Kumar, Special G.P.	
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	<p>was also heard on behalf of the State. Thus concluding the hearing, this order is being passed today.</p> <p>There are two Revision cases namely, Case No. 3/2009 and Revision Case No. 4/2009. Both are amalgamated as the issue is common and therefore a common order is being passed.</p> <p>In Case No. 3/2009, the landlord and his <i>fua</i> Smt. Rampati Devi are the Petitioners. In Case No. 4/2009, four sisters of the landholder namely Smt. Vasundra Devi, Manju Devi, Krishna Devi and Chanda Devi are the Petitioners. So in one set, the <i>fua</i> of the landholder Sri Rajeshwar Rao is a Petitioner and other set the sisters of the landholder Sri Rajeshwar Rao are the Petitioner.</p> <p>The demand in both the cases is that they need respective shares in the property of the original landholder Sri Baccha Rao who is the father of the Petitioner Sri Rajeshwar Rao.</p> <p>I have heard the Learned Advocate of the Petitioner in great detail. As per the Learned Advocate, the total land involved is 108.63 acres. After allowing two units, initially, to the landholder, 78.63 acres was declared surplus. Against this order, the landholder came to the Board of Revenue who, vide order dated 21.07.1977, remanded the matter back to the Learned Collector.</p> <p>On such remand, the Learned Additional Collector, vide order dated 28.10.1977, allowed a third unit</p>	

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	<p>on account of Smt. Shivdhari Kuer who is the grandmother of the landlord Sri Rajeshwar Rao.</p> <p>Continuing his arguments, the Learned Advocate mentioned that after the amendment in the year 1981, a new ceiling proceeding was initiated against the landholder. In the second proceeding, surplus area was enhanced and his objection regarding additional unit on account of the <i>fua</i> of the landholder and the sisters of the landholder was not considered. His above objections were rejected by the Learned Additional Collector vide order dated 07.06.1988. By the said order, three units were allowed to the landholder as before and the remaining land was declared surplus.</p> <p>Aggrieved at this order, the land holder went in appeal before the Learned Collector who, vide order dated 30.01.2009, upheld the order of the Learned Lower Court.</p> <p>Thus further aggrieved, the Petitioner has come again before the Board of Revenue for relief and hence this proceeding.</p> <p>The Learned Advocate, while concluding his arguments says that he does not want any units for the <i>fua</i> and the sisters of the landlord but he wants their share in the said property as per the Hindu Succession Act. Secondly, he also wants additional unit for Sri Niteshwar Rao, son of the original landholder Sri Baccha Rao who is said to be major on 09.09.1970. Additionally, he has challenged the classification of the land by the Revenue Authorities.</p>	

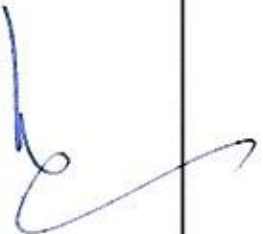
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 4 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>Moreover, he wants 1/10 unit for the four minor children of the landlord Sri Rajeshwar Rao. These demands have been mentioned in Pare 12, 13, 14 and 15 of the Revision application.</p> <p>I heard the Learned Special GP on behalf of the State who mentioned that these facts were not stated before the Lower Courts earlier and now Petitioner is opening entirely new grounds in order to delay the proceeding.</p> <p>Having heard the Learned Advocate of the Petitioner as well as the Learned Special GP and having perused the material available on record as well as the Lower Court Records, my own findings on the matter are as under:-</p> <p>(a) I note that the ceiling proceeding was once adjudicated in the year 1977 itself prompting the Petitioner to approach the Board of Revenue for relief. In the said revisional matter, the Petitioner then had raised the point which he has raised now namely extra unit for Sri Niteswar Rao, share for Rampati Devi and four daughters of Sri Baccha Rao in the property of Sri Nageswar Rao, and the classification.</p> <p>(b) The issue of minor children of the Petitioner Sri Rajeshwar Rao was not raised then.</p> <p>(c) In the said Revision matter, only one issue was raised by the Petitioner regarding asking one extra unit for Smt. Shivdhari Kuer who is the widow of</p>	


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	<p>Late Nageshwar Rao and grandmother of Petitioner Sri Rajeshwar Rao. All the other issues were not raised by the Petitioner then i.e. in the year 1977, whereas, all these said persons were very much alive in the year 1977 and therefore these issues should have been raised then.</p> <p>(d) The Board of Revenue, while passing the order dated 27.7.1977 felt that Smt. Shivdhari Kuer should be given additional unit in terms of Hindu Mitakshara Law and remanded the matter back to the Learned Collector.</p> <p>(e) The Learned Additional Collector, in terms of said remand, passed an order dated 28.10.1977 and allowed a unit to Smt. Shivdhari Kuer thus giving a total of three units to the landholder.</p> <p>(f) The Petitioner never challenged the order of the Learned Additional Collector on 28.10.1977 when he granted the third unit to Smt. Shivdhari Kuer and in all three units granted to the landholder. No other objections, which are now subject matter of this Revisions case were either discussed in 1977 nor any orders were passed in 1977. Thus, the land ceiling proceeding, in so far as the State and the landlord (the Petitioner) were concerned, the matter had achieved the finality. The Petitioner never went in appeal to any other forum against the order dated 28.10.1977 because he got what he</p>	


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	<p>wanted as per the direction of the Board of Revenue namely, the third unit on account of Smt. Shivdhari Kuer.</p> <p>(g) From the perusal of the record of the Learned Additional Collector, I find that the averments made by the Learned Advocate that the case was reopened as a result of the amendment in the year 1981, is not correct. From the perusal of the record of the Learned Additional Collector, it seems that the case was reopened in the year 1979 itself. Moreover, the case was opened under powers conferred to the Collector under Section 45B of the Bihar Land Ceiling Act, 1961. This was done because it was found that certain villages were not included in the verification report where the landholder is said to be owning land.</p> <p>(h) Pursuant to the said reopening of the case, a report from the Circle Officer was sought and it was found that out of the total land 108.63 acres, 78.63 was declared surplus after allowing 30 acres of Class-I land to the landholder on account of two units allowed to him.</p> <p>(i) Upon the said reopening of the case, the Petitioner had raised the issue before the Learned Additional Collector about the shares of her <i>fua</i> and her four sisters in the property of Late Baccha Rao. He also raised the issue of a unit on account of Niteshwar</p>	

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	<p>Rao, his brother, said to be a major as on 09.09.1970. On 05.12.1987, these issues were duly noted by the Learned Additional Collector and the Petitioner was directed to submit the evidence in his support.</p> <p>(j) On 07.06.1988, a final order was passed by the Learned Additional Collector, wherein he ruled the following:-</p> <ol style="list-style-type: none"> i. An extra unit on account of the grandmother of the Petitioner namely Sri Shivdhari Kuer was allowed as before. ii. Regarding a unit for the brother Sri Niteshwar Rao, the exact date of birth is not given and no paper was provided in support and hence no unit was given on account of Sri Niteshwar Rao, except for the family register mentioned the date of birth to be 01.02.1959. iii. All the four sisters were held to be minor as no evidence was given except the family register and an affidavit submitted by the mother of landholder. 	



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	<p>iv. Regarding the <i>fua</i> of the Petitioner, Smt. Rampati Devi, though she is entitled for a share in the property as per the Hindu Succession Act, the Learned Additional Collector held that there is no evidence submitted by the Petitioner as to whether she is alive or not. Moreover her name does not appear in the Anchal record.</p> <p>v. On classification issues, certain objections filed by the Petitioner were considered on the basis of the second report submitted by the Circle Officer. Based on that report, necessary corrections were also made. Hence to this end, objection raised by the Petitioner was duly considered by the Learned Additional Collector.</p> <p>vi. Another objection of Petitioner was regarding the inclusion of the land of his pattidars. This was considered by the Learned Additional Collector and said land was excluded from the ceiling proceeding.</p> <p>vii. The land voluntarily surrendered (2.86 acres) and the land in which homestead Parcha has been issued</p>	

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	<p>were excluded from the ceiling proceeding.</p> <p>(k) Aggrieved at the order of the Learned Additional Collector, the Petitioner filed an appeal before the Learned Collector who took 21 years to dispose of the appeal. The Learned Collector also, vide order dated 30.01.2009, rejected the appeal and upheld the order of the Learned Additional Collector.</p> <p>(l) I also find that the Petitioner had submitted no evidence or any paper in his Revision Petition in support of the fact that his brother and sisters, on whose behalf he is seeking units, are major nor any birth certificate has been annexed with regard to the sisters.</p> <p>(m) Regarding Niteshwar Rao, a certificate which is undated, has been submitted as Annexure-5. The certificate is signed by the Principal but it has not been signed by the SDO (Education). As per this certificate, the date of birth Niteshwar Rao is 16.02.1952. Whereas as per the family register submitted by the landholder in the Learned Lower Court in the Learned Additional Collector, the date of birth of Sri Niteshwar Rao has been mentioned as 01.02.1959. This difference of 7 years cannot be ignored. Therefore, no reliance can be placed on both the papers and it can be safely held that the landlord has not been able to prove beyond doubt</p>	

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	<p>that his brother Niteshwar Rao is a major as on 09.09.1970. Hence, there is no question of giving any units to Sri Niteshwar Rao.</p> <p>(n) Coming to the share in the property on account of the Petitioner <i>fua</i>, no evidence has been produced by the landlord as to whether the <i>fua</i> is alive on the date on which the Learned Additional Collector passed the order. Moreover, there is no mention of Smt. Rampati Devi in the Anchal records.</p> <p>(o) Coming to the share in the property on account of four sisters, the only evidence submitted by the Petitioner regarding the fact that the four sisters were major as on 09.09.1970 was a family register submitted by the Petitioner. However, the family register has not been signed by any official. Additionally, an affidavit submitted by the mother of the Petitioner has been enclosed, which too is not a reliable evidence. Therefore, it is difficult to arrive at the conclusion that the four sisters were major as on 09.09.1970.</p> <p>(p) Regarding the issue of classification, reports were sought from the Circle Officer on three different occasions and each report was different than the previous one. However, the objections of the Petitioner were considered by the Learned Additional Collector to the extent admissible and necessary correction were indeed made. Therefore,</p>	

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	<p>it would not be correct to say that this objection was not entirely considered by the Learned Additional Collector. The Petitioner did get some relief on this score.</p> <p>(q) Regarding the additional unit with regard to minor children of the Petitioner, it is an entirely a new issue which has been raised by the landholder. This issue was not raised in the year 1977 or in the year 1988 before the original Court of the Learned Additional Collector. The issue was also not raised before Learned Collector. Moreover, the details have not been given by the Petitioner regarding their age. Furthermore, under no stretch of imagination, three generations of a landholder can be included within the meaning of the word 'family' as defined under Bihar Land Ceiling Act, 1961.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the Petitioner has not submitted any document with regard to his claim for additional unit for younger brother, share of property for <i>fua</i>, share of property for four sisters and the classification of land which would allow this Court to intervene in the order passed by the Learned Lower Courts.</p> <p>Moreover, I find it strange that this objection was not raised by the Petitioner either when the ceiling case</p>	

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	<p>was earlier adjudicated in the year 1977 or when he came to the Board of Revenue in the year 1977 itself.</p> <p>Rather, these new sets of issues were raised by the landholder when the land ceiling case was reopened in the year 1979 under Section 45B. In fact, after he got the desired one unit on behalf of his grandmother Smt. Shivdhari Kuer (on which issue he had come to the Board of Revenue in the year 1977), vide order of the Learned Additional Collector dated 28.10.1977, he allowed the matter to rest in the sense that he did not challenge or raised these issues which he is doing now.</p> <p>Therefore, it can be safely held that all these new issues were raised by the Petitioner when the land ceiling case was reopened in 1979.</p> <p>In nut shell, it can be said that these issues were absent in the year 1977. However, they came up in 1979 when the Learned Collector reopened the case under Section 45B. Therefore, it appears that these issues were raised more as an afterthought in order to delay the proceeding.</p> <p>Coming to the merits of this issue, I have already held that no papers have been given in support of the date of birth of four sisters that they were major as on 09.09.1970. Nor any papers were given in support of the fact that the <i>fua</i> of the Petitioner was alive on 09.09.1970. Only paper given in support of date of birth was Sri Niteshwar Rao which only confused the matter further as the family register showed a different date of birth and the certificate of</p>	

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	<p>the Principal of the school showed a different date of birth. Obviously, much reliance cannot be placed on these two papers- both submitted by the Petitioner himself.</p> <p>I, therefore, am unable to help the Petitioner in the absence of any reliable evidence. That also explains why the Learned Collector did not intervene in his favour. In the absence of any documents, no court would prefer to alter the findings of the original Court.</p> <p>That be the case, I find it difficult to intervene with the order passed by the Learned Collector on 30.01.2009 or the order passed by the Learned Additional Collector on 07.06.1988 and the same are hereby reaffirmed.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	