

Ainul Haque and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Mar-23-2007

Judge : Barin Ghosh and Navaniti Prasad Singh, JJ.

Acts : Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Sections 9, 11(1) and 15(1)

Appeal No. : Letters Patent Appeal No. 144 of 1998

Appellant : Ainul Haque and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Shashi Bhushan Kumar, S.C. and J.K. Roy, Adv.

Advocate for Pet/Ap. : Uday Bhanu Roy and Sanjay Kumar Sharma, Advs.

Disposition : Petition dismissed

Prior history : Barin Ghosh and Navaniti Pd. Singh, JJ. 1. In the revisional survey, the father of the respondents No. 5 & 6 was shown as the riyat of the land, being the subject matter of the writ petition. It is not known when the father of the respondents No. 5 & 6 died. Be that as it may, a proceeding was initiated against the respondents No. 5 & 6 under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. That was contested by the respondents No. 5 & 6. In terms

Judgement :

Barin Ghosh and Navaniti Pd. Singh, JJ.

1. In the revisional survey, the father of the respondents No. 5 & 6 was shown as the riayat of the land, being the subject matter of the writ petition. It is not known when the father of the respondents No. 5 & 6 died. Be that as it may, a proceeding was initiated against the respondents No. 5 & 6 under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. That was contested by the respondents No. 5 & 6. In terms of the provisions contained in the said Act, in relation to lands, being the subject matter of proceedings initiated under the Act, a draft statement is required to be prepared. There are provisions in the said Act for publication of such draft statement in the Official Gazette of the district and at such places and in such manner as may be prescribed. The prescription directs that a copy of such notice shall also be affixed to the Notice Board of the office of the Collector, Anchal Adhikari and Gram Panchayat within whose jurisdiction the land or part thereof, to which the notice or order relates, is situate. After an objection to such draft statement is disposed of, such draft statement is required to be finally published in the official Gazette. Subsequent thereto acquisition of surplus land pursuant to the finally published draft statement is effected by once again publishing a notification in the Official Gazette. In the instant case, a notification under Section 15(1) was published as far back as on 5th June, 1989. It is not known when the notification finally publishing the draft statement was published.

2. The appellant on 17th May, 1997 filed a writ petition and thereby contended that he is the owner of the land measuring about 4 acres, which has been acquired by the said notification published on 5th June, 1989 proceeding on the basis that the same belongs to the respondents No. 5 & 6, when, in fact, the same belongs to the appellant. It was contended that a suit was filed by the appellant against the respondents No. 5 & 6 in the year 1972 and the same was compromised and, on the basis of such compromise, a decree was passed also in 1972 and, by virtue thereof, the appellant became the owner of the land in question. The amended provisions of the Act came into effect on 9th September, 1970. In terms thereof

any land holder holding land in excess of the ceiling area was debarred from transferring any land held by him except with the previous permission in writing of the Collector until such time a notification under Section 15 is published.

3. The Writ Court felt that this compromise decree as well as the suit are collusive.

4. Even if the suit and the decree are not collusive, the fact remains that the title of the respondents No. 5 & 6 in the land in question, as was acknowledged by the State was sought to be transferred by the said decree, without admittedly obtaining any permission in writing of the Collector. In such view of the matter, this decree was never binding upon the State.

5. Before the Writ Court it was contended that in the cadastral survey, this land was recorded in the name of the forefather of the appellant. However, at the same time, no attempt was made to establish that since the recording in the cadastral survey until at least upto 1957, rates and taxes pertaining to the land in question had been paid by the father or the forefather of the appellant. In other words, apart from making assertions, there was nothing on record which would suggest that either the title or possession of the land in question remained in the family of the appellant until the revisional survey was made and thereafter.

6. It is the case of the appellant that in 1964, a suit was filed by the father of the appellant in respect of the land in question whereunder he wanted to re-establish his title and possession thereon. The appellant does not know what happened to that suit. It, however, appears that the father of the respondents No. 5 & 6 was the sole defendant in the said suit. In view of institution of the said suit, acceptance of a similar claim in a subsequent suit, if opined as a collusive suit and collusive compromise, we do not think such an opinion can be interfered with. If the 1964 suit was still pending and had not been dismissed, the 1972 suit could not be instituted. If the 1964 suit had been dismissed before institution of the 1972 suit, the 1972 suit would have been barred by res judicata. No sensible person, therefore, unless colluding with the plaintiff in such suit, would accept the claim of the plaintiff in such suit and agree to compromise the same in the manner the plaintiff has asked.

7. Be that as it may, the learned Counsel appearing on behalf of the appellant has rightly contended that by virtue of the provisions contained in Section 9 of the Act, the land in question should be deemed to have been opted by the respondents No. 5 & 6 to be retained within their ceiling limit, inasmuch as the 1972 decree is binding in between the appellant and the respondents No. 5 & 6.

8. We think that the appellant has missed the bus. As aforesaid, after preparation of the draft statement, the same is required to be published in the District Gazette. Notice of inclusion of the land in question in the draft statement pertaining to the proceeding pending against the respondents No. 5 & 6 was, therefore, deemed to be within the knowledge of the appellant as soon as the draft statement was published in the District Gazette. Subsequent thereto, as required, the draft statement was required to be finally published in the official Gazette. Without publishing the same, the surplus land could not be acquired. Therefore, in the instant case, the same was published in the Official Gazette. It is not known when the draft statement was prepared and when the same was finally published. Lastly, the notification under Sub-section (1) of Section 15 of the Act was published on 5th June. 1989 and the appellant approached the Writ Court in 1997, i.e. after 9 years. Whether or not the land in question has or has not been distributed is of no consequence. The fact, remains that if the subject land is included in the land to be retained by the respondents No. 5 & 6, some other land retained by the said respondents will become surplus land. The respondents No. 5 & 6 though were made parties to the writ petition, but no notice to them was given. Although notice of the present appeal has been given to the respondents No. 5 & 6, who have not bothered to enter appearance, but the fact remains that in the Memorandum of Appeal it has not been contended that the land in question should be deemed to have been opted by the respondents No. 5 & 6 within their ceiling limit. Admittedly, the appellant approached the Writ Court after 9 years from the date of publication of the notification under Section 15(1) of the Act. If the appellant has not been able to protect his right, title and interest as well as possession in a property for 12 years, he loses his right, title and interest therein. The notification under Section 11(1) preceded the notification under Section 15(1) of the Act. If it has preceded three years before, then as on the date of approaching the Writ Court, the appellant could not save his alleged title in the land in question. Mere assertion,

without anything to support the same, that the appellant is in possession of the land in question will not suffice. Furthermore, having regard to the nature of the transaction depicted by the 1964 suit followed by 1972 suit, the logical conclusion would be, as has been held by the writ Court, that the said suit as well as the decree passed thereon on compromise are collusive. There is therefore, nothing further to be done in the appeal. The same fails and is dismissed without any order as to costs.

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