

Bibi Amrunnisan and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-23-1999

Judge : R.N. Sahay, J.

Appeal No. : C.W.J.C. Nos. 5040 and 5803 of 1992

Appellant : Bibi Amrunnisan and ors.

Respondent : State of Bihar and ors.

Judgement :

R.N. Sahay, J.

1. Both the writ applications at the instance of purchasers from the land-holders involve a common question of law and are being disposed of by this common order.

2. Admittedly the petitioners in each case had purchased land from the land-holders after 9-9-1970, Transfers were made by the land-holder in contravention of Section 5 (ii) of the Bihar Land Ceiling Act, 1961. It appears that the proceeding for determination of surplus land was initiated against the vendor of the petitioners without notice to the petitioners. It also appears that the land-holder did not disclose that he had transferred the land to any person. After conclusion of land ceiling proceeding, the Collector declared 47.50 acres land as surplus land of the land-holder and allowed him to retain 30 acres and odd. Gazette Notification under

Section 15(1) of the Act was published and the lands of the land-holders, namely, Chandra Madhav Prasad and Dina Nath Prasad were declared surplus.

3. The petitioners rushed to this Court and filed the present writ applications without approaching the Collector to re-open the proceeding.

4. Even if transfers made by the land-holders as in the present case is in contravention of Section 5 (ii) of the Act, Section 9(ii) of the Act comes to the aid of the petitioners which provides that any land transferred in accordance with or in contravention of Clause (ii) of Sub-section (1) of Sections 5, shall, to the extent of ceiling area admissible to the landholder, be deemed to have been selected by him for retention within the ceiling area. There is no dispute in the present case the land purchased by the petitioners are included in the surplus land of the land-holders.

5. In C.W.J.C. No. 5040 of 1992, the petitioners had purchased 2.73 acres of land by two sale-deeds. The petitioner in C.W.J.C. No. 5803 of 1995 had purchased 1.32 acres of land.

6. In my view, there will be no necessity of remitting the case and directing the Collector to re-open the matter. Both the writ applications are allowed with a direction to the Collector to exclude the lands purchased by the petitioners in each case from the ceiling area from the lands declared surplus i.e. 47.50 acres. The Gazette Notification (Annexure-2 in C.W.J.C. No. 5803 of 1995 and Annexure-1 in C.W.J.C. No. 5040 of 1992) is hereby quashed. The Collector East Champaran is directed to issue modified notification in accordance with law.