

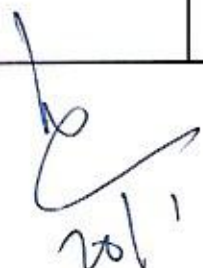
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
20.01.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Surplus) Case No.- 32-33/2016 Dist.-Bhagalpur</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Alok Kumar and Anothers - Petitioner/ Appellant Versus The State of Bihar & Others- - Opposite party =====</p> <p><u>Appearance:</u></p> <p>For the Appellant/Revisionist :Shri Arun Kumar Ambastha For the OP : For the State : Sri Nirmal Kumar, Special G.P.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is ceiling surplus case where a Revision Petition has been filed on 04.07.2016 under Section 32 of the Bihar Land Ceiling Act, 1961 against the order dated 17.05.2016 passed by the Learned Collector, Bhagalpur.</p> <p>The case was admitted for hearing on 14.12.2016 even though at the admission stage, the Learned Special GP had protested that the case is fit to be dismissed at the admission stage itself because the Revisionist had not filed any certificate saying that the married daughters were major as on 09.09.1970. Moreover, he has already been allotted two units as per his share.</p>	



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	<p>However, the case was admitted and the Lower Court Records for called for which was received. The case was finally posted for hearing on 13.01.2017. On that date, the Learned Advocate of the Petitioner was heard in great detail. Learned Special GP was also heard on behalf of the State. Thus concluding the hearing, the order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, this Revision is preferred against the order of the Learned Collector Bhagalpur dated 17.05.2016 wherein the Learned Collector has dismissed his appeal against the order passed by the Learned Additional Collector in the year 1992.</p> <p>Giving a background of the matter, the Learned Advocate argues that Sri Yadunandan Mahto was the person against whom a land ceiling proceeding was started in 1973. His father Sri Genda Yadav was the original land holder who died in 1958. Hence, the property is ancestral. The total area with respect to which the land ceiling case was started is 168.46 acres. Of that, 53.74 acres were declared surplus spread over various categories of land.</p> <p>Coming to the merits of the case, the Learned Advocate mentioned that during the period while ceiling proceeding was on, Section 32A and 32B got inserted in the Act in 1982 and which came into force on 09.04.1981. As a result, everything abated. Proceeding de novo should have been started afresh. Meaning thereby, that an enquiry under Section 10 of Bihar Land Ceiling Act, 1961 read with Rule 8</p>	



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	<p>- Rule 11 of Bihar Land Ceiling Rules, 1963, should have been done.</p> <p>The Learned Advocate pleads that in the instant case, such an enquiry has not been done. No verification was done afresh, as there is nothing a record. Some reports, though, were called for but those were in piecemeal basis with respect to only those plots where objections were raised.</p> <p>He further mentioned that there are numerous judgements of the High Court as well as of the Board of Revenue that after the ceiling proceeding has abated in the year 1982, fresh verification should have been done after issuing notices to the concerned land holder. In the instant dispute, no such verification and enquiry was done.</p> <p>The result is that the entire proceeding including the draft publication is illegal. An enquiry under Section 5 (1) (3) should precede the draft publication.</p> <p>The Learned Advocate draws the attention of this Court to Form LC 5 of the Rules, which says that the whole draft statement is dependent on the enquiry under Section 5 (1) (3) of the Act. The Learned Advocate also mentioned that he has given all the details of the land sold to various people but no enquiry was conducted. He has sold all the land prior to the appointed date 09.09.1970.</p> <p>Continuing with his arguments, the Learned Advocate further mentioned that under the Hindu Succession</p>	



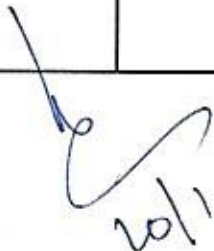
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	<p>Act, daughters are separate units. Sri Genda Yadav had three daughters who were major as on 09.09.1970 but the Learned Additional Collector did not consider their case.</p> <p>Bringing another procedural lapse of the Learned Lower Court, the Learned Advocate further draws the attention of this court to Para 22, 23 and 25 of his Revision application wherein he mentioned that the land ceiling case is heard by any Additional Collector only after it has been duly transferred by the Learned Collector in terms of the provision of Section 31 of the Act.</p> <p>He further mentioned that up to Sri Parfful Kumar Dubey, who was posted as Additional Collector (Land Ceiling), the case was procedurally correct as it was transferred to his court under Section 31 of the Act. However, the subsequent hearings by new Additional Collectors, who joined after Sri Prafful Kumar Dubey, conducted the land ceiling proceeding without the case being transferred to them by the Learned Collector under Section 31. Thus, the cases were never transferred to the Learned Additional Collectors by the respective Collectors and hence they heard these cases without jurisdiction. Therefore, the entire proceeding is not maintainable.</p> <p>I also heard the Learned Special GP on behalf of the State. He draws the attention of this Court to the first page of the order by the Learned Additional Collector wherein he says that one unit was sanctioned to Alok Kumar Yadav, son of Sri Yadunandan Yadav as he was an adult on</p>	


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	<p>09.09.1970. Another son Sri Raj Kumar Yadav was only 8 year old on 09.09.1970 hence no units were given to him.</p> <p>The Learned Special GP further argues that process of verification was done which is evident from the fact that land classification was done properly. The Learned Special GP quotes the order passed by the Learned Additional Collector on 14.03.1980 and he argues that there is no evidence produced by the Petitioner to suggest that the land was sold before the appointed date.</p> <p>He further mentioned that the State has adopted a very reasonable approach and excluded a certain area of land which was sold by the Petitioner before the 09.09.1970. At the same time, the Learned Additional Collector had found that certain lands were transferred after 09.09.1970 and hence they were rejected.</p> <p>The Learned Special GP further avers that the Learned Collector has considered the case for separate units for daughters and had rejected the same.</p> <p>As a closing argument, the Learned Advocate of the Petitioner mentioned that the Learned Special GP is quoting an order passed by the Additional Collector in the year 1980. This order is prior to the abatement of the case hence is of no use. He further mentions that in the enquiry under Section 5 (1) of the Act, the purchasers too were never noticed hence the enquiry was not done as per the procedure.</p>	

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	<p>Based on the arguments forwarded by the Learned Advocate of the Petitioner and the Learned Special GP and perusal of the material available as well as the Lower Court Records, my own findings on the issue are as under:-</p> <p>(a) First, I would like to discuss the issue regarding the procedure as pointed out of the Learned Advocate of the Petitioner that the Additional Collectors under took the hearing of the case even though the case was not duly remanded to them by the Collector under Section 31. To this objection, this Court had asked Learned Advocate whether he had raised this procedural lapse by the Learned Additional Collector before the Learned Collector in appeal. To this, the Learned Advocate replies that this procedural point was not raised by him before the Appellate fora of the Learned Collector. Hence, I find that this is a new objection raised at the Revisional Court.</p> <p>(b) However, I would still like to dwell on the merits of the procedural lapse alleged to have been committed by the Learned Additional Collectors who, as per the Learned Advocate, continued to hear the land ceiling case even though the case was not remanded to them by the Collector under Section 31. I have carefully gone through the order sheet of the Court of the Learned Additional Collector. I find that the Learned Additional Collectors, subsequently, heard this case with the</p>	



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	<p>specific designation of Additional Collector (Land Ceiling). I must mentioned here that the Additional Collector (Land Ceiling) is an officer who is specifically posted by the State Government in exercise of its power under Section 2(b) of the Act and whose sole purpose is to hear land ceiling cases under the Act. Therefore once an Additional Collector rank officer is posted by the State Government with the specific designation of Additional Collector (Land Ceiling) then only such officer can hear the cases under the Land Ceiling Act. Such officer need not wait for any matter to be referred to them by the Collector. Nor the Collector can take away any land ceiling case away from specifically designated officer and give it to any other Additional Collector (who may be, perhaps, looking after law and order duties). Therefore, Section 31 would not be applicable in this case. To quote, Section 31 (1) says that</p> <p>‘Section 31- Power of Collector of district to make distribution of work and to withdraw or transfer cases. – (1) If the same local area is assigned to two or more officers exercising the powers of Collector under this Act, the Collector of the district may assign to each of them such business under this Act cognizable by him, as he think fit.’</p>	

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	<p>From the above, it is clear that Section 31 gives the power to the Collector to allot work between same setup of officers. Meaning thereby, that if two Additional Collectors without any specific designation are available, then the Collector may allot the work of land ceiling to any one of them. However, if the State Government has specifically posted an officer with the designation of the Additional Collector (Land Ceiling), then in that case, I do not think that Collector under Section 31 can take away ceiling related cases from such specifically designated officer and give the ceiling case to any other Additional Collector.</p> <p>Therefore, there has been no procedural lacuna on the part of the Additional Collector as since 1991, till the disposal of the matter on 29.06.1992, the entire proceeding was heard by a specially designated officer called Additional Collector (Land Ceiling) and not any other Additional Collector. Had the case been heard by any other Additional Collector, then that Additional Collector will have to hear the ceiling cases only after the ceiling case remanded to him by the Learned Collector.</p> <p>(c) Now coming to the main contention of the Learned Advocate that the enquiry under Section 10 of the Act was not conducted and no fresh verification</p>	

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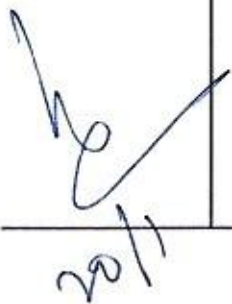
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	<p>was made, my own findings on this issue are as under:-</p> <ol style="list-style-type: none"> i. The Petitioner had approached the Hon'ble High Court in CWJC No. 3536/1981 where the Hon'ble High Court vide order dated 28.11.1985 allowed the writ and quashed the proceeding as abated and gave the liberty to the Authorities to proceed under ceiling proceeding in accordance with law. ii. I also find that notices were issued to both the sons of Sri Yadunandan Mahto, who had died by then. iii. Vide order dated 18.02.1992 a report was sought from the Circle Officer by the Learned Additional Collector. The said report was received and is a matter of record. iv. I also find that certain purchasers who had claimed to have purchased the land from the land holder were also issued notices and have filed their attendance as well in the Court of the Learned Additional Collector. Therefore, the averment made by the Learned Advocate of the Petitioner 	

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	<p>that the purchasers were not issued notices was not correct.</p> <p>v. I also find that certain objections were raised by the land holder before the Learned Additional Collector that some land does not belong to the land holder but has been included in the land ceiling proceeding. The land holder had requested an enquiry in the matter. On 20.02.1992 the Learned Additional Collector had ordered the Circle Officer to conduct the enquiry as well.</p> <p>vi. I also find that there are numerous reports of Kanungo as well as Anchal Adhikari dated 28.02.1992, 29.03.1992 and 28.03.1992. Therefore, the averment made by the Learned Advocate of the Petitioner that no enquiry was conducted is not correct. The Circle Officer vide his Letter No. 95 dated 28.03.1992 has clearly mentioned that certain lands which were allegedly transferred by the land holder was contrary to the norms.</p>	

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/	<p>vii. In fact, the Circle Officer had also clearly mentioned which of the plots are inundated under the river belonging to the land holder. I fail to understand how such a specific report is possible if no verification was conducted.</p> <p>viii. Moreover, the so called piecemeal enquiry that the Learned Advocate of the Petitioner was talking about, was made at the request of the land holder himself as is evident from the order sheet of the Learned Additional Collector. Therefore, I do not agree with this contention that no enquiry or verification was done by the Learned Additional Collector pursuant to the re-initiation of the proceedings.</p> <p>(d) The other major issue was the land transferred by the landholder over the various dates to various purchasers. In this connection, I find that about 51.14 acres of land was transferred to 14 different people. All these people were issued notices and some purchasers did turn up, as is evident from the order sheet of the Learned Additional Collector dated 21.03.1992. In fact, the Learned Additional Collector was very specific with regard to the fact whether the transaction was fictitious or real. In the</p>	



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	<p>subsequent dates, various vendees had appeared before the court of the Learned Additional Collector and where their points were heard. Many vendees have filed the copy of the sale deeds. Therefore, the averment made by the Learned Advocate that the issue of land transfers to various other purchasers was not considered is not correct. In fact the Learned Additional Collector has very meticulously gone ahead and issued notices to every such person to whom the land holder is said to have transferred the land.</p> <p>(e) In fact, the Learned Additional Collector had already excluded all the lands which were voluntary surrendered by the land holder. Certain land was also excluded which was found to be sold validly to other persons. Thus, every transaction of the land holder was carefully relooked and verified through the documents by the Learned Additional Collector afresh and hence the claim of the Learned Advocate that these transfers were not carefully looked into after the abatement of proceeding in 1982 is not correct.</p> <p>(f) Now coming to the third important issue about granting extra unit to the other son of Sri Yadunandan Mahto and the major daughters of Sri Yadunandan Mahto, I find that no such papers were submitted by the land holder to prove that the other son namely Sri Raj Kumar Yadav and the</p>	

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	<p>major daughters were actually major as on 09.09.1970. I find that the said brother Sri Raj Kumar was mentioned to be the twin brother of Alok Kumar where as it has been proved that Sri Raj Kumar was only 8 year old in 1975. Therefore, it is not possible to treat him as an adult on 09.09.1970. In fact if we use this as a basis, then the unit granted to Sri Alok Kumar by the earlier Additional Collector should also be rejected. There was a report of the Circle Officer then, that, both Alok Kumar and Raj Kumar was minors as on 09.09.1970. Therefore, the fact that Alok Kumar has one unit in his itself appears to be a miscarriage of justice.</p> <p>(g) Nor any evidence has been adduced before either the Court of the Learned Collector or before this Court to suggest that any of the daughters were major as on 09.09.1970.</p> <p>(h) I also find that neither the land holder nor the daughters had filed any objection on this behalf that separate units be given to them before the original trial Court of the Learned Additional Collector.</p> <p>(i) Thus, having considered all the above points, the Learned Court of the Additional Collector proceeded to publish the district gazette under Section 11 (1) on 16.08.1996.</p>	

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	<p>(j) I also find that the Revisionist has submitted before the Court of the Learned Collector an evidence to the effect that his daughters Smt. Hema Devi, Shail Kumari and Indu Kumari, were born respectively on 19.01.1944, 03.07.1958 and 05.08.1952 meaning thereby they were all majors as on the appointed date of 09.09.1970. However, the certificate that has been filed is issued by In charge Principal in the year 2007. Though, the said certificate quotes the Admission Register as the basis for the age, however, it lends suspicion as to why the land holder took 54 years to get a certificate of birth. I also find that apparently Admission Register of the year 1953, 1957 and 1960 were perhaps properly preserved so as to enable the Principal to issue the certificate. I find this rather pleasantly unbelievable. I also find it pleasantly amazing that the Incharge Principal was able to hunt the Register which were 50 years old and was safely kept in a middle school in a rural area. However, I also note that the name of the daughter Shail Kumari is different than what the land holder has told the Courts below. Hence, there are reasonable grounds not to believe these informal certificates issued after 50 years of birth of the concerned daughters. Hence, the Learned Collector had rightly rejected those certificates issued by In charge Principal of Bhagalpur.</p>	



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	<p>(k) The other documents submitted in support of age are the affidavits by Hema Kumari Yadav and other daughters claiming that they were adults as on 09.09.1970. The said affidavit cannot be taken at the face value as it mentioned no basis or hospital/birth papers in their support. Therefore, the Circle Officer report submitted vide Letter No. 48 dated 20.09.2006, also being dependent on the said affidavit of the Petitioner's daughter, cannot be relied upon. Thus, the Court of Learned Collector and Additional Collector were correct in not allowing any extra unit.</p> <p>(l) I also find that the Petitioner has enclosed the genealogy with an affidavit followed by a report of the Circle Officer dated 11.01.2017 that Sri Genda Mahto died on October 1958 (father of the Petitioner) who had left behind three daughters and six sons. All are dead except the surviving son Yadunandan Yadav (Petitioner) who also died during the pendency of the ceiling proceeding and he was duly substituted by his son Sri Alok Kumar and Raj Kumar. I don't see how this genealogy is helpful to the Petitioner except that there could be many more units that the Petitioner's uncles or aunts should have demanded. In that case, at this stage, this issue cannot be reopened in the sense that what now the Petitioner is hinting is that the land ceiling proceeding should have been started</p>	





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	<p>against Genda Mahto. This would be a wrong argument because the proceeding under the Ceiling Act was started only in the year 1973 whereas the Sri Genda Mahto died in October 1958. It is settle principle of law that ceiling proceeding cannot be started against a dead person. Hence, the documents submitted by the Petitioner on 13.01.2017 before this Revisional Court are not going to help the Petitioner's case.</p> <p>Conclusion:-</p> <p>From the foregoing findings, it is clear that the land holder's case was duly heard by the Learned Lower Courts. I do not agree with the averments made by the Learned Advocate of the Petitioner that no verification or enquiry was held under Section 10 afresh nor any notices were issued to them or to the transferees of the land.</p> <p>On the contrary, every due diligence was taken by the Learned Additional Collector. On the spot verification was conducted for all the lands belonging to the landholder. Even the area which was then submerged under the river was also identified plot wise, which is not possible unless a methodical and plot by plot survey is conducted. The numerous reports by the Circle Officer and the Kanungo are testimony to this fact.</p> <p>The issue of classification of the land was also considered de novo by the Revenue Authorities. Land classification was considered and the same was upheld.</p>	

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	<p>The issue of the age relating to one son and other daughters of land holder was also duly considered by the Learned Lower Courts and same was rejected on the basis of lack of reliable documents. In fact, if the contention of the Petitioner is to be believed that Sri Raj Kumar and Sri Alok Kumar are twins, then I tend to agree with the observation of the Learned Additional Collector that the two units granted to the land holder in the name of Sri Yadunandan Yadav and his son Alok Kumar (who was considered to be adult as on 09.09.1970) too is suspicious. Because, it is established fact that Sri Raj Kumar was less than 8 years old as on appointed date 09.09.1970. If his brother Alok Kumar is his twin, then he was also a minor as on 09.09.1970 and therefore the unit allowed in the name of Sri Alok Kumar also needs to be re considered.</p> <p>That be the case, I find no reason to interfere with the order passed by the Learned Collector dated 17.05.2016.</p> <p>The Revision Petition is dismissed with direction to the Learned Collector as under:-</p> <p>(a) The Learned Collector may proceed further with the distribution of surplus land so identified, if the same has already been not distributed.</p> <p>(b) The Learned Collector may also re-enquire whether the original land holder Sri Yadunandan Mahto was entitled for two units- one for himself and one for his son Sri Alok Kumar. If</p>	



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	<p>it is found that Sri Alok Kumar was also a minor as on 09.09.1970, then in that case Sri Yadunandan Mahto was eligible for only one unit. This aspect therefore must be relooked by the Learned Collector.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  Dictated & Corrected K.K.Pathak Additional Member Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member Board of Revenue, Bihar. </div> </div>	