

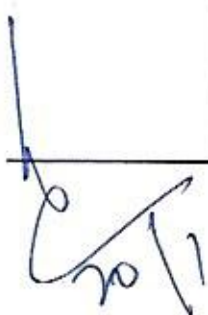
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
20.01.2017	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Surplus) Case No. - 10/2009 Dist. - Darbhanga</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Mohan Yadav and Others - Petitioner/ Appellant</p> <p style="text-align: center;">Versus</p> <p>The State of Bihar and Others - Opposite party</p> <p>=====</p> <p><b><u>Appearance:</u></b></p> <p>For the Appellant/Revisionist : Shri Sanjay Kumar</p> <p>For the OP :</p> <p>For the State : Shri Nirmal Kumar, Special GP</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>This is a ceiling surplus case in which a Revision application has been filed on 15.09.2009 against the order of the Learned Divisional Commissioner, Darbhanga passed on 28.07.2009 in Ceiling Appeal No. 46/2008. Since then, on various dates, the Petitioner remained absent resulting in the case being dismissed for default on 26.08.2014.</p> <p>Subsequently, a Restoration Petition was filed and case was restored on 28.12.2006 and the matter was posted for final hearing on 11.01.2017.</p> <p>On 11.01.2017, the Learned Advocate of the Petitioner was present and he was heard in great detail. He</p>	

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	<p>wanted to file a written note of argument along with copy of rent receipts and some judgements which he filed on 16.01.2017.</p> <p>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, he is the purchaser from the original land holder Mahant Ramawatar Das, who sold 8 bighas of land to one Sri Nawal Kishore Chaudhary on 28.09.1973. Sri Nawal Kishore Chaudhary is Respondent No. 7 in the present Revision Case. From the said Nawal Kishore Chaudhary, the Petitioner purchased 2 bighas of land on 06.07.1977.</p> <p>He further avers that the ceiling proceeding was initiated against the Mahant, however, his (Petitioner's) land was wrongly shown in the gazette notification published in June 1976.</p> <p>To this point, this Court asked the Learned Advocate that if the gazette was already published in the year 1976, why the Petitioner purchased the land in 1977. To this, the Learned Advocate replied that he was not aware about the gazette notification or that the land has been covered under the Ceiling Act.</p> <p>Continuing with his arguments, he further says that the matter got initiated when Respondent No. 6 Sri Ram Anuj Yadav filed a complaint before the Learned Collector Darbhanga in the year 2000 about the land sold to the Petitioner. The Learned Collector then issued notices to all</p>	

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	<p>concerned and vide order dated 30.12.2000 declared the sale of the land to the Petitioner null and void.</p> <p>Aggrieved at this order, the Petitioner filed a writ in the Hon'ble High Court CWJC No. 1794/2001 wherein the Hon'ble High Court vide its order dated 29.08.2008 advised the Petitioner to avail the remedy of appeal and Revision against the impugned order.</p> <p>In compliance thereof the Petitioner filed an appeal before the Court of the Learned Divisional Commissioner, Darbhanga who vide order dated 28.07.2009 rejected the appeal. Hence, the Petitioner has come to the Board of Revenue in Revision.</p> <p>Raising a law point, the Learned Advocate of the Petitioner mentioned that the ceiling proceeding was concluded in 1976. Therefore, the Learned Collector has no power to reopen the case in the year 2000. Only State Government could have reopened the case. Secondly, the Learned Collector should have made an enquiry under Section 5 (1) (iii) of Bihar Land Ceiling Act, 1961. But the Learned Collector did not do any enquiry. Thirdly, his sale deed is also protected under Section 9 (2) of the Act, which point was not considered by the Learned Collector.</p> <p>Finally, concluding his argument, the Learned Advocate mentioned that he had the mutation of the land in his favour and has filed his rent receipts. He also mentioned that even the first purchaser Sri Nawal Kishore Chaudhary also had a mutation in his favour. Claiming that the land is in his possession, the Learned Advocate wants the land</p>	





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	<p>involved in the sale deed to be excluded from the ceiling proceeding.</p> <p>The Learned Special GP argued on behalf of the State. He mentioned that when the final notification was published under Section 15 of the Act on 25.06.1976, the entire land was in the name of the Mahant. Consequent upon the publication of the notification, the entire land stood vested in the State Government.</p> <p>No steps were taken by the Petitioner for mutation because he was aware of the ceiling proceeding. The Learned Special GP further argues that the Petitioner never obtained any permission under Section 5 (2) of the Act to purchase the land. Moreover, Section 9 (2) of the Act will be not applicable in this case.</p> <p>Concluding his arguments, the Learned Special GP denied that the land is in the possession of the Petitioner. Rather, he says that the land so acquired has already been distributed to the Parcha owners.</p> <p>Having heard the Learned Advocate of the Petitioner and the Learned Special GP and after having perused the material available on record as well as the Lower Court Records, my own findings in the matter are as under:-</p> <p>(a) That the transfer of land of Mahant to the first transferee namely Sri Nawal Kishore Chaudhary was made after the due date of 09.09.1970. Apparently, no permission for such a sale by the taken by the land holder from the Learned Collector.</p>	

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	<p>(b) That the sale deed itself is suspicious as the land reported to be sold is 6 bigha. However, upon calculation, the area comes to about 5 bigha and 16 katha. Thus, the sale deed document itself has been found to be suspicious by the Learned Collector.</p> <p>(c) Since, the transfer by Mahant to Sri Nawal Kishore Chaudhary of the land itself was null and void, therefore, the subsequent transfer of 2 bighas by Nawal Kishore Chaudhary to the Petitioner follows natural consequences of being illegal and void.</p> <p>(d) I also find that the said Sri Nawal Kishore Chaudhary is related to the original land holder Mahant Ramawatar Das. Thus, this possibility cannot be denied that the Mahant transferred the land with the intention to cheat the ceiling laws.</p> <p>(e) I find that there was Bataidari Case 630/72-73 which was decided in favour of Sri Ram Anuj Yadav, who is Respondent No. 6 in the Revision Case. In that matter, the Petitioner was also granted a Parcha which was subsequently cancelled by the Learned Collector Darbhanga in Case No. 58/92-93:</p> <p>(f) I also find that the contention of the Petitioner that his sale deed is protected under Section 9 (2) of the Act is not correct. Section 9 (2) is reproduced below:-</p>	

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	<p>‘Where the land held by the landholder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of sub-section (1) of Section 5, the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 shall to the extent of the ceiling area admissible to the land holder, be deemed to have been selected by him for retention within the ceiling area; and where the total area of such land is less than the ceiling area admissible to him, the land holders shall select the balance<sup>1</sup> of ceiling area from his remaining land;’<sup>11</sup></p> <p>It can be seen from the above, the word is ‘landholder’. The land holder as on date was the Mahant and not the Petitioner. That be so, the said land transferred, whether in accordance or contravention of the Section 5 (1) (ii), the said land shall be part of the ceiling area. The provision therefore is very specific and works to the disadvantage of the Petitioner given the fact that Sri Nawal Kishore Chaudhary purchased this land much after the appointed date of</p>	



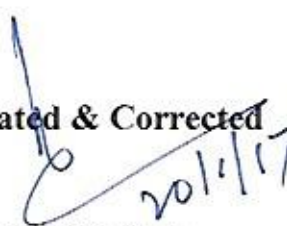

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	<p>09.09.1970 and without the valid permission of the Learned Collector.</p> <p>(g) Coming to the rent receipts filed by the Petitioner, I find that although, the Petitioner claimed to be owning the land since 1977, he has submitted only two rent receipts for the period 1988 to the year 2000. Therefore, these rent receipts do not convey that the Petitioner has been in continuous possession of the land since 1977.</p> <p>(h) Coming to the other issue made by the Learned Advocate of the Petitioner that the Collector does not have power to reopen the case under the ceiling Act, I find that under Section 5 (iii), the Learned Collector is fully empowered to conduct any enquiry and thus the proceeding initiated by the Learned Collector was within his original powers vested with him. The Learned Advocate of the Petitioner was perhaps hinting at the powers under Section 45B of the Bihar Land Ceiling Act, 1961 under which the State Government or the Collector can open any case. In the year 1997, the power of Collector was withdrawn and only State Government could reopen any case. The instant proceeding is not about reopening any land ceiling case but a transfer of the land by a landholder made after 22.10.1959,</p>	

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	<p>which is covered under Section 5 (iii) of the Act. Hence, the Learned Collector was within his right to reopen the case.</p> <p><b>Conclusion:-</b></p> <p>From the above finding, it is clear that the Petitioner's sale deed was ipso facto an illegal transaction because his vendor namely Sri Nawal Kishore Chaudhary was actually not the owner of the land. On the date of execution of the sale deed, the land de facto vested with the State Government.</p> <p>It is an admitted fact that the gazette notification was published in the year 1976 whereas the sale deed is dated 1977.</p> <p>The contention of the Learned Advocate that he was ignorant about the gazette notification and that he was unaware of ceiling proceeding, is not acceptable. The very fact that the gazette notification was duly published in official gazette means that the said notification is hereby made to inform the public at large. Ignorance of law is no excuse. Nor the ignorance about the ownership of a land can be allowed.</p> <p>In the rural scenario, it is common tradition that whenever a prospective vendee tries to purchase a land, he approaches the Circle Officer or Amin or such other lower level Halka functionary to find out about the ancestry of the land that he wishes to buy. Hence, it is difficult to believe that Petitioner was an aware that the land is covered under the Ceiling Act.</p>	





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	<p>Thus, in all probability, this transaction was done with the mala fide intention and was done with all consequences fully in knowledge. The area of land is 2 bigha, which is sizable and therefore it cannot be assumed that the Petitioner had not carried out any due diligence before purchasing the land.</p> <p>That be the case, I find it difficult to believe the arguments put forth by the Petitioner. Therefore, I find no reason to interfere with the order passed by the Learned Divisional Commissioner dated 28.07.2009 and same is reaffirmed.</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>  <b>K.K.Pathak</b>  <b>Additional Member</b>  <b>Board of Revenue, Bihar.</b> </div> <div style="text-align: center;">   <b>(K.K.Pathak)</b>  <b>Additional Member</b>  <b>Board of Revenue, Bihar.</b> </div> </div>	