

BOARD OF REVENUE, BIHAR, PATNA.

**Revision (Land Ceiling Surplus) Case No. 50/2015
District -Jamui**

**PRESENT :- K.K. Pathak, I.A.S.,
ADDITIONAL MEMBER**

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Smt. Indu Devi@ Indu Singh

- Petitioner/ Appellant

Versus

State of Bihar through the Collector, Sitamarhi

- Opposite party

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Appearance:

For the Appellant

: Shri Arvind Kumar Jha -

For the OP

:

For the State

: Shri Nirmal Kumar

ORDER

16.12.2016

This is a Ceiling Surplus case where a Revision Petition has been filed on 30.09.2015 against the order of the Divisional Commissioner, Muzaffarpur passed on 14.07.2015. The case could not heard on many dates. Finally, the case was heard on 06.12.2012 and was admitted. On that date the Learned Advocate of the Revisionist was not present and hence a short date was given for 14.12.2016 where the case was heard in detail on points of the Revisionist as also the Learned Special GP appearing on the behalf of the state.

Thus, concluding the hearing the order is being passed today.

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As per the Learned Advocate of the Revisionist, he is the challenging the Learned Collector's dated 28.10.2002 and the Hon'ble Commissioner's Order dated 14.07.2015. Giving a brief background of matter, the Learned Advocate mentioned that the Ceiling Proceeding No. 26/73-74 was drawn against Shri Chandradeo Narayan Singh, who is the father of the Revisionist Smt. Indu Devi. The said ceiling proceeding was decided was the then Additional Collector who held on 24.05.1982 that only one acre land was surplus.

However, after 10 years, the then Learned Collector reopened the matter in terms of section 45B of the Act. Consequently, a new Ceiling Case No. 53/92 was opened. But the Learned Collector, as per the Learned Advocate of the Revisionist, did not hear the Revisionist on the point of reopening the case. The Learned Collector did not even issue notice. Notices were rather sent on dead persons as Shri Chandradeo Narayan Singh died on 05.08.1984 and his widow also died on 01.10.1987. Hence, no notice was served to the heirs of the Land Holders before reopening the case.

The Learned Advocate further mentioned that the Collector further sought report from the Circle Officer, but however without waiting for the report of the Circle Officer, he passed the final order on 28.10.2002 but he admitted that the Learned Collector did hear the legal heirs of the land holders who filed an objection also before the Learned Collector.

Aggrieved by the order of the Learned Collector, the Revisionist went in appeal before the court of the Commissioner who also dismissed their appeal on 14.07.2015. The Learned Advocate pleads that the Divisional Commissioner did not follow the proper procedure while disposing of the appeal. He drew the attention of this court to Rule 49 of the Land Ceiling Rules 1963 which says that the appellate authority shall follow the procedure, as far as may be practicable, provided for civil appeal under Order XLI of the Civil Procedure Code 1908 (Act 5 of 1908). The Learned Advocate mentioned that the Divisional Commissioner had merely rejected his appeal without applying his own mind and giving his own findings on the objections mentioned in the order of the Learned Collector and hence, aggrieved at this order, the Revisionist has preferred this Revision.

I also heard the Learned Special GP who mentioned that the Learned Collector has passed A very reasoned and pointed order and hence the Hon'ble Divisional Commissioner did not needlessly intervened on a very speaking order passed by the Learned Collector. He further mentioned that the land holder had filed 15 objections in total and the Learned Collector had disposed of each and every objection. He further points out that a few objections were allowed and hence the Learned Collector acted in a very impartial manner.

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Findings:-

Having heard the Revisionist and also the State, I perused the lower court's case records as well as the order passed by the Learned Collector and the Hon'ble Divisional Commissioner. My own findings on the matter are as under:-

(a) With regard to the procedure followed by the Lower Court, (the Collector's Court), I find that the Collector was well within his right to reopen the case under section 45B of the Land Ceiling Act, 1961. On 15.09.1992, the then Collector had referred to the order passed by the Learned Additional Collector on 24.05.1982 and gave the following reasons for reopening the case -

- i. That the land holder fraudulently tried to gift away 32.22 acres of land in order to defeat Ceiling Laws.
- ii. He further tried to mislead the Revenue Authorities by hiding huge chunks of land that in fact belonged to him.
- iii. The land holder tried to show his land of 22 acres as belonging to Class IV category whereas it was later found that the land actually belonged to Class II category.

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Thus, he found enough reason to reopen the case and issued notices in the year 1992. From the order of the Collector dated 28.02.1994, ^{it is} is also clear that the then land holder Ram Deo Singh's sons were substituted as the land holder had died. After such substitution, an Order of the Collector was passed on 04.09.1995 for reopening the case under section 45B. Subsequently, the case was finally decided by the Learned Collector on 28.10.2002. Thus, it appears that the Collector had followed due procedure while reopening the case under section 45B of the Land Ceiling Act, 1961. Therefore, I do not agree with the Learned Advocate of the Revisionist that the case was reopened without following due process or without the knowledge of the Revisionist.

(b) Coming to the issue of the objections filed by the Revisionist, I find that a total of 15 objections were filed in the court of the Collector and the Collector had considered each and every objection and disposed them individually. The first objection was raised by the Revisionist that there was a formal division of property between Chandradeo Narayan Singh and his brother Thakur Ram Dev Singh and hence, they should be treated separate families. However, the Collector found that post division, the land holder still retained 89.4 acres of land. On second objection (Objection 2 as well as Objection 10) relates to gifting away of land by Chandra Deo Narayan Singh to his wife and daughter. On this issue, the Learned Collector has rightly held there such a gift cannot be legally validated as the purpose was to defeat the Ceiling Laws. On the point of Objection No 3, the issue

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was that certain land belongs to some other parties but was shown to be belonging to the land holder and hence, that portion should be freed from the ceiling proceeding. The Collector found some merit on this objection and agreed to exclude certain land from the ceiling proceeding. Objection No 4 related to certain land which has homestead property on it and some of the land was voluntarily surrendered. The Collector had found some merit in this objection and rightly agreed to exclude some of this land from ceiling proceeding. Similar was the case with Objection No. 5. On Objection No 6, the Revisionist wanted to claim the land to be belonging to Vth and VIth category as most of the land was already submerged in the river. The Learned Collector however held that since the land categorisation has already been made and draft publication issued, no reconsideration can be made. Moreover, I would also mention here that even if the land is submerged but the point remains that the land is not perennially submerged and agriculture activity can happen on some months of the year. On Objections 7,8,9 and 11, the Revisionist claimed that these lands were either sold away or belonging to some other person and hence, should be excluded from the ceiling proceeding. The Collector held that these lands were sold without due permission and with the purpose of defeating the ceiling laws. I find merit in the view of the Collector that any transfer made after the appointed date viz. 9.9.70 must be rejected and such land be included in the ceiling surplus land so identified. Objection No 12 and 13 related to separate units for adult children. Here the Collector rightly held that since these lands were

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<p>की क्रम सं० संस्थापिका</p> <p>1</p>	<p>आदेश और पदाधिकारी का हस्ताक्षर</p> <p>2</p>	<p>आदेश पर की गई कार्रवाई के बारे में दिवाणी तारीख सहित</p> <p>3</p>
	<p>alienated after 09.09.1970, therefore the ceiling laws do not allow the exclusion of such transfer. Similarly, I find that Section 2EEE relating to "minor child" will not be applicable here because the said gift deed was not made during the grace period and therefore the Collector was right in rejecting this objection. Coming to objection No 14, the Revisionist wanted relaxation from the husband's side. Such consideration was not possible under Ceiling Laws and the Learned Collector rightly rejected such consideration. With regard to the Objection No 15, the Revisionist has desired to exercise her option under Sec 9. On the right to exercise option, I find that the option can be exercised only if there is no violation with regard to the ceiling laws. In this case the land holder made innumerable attempts to transfer the land, through sale and/or gift, after the appointed date of 09.09.1970. Therefore the Collector rightly did not allow any fresh option under section 9 of the Land Ceiling Act, 1961. Overall, the Collector however gave some relief to the landholder and excluded 4.6 acres of land and thus calculated the ceiling surplus of 85.21 acres. After reducing of 30 acres for one unit, the Learned Collector rightly ordered that final publication for 55.21 acres be taken out. Thus, I find that the Learned Collector had gone about systematically on each Objection and dealt with them properly and as per law.</p> <p>6(b) I also find that the Learned Collector gave the landholder another opportunity to file their objections at the notification stage, which they did. The Collector further heard the case after the final publication under section 11</p>	

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and after hearing the land holder again, he rejected the second set of objections filed by the land holder and issued notification under 15(1) on 17.02.2003. Therefore, procedurally the Learned Collector has not erred.

(d) I have also perused the order of the Hon'ble Divisional Commissioner, where the case continued for 12 long years. It appears that the Divisional Commissioner held the view that the Appellant have not be able to brought out any new fact and hence, he refused to intervene with the order of the Collector.

From the above findings, I conclude that the entire Ceiling Proceeding that followed was with due procedure. Moreover, due care was taken by the Learned Collector while reopening the case under Section 45B. Under Section 45B the Learned Collector was competent (till the Act was amended in 1997) to reopen any case. I also find that after reopening the case, the Learned Collector had given the landholder two opportunities to file objections which he actually availed. On both the occasions, the Learned Collector passed speaking orders while dealing with the objections. I also find that there has been a history of the revisionist displaying malafide intention to save his land from the Land Ceiling Act, 1961. To that extent, he was successful in the year 1982 where he was able to obtain a favourable order from the then Learned Additional Collector. However, 10 years later, it was detected that the land holder has been able to fool the State in connivance with lower level Revenue functionaries. Accordingly, the

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की क्रम सं० और तारीख	<p style="text-align: center;">9</p> <p style="text-align: center;">आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p>	<p style="text-align: center;">आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित</p> <p style="text-align: center;">3</p>
	<p>case was rightly reopened and suitably adjudicated. I therefore find no merit in the Revision application.</p> <p style="text-align: center;">Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end; margin-top: 20px;"> <div style="text-align: center;"> <p><i>Dictated & Corrected</i> <i>16/11/2016</i></p> <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;"> <p><i>16/11/2016</i></p> <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	