

Mritunjay Sharma and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-28-1999

Judge : R.N. Sahay, J.

Appeal No. : C.W.J.C. Nos. 6553 and 6554 of 1992

Appellant : Mritunjay Sharma and anr.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Prior history : R.N. Sahay, J. 1. Both the writ applications involve common question of fact and law and they are being disposed of by this common order. 2. In C.W.J.C. No. 6553 of 1992, there are two petitioners, namely Mritunjay Sharma and Chitaranjan Rai. The facts of this case are that petitioner No. 1 had purchased 2 bighas 19 kathas and 17.5 dhurs of land from the four sons of Nokha Lal Jha by registered sale-deed dated 30-4-1973 (Annexure-4). By another registered sale-deed dated 6-3-1975, he purchase

Judgement :

R.N. Sahay, J.

1. Both the writ applications involve common question of fact and law and they are being disposed of by this common order.

2. In C.W.J.C. No. 6553 of 1992, there are two petitioners, namely Mritunjay Sharma and Chitaranjan Rai. The facts of this case are that petitioner No. 1 had purchased 2 bighas 19 kathas and 17.5 dhurs of land from the four sons of Nokha Lal Jha by registered sale-deed dated 30-4-1973 (Annexure-4). By another registered sale-deed dated 6-3-1975, he purchased 1 bigha of land from Lakshmeshwar Jha (Annexure-4/1). Petitioner No. 2 had purchased one bigha of land from Bishwanath Jha on 1-6-1960 (Annexure-2). There are two registered sale-deeds dated 28-5-1962 whereby they purchased 2 bighas of land vide Annexures-2/1 and 2/2. These lands were purchased from Bishwanath Jha, Rupeshwar Jha and Jageshwar Jha. Both the petitioners got their names mutated in Register II. The name of petitioner No. 1 was mutated in 1974-75 while the name of the petitioner No. 2 was mutated in 1963-64.

3. In 1983 Land Ceiling Case No. 3 of 1982/83 was commenced against Sudina Devi and Dhanmaya Devi wife of late Jageshwar Jha. There is no dispute that the vendor of the petitioner belonged to the family of Jageshwar Jha. Proceeding was initiated with respect to 53.83 acres of land. In the said proceeding, Karmchari of Parbata Circle submitted details of land held by the land-holder Jageshwar Jha. In the said details of land total 9 acres and 38 decimals of land out of 10 acres 45 decimals of land originally purchase by the family of Bhawani Jha by sale-deed contained in Annexure-1 was shown in the name of Jageshwar Jha. On the basis of the details submitted by the Karamchari, as contained in Annexure-6 of the writ application, orders were passed by the Additional Collector, Khagaria, whereby 51.34 Acres of land including the land of the petitioners was declared surplus which was shown as the land of Smt. Sudina Devi and others. By order dated 17-4-1991 passed in the said land ceiling case final publication of the surplus land was ordered to be made under Section 11(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

4. In due course, the land declared surplus were acquired by the , Collector, Khagaria and information to this effect was ordered to be published in the District Gazette. Parchas were issued to the landless persons by the Collector.

5. The petitioners have asserted that the order of the Collector granting Parchas to landless persons had not been given effect to. The petitioners continued to be in possession over the land in question.

6. Some of the parcha-holders have intervened in this application stating that they got possession after the land was declared surplus.

7. In C.W.J.C. No. 6554 of 1992, the grievance of the petitioners, who are not the purchasers but co-sharers, is that they were entitled to separate notice of the proceedings which has caused prejudice to them since their lands have been declared surplus in the hands of Sudina Devi.

8. The petitioners have impugned the legality of the proceedings on the ground that no notice was issued to the petitioners or to the predecessors in interest before the initiation of the land ceiling case and the petitioners land have been shown in the name of Sudina Devi, wife of Jageshwar Jha, even though the said Jageshwar Jha had been left with no land out of 10 acres 45 decimals purchased by sale-deed dated 25-8-1937. It is thus apparent that the land-holders had suppressed the fact that he had sold large area of the land to the petitioners and others. The petitioners came to know of the result of the proceeding in the land ceiling case only when the persons in whose favour Parchas had been issued started claiming the land of the petitioners. The petitioner made inquiry and learnt about the true state of affairs.

9. Dr. Sachchidan and Jha, learned Counsel appearing on behalf of the petitioners submitted that the land in question was purchased by the father and uncle of the petitioner No. 2 in the year 1960 and their names have been mutated in the Government Sherista and even then no notice was given to the father and uncle of petitioner No. 2, who had purchased the lands in question by sale-deeds contained in Annexure-2 series. Petitioner No. 1 had purchased the land after 9-9-1970 without the permission of the Collector as required under Sub-section (2) of Section 5 of the Land Ceiling Act. Dr. Jha has submitted that this provision is to applicable in the case of the land-holder since he was not possession any land in excess of the ceiling area. It is not necessary to decide this question in the present case.

10. There is not provision in the Land Ceiling Act to issue notice to the purchaser but it is implied that the Collector before starting any proceeding should have ascertained from the land-holders whether they had sold the lands which were subject matter of land ceiling proceeding. Land holders had not furnished the details of lands transferred by him intentionally. The petitioners would have approached the State Government under Section 45-B of the Act to reopen the proceeding on the grounds on which initiation of land ceiling proceeding has been challenged in this Court.

11. Learned Counsel for the State submitted that the petitioner should have invoked the remedy under Section 45-B of the Act before coming to this Court. It is true that the petitioners could have moved the State Government to re-open the proceeding but since this writ application was entertained, it would not be in the interest of justice to non-suit the petitioners and direct them to file an application under Section 45-B of the Act to re-open the proceeding. It has been conceded by the Counsel for the State that no notice has been issued to the petitioners. It was, however, contended that the persons to whom parchas have been issued have assumed possession of lands and hence the petitioners are not entitled to any relief.

12. I am afraid this contention of the the State Counsel is wholly untenable. The order of the Collector suffers from illegality of the non-service of notice to the affected persons resulting in acquisition of their lands. The order is bad in law and the petitioners are entitled to relief since no notice was issued to the petitioners, and the land has been included in the final Gazette Notification.

13. In the result, both the writ applications are allowed, the impugned orders as contained in Annexures-7 and 8 are hereby quashed so far it relates to the lands of the petitioners. The matter is remitted to the Collector, Khagaria to re-open the proceeding so far it relates to the petitioners' land and after due notice to all persons concerned, decide the claim of the petitioners in accordance with law. The petitioners are directed to appear before the Collector within six weeks from today along with a copy of this order and a copy of the writ application so that the Collector may be able to appreciate the grievance of the petitioners in right

prospective. The proceeding should be disposed of within six months of production of a copy of this Order. It is open to the Parcha holder to intervene before the Collector. There shall be no order as to costs.

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