

A ASHOK KUMAR PANDEY & ORS.

v.

STATE OF BIHAR
(Civil Appeal No.7770 Of 2001)

MAY 9, 2008

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**[DR. ARIJIT PASAYAT, P. SATHASIVAM AND DR.
MUKUNDAKAM SHARMA JJ.]**

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Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961:

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s.45 – Re-opening of proceedings under – After 14 years – Challenge to – Held: On facts, not tenable – Case herein was re-opened after issuance of show cause notice and after hearing of objection of the land holders – In absence of any time limit, such action taken in order to ascertain the actual / eligible land holdings, could not be faulted with – Show cause notice was issued to the land holder and they were heard on the point of draft publication prior to passing of the order – Order regarding draft publication was passed after taking into consideration all the relevant facts.

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ss. 2(g), 5(iii), 9(2) – Land mortgaged in 1966 – And in 1972 transferred by the land-holders to the same mortgagees – Land Ceiling proceedings initiated under the Act – Whether the mortgaged lands, possession of which was handed over to the mortgagees by the mortgagor-land holders, could be included within lands of the land holders – Held: Mortgaged land is essentially considered as land of the land holder – Mortgage of the land in 1966 could not be considered as a transfer prior to the notified date i.e. 9-9-1970 – Lands were transferred by registered sale deed after 9-9-1970 and the title passed only thereafter – High Court was right in concluding that transfers made in 1972 having been made after 9-9-1970, with or without permission, be treated as lands selected by the land holders for purpose of retention of their lands within their

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ceiling units in terms of s.9(2).

Appellants, land-holders, mortgaged the lands in question in 1966 and in 1972 transferred the said lands to the same mortgagees. In 1975, Land Ceiling proceedings were initiated under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. After coming into force of the Act, no person could hold land beyond the ceiling limit after the appointed day i.e. 9-9-1970. Appellants, land-holders claimed exemption of the land sold to the mortgagees. An enquiry was contemplated under s.5(iii) of the Act. The transfers made to the mortgagees were found to be genuine and valid. The proceedings were thereafter dropped. No appeal, revision or review was filed against the same.

14 years later, the Revenue Authority re-opened the proceedings in exercise of power under s.45-B. It did not accept the transfers made in favour of the mortgagees, on the ground that the sale deeds were executed after 9-9-1970, and held that the transferred lands have to be included within the ceiling area to be retained by the Appellants land-holders. The order of the Revenue Authority was upheld by the High Court.

In appeal to this Court, it was contended on behalf of the Appellants that after inordinate delay of 14 years, the Collector was not justified in re-opening a concluded proceeding in exercise of power under s.45-B of the Act and that even if the transfers made by the land holders in the year 1972 in favour of the mortgagees are to be ignored on the ground that the same was without obtaining prior approval of the Collector in writing as required under s.5(ii) of the Act, still the mortgaged lands, the possession of which has been handed over to the mortgagees by the mortgagor-land holders, cannot be included within the lands of the land holders in view of the definition of "land holder" as defined in s.2(g) of the Act.

A Dismissing the appeal, the Court

B HELD: 1. Insofar as the first contention regarding re-opening of the case under s.45-B of the Act is concerned, it is seen that the District Collector, finding fault with the disposal of the case, re-opened the case after issuance of show cause notice and after hearing the objection of the land holders. A reading of the above provisions, mainly s.45-B, makes it clear that after affording an opportunity to the land holder, the Collector of the District (since omitted by Act No.8/97) or the State Government call for and examine any proceeding and direct the case to be re-opened and dispose of afresh. In absence of any time limit, the action taken by the Collector in order to ascertain the actual/eligible land holdings, cannot be faulted with. However, the said provision mandates that aggrieved person must be afforded an opportunity by way of show cause notice. It is seen from the order of the Additional Collector, the show cause notice was issued to the land holder and they were heard on the point of draft publication prior to passing of the order. The order further shows that the enquiry report was received from the Circle Officer, Belsand, regarding the partition taken place between the members of the family of the land holders. The order further shows that after taking into consideration all the relevant facts, the order regarding the draft publication was passed on 10.10.1995. Accordingly, contention of the appellants was rejected. [Para 8] [170-G, 171-A,D]

G 2. Coming to the other contention, the mortgaged land is essentially considered as the land of the land holder. In those circumstances, the mortgage of the land in 1966 cannot be considered as a transfer prior to 9.9.1970. Admittedly, the lands were transferred by registered sale deed after 9.9.1970 and the title has passed only thereafter. The High Court correctly concluded that transfers made on 2.8.1972 and 4.8.1972 having been made after 9.9.1970 with or without permission be treated as

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lands selected by the land holders for the purpose of retention of their lands within their ceiling units in terms of s.9(2) of the Act and dismissed their writ petition. [Paras 9, 12] [171-E,F,G, 172-E,F,G]

3. In view of s.45-B of the Act and the fact that the transfers of land in favour of mortgagees on 2.8.1972 and 4.8.1972 having been made after the notified date, i.e., 9.9.1970 without prior permission from the authority concerned, the same are to be treated as lands selected by the land holders for the purpose of retention of their lands within their ceiling units and consequently, the orders of Revenue Authorities cannot be faulted with. Also the show cause notice was issued to the appellants and thereafter after affording a further opportunity, an order was passed determining their surplus land. In view of the statutory provisions and of the fact that the appellants were afforded adequate opportunity before passing the order declaring certain lands as surplus lands and all the relevant aspects having been duly considered by the hierarchy of revenue authorities as well as the High Court, there is no valid ground for interference. [Paras 13, 14] [172-G, 173-A,B,C]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 7770 of 2001

From the Judgment & Order dated 29.1.1999 of the High Court of Judicature at Patna in L.P.A. No. 1173/1998

Lakshmi Raman Singh for the Appellants.

Gopal Singh and Manish Kumar for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Challenge in this appeal is the final judgment and order dated 29.1.1999 passed by the Division Bench of the High Court of Judicature at Patna in L.P.A. No. 1173 of 1998 whereby the High Court dismissed the said appeal of the appellants herein.

A 2. The brief facts in a nutshell are:

The appellants are the land-holders. On 11.2.1966, Ram Nandan Pandey, the father of the appellants, mortgaged 6 Bigha 15 Katha of land to one Md. Kuddus and subsequently on 4.8.1972, he transferred the said land along with some other
B land to the same mortgagee. On 11.02.1966, one Rajendra Pandey, the brother of Ram Nandan Pandey mortgaged 6 Bigha 4 Katha 10 Dhur land to one Md. Alam. After the death of Rajendra Pandey, his widow Chandrakala Devi transferred the said land to Md. Alam.

C 3. On 27.12.1975, a proceeding being Land Ceiling Case No.40 of 1975 was initiated against Ram Nandan Pandey under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act"). In the draft statement published under Section 10(2) of the Act, the land holders were shown in
D possession of 126.38 acres of Class IV land and after allowing three units for Ram Nandan Pandey, Smt. Chandrakala Devi – the widow of Rajendra Pandey and Ashok Kumar Pandey, 36.38 acres was shown as surplus land. The land holders filed objections against the said claiming, inter alia, one more separate
E unit for Arun Kumar Pandey and exemption of 12 Bigha 19 Katha 10 Dhur of land which were sold to the mortgagees – Md. Kuddus and Md. Alam respectively. An enquiry was contemplated under section 5(iii) of the Act and the transfers found to
F be genuine and valid as the transferees were found in actual physical and cultivating possession of the lands transferred and their names were also mutated in the revenue records of the Government. The transfers were also effected through registered documents and for a valuable consideration. They were
G also paying land revenue to the Government. After the enquiry on 24.4.1981, the Additional Collector, Sitamarhi held that the land holders were entitled to four units including one separate unit for Arun Kumar Pandey and the transfer of land in favour of Md. Kuddus and Md. Alam were genuine and valid transfers.
H Accordingly, on 5.5.1981, the Additional Collector having found

no surplus lands in possession of the land holders, dropped the proceeding. The State of Bihar did not prefer any appeal, revision or review against the order dated 24.4.1981 or against the order dated 5.5.1981 and those orders were allowed to become final. After dropping of the proceeding, the Ram Nandan Pandey and his sons transferred 31.41 ½ acres of land to different persons for their legal necessity. Smt. Chandrakala Devi and her daughters namely Usha Devi and Manju Devi transferred 29.24 acres of land to different persons for their legal necessity. In December, 1983, Ram Nandan Pandey died and by that time his third son Dhruv Kumar was a major. On 22.4.1993, a notice under Section 45 B of the Act was sent by the Collector, Sitamarhi to show cause as to why the case be not re-opened on the ground that 12 Bigha 19 Katha 10 Dhur of land transferred to Md. Kuddus and Md. Alam were illegally exempted as no previous permission in writing of the Collector was obtained and thus the transfers have been made with mala fide intention of defeating the object of the Act. On 16.8.1993, the land holders replied to the notice contending that the lands were rightly excluded after conducting proper enquiry and that order of exemption had become final as no appeal, revision or review was preferred by the State against those orders before any higher forum as prescribed under the provisions of the Act and that the matter cannot be re-opened. On 26.6.1995, the Collector, Sitamarhi re-opened the case in exercise of his power conferred under Section 45 B of the Act after more than 14 years. On reconsideration of the materials, the Collector transferred the same for disposal to the Court of Additional Collector, Sitamarhi. On 10.10.1995, the Additional Collector, Sitamarhi in Land Ceiling case No. 46/76/78/93 did not accept the two transfers made in favour of the mortgages-Md. Alam and Md. Kuddus respectively and after granting two units for Ashok Kumar Pandey and Arun Kumar Pandey and 20 acres of land for Dhruv Kumar Pandey, third son of Ram Nandan Pandey, declared 46.39 acres of land as surplus on the ground that the sale deed were executed after 9.9.1970 without obtaining prior permission of the Collector and therefore, the transferred lands have

A to be included within the ceiling area to be retained by the land-holders and ordered for draft publication of land. The appellants-land holders filed objections under Section 10(3) of the Act stating that the draft publication was not in conformity with the order of re-opening of the case and that the fishing enquiry is not permissible in law, that 31.42 ½ acres of land transferred after dropping of the proceeding out to have been excluded from the land of land holders, that Dhruv Kumar Pandey was entitled to a separate unit, that 5.91 ½ acres of land acquired by the State ought to be excluded from the land of the land holders, that 39.61 acres of land lying between two bundhs ought to be classified as Class V land and land belonging to other ought to be excluded from the land of the land holders. On 22.12.1995, the Additional Collector, Sitamarhi in Land Ceiling Case No. 40/75 78-93 came to the conclusion that it is not competent to examine the authority, jurisdiction and decision of the Collector to re-open the proceeding and that once the case is re-opened, the entire exercise has to be carried afresh and de novo. However, he exempted 0.90 acres of homestead land and 1.37 acres of land transferred before 9.9.1970 from the land of land holders. All other objections of land-holders were rejected and 24.11 acres of land was declared as surplus and the office was directed to take steps for publishing the final statement as contemplated under Section 11(1) of the Act. On 5.1.1996, final statement was published. Aggrieved by the order dated 22.12.1995, the appellants filed an appeal being Land Ceiling Appeal No.2 of 1996 and the same was rejected by the Collector, Sitamarhi on 3.6.1996. Being aggrieved by the said order, the appellants filed Revision No. 50 of 1996 before the Board of Revenue, Bihar, Patna and the same was also dismissed on 26.12.1997. Against that order, the appellants approached a single Judge of the Patna High Court by way of writ petition being C.W.J.C. No. 2912 of 1998 and the same was also dismissed on 10.9.1998. Again the appellants filed L.P.A. No. 1173 of 1998 before the Division Bench of the High Court and the same was also dismissed on 29.1.1999. Against the said order, the appellants preferred the above appeal before this Court.

4. Heard Mr. Lakshmi Raman Singh, learned counsel for the appellants and Mr. Gopal Singh, learned counsel appearing for the respondent-State. A

5. The only point for consideration in this appeal is whether the appellants have made out a case for interference in the impugned order of the Division Bench of the High Court and earlier orders of Revenue Authorities? B

6. Learned counsel appearing for the appellants mainly contended that after inordinate delay of 14 years, the Collector was not justified in re-opening a concluded proceeding in exercise of power under Section 45-B of the Act. He also contended that even if the transfers made by the land holders in the year 1972 in favour of the mortgagees are to be ignored on the ground that the same was without obtaining prior approval of the Collector in writing as required under Section 5(ii) of the Act, still the mortgaged lands, the possession of which has been handed over to the mortgagees by the mortgagor-land holders, cannot be included within the lands of the land holders in view of the definition of "land holder" as defined in Section 2(g) of the Act. C D

7. In order to appreciate the above contentions, it is useful to refer certain provisions from the Act: E

"Section 2(ee) – "Family" means and includes a person, his or her spouse and minor children; F

Explanation I.- In this clause the word "person" includes any company, institution, trust, association, or body of individuals whether incorporated or not.

Explanation II.- The personal law shall not be relevant or be taken into consideration in determining the composition of the family for the purposes of the Act; G

"Section 2(g) – 'land holder' means a family as defined in clause (ee) holding land as *raiyat* or as under-*raiyat* or a mortgagee of land in possession or holding land H

A permanently settled by Government or lessee of land not resumable by Government.”

B **“Section 9(2) –** Where the land held by the land-holder includes land transferred by him in accordance with or in contravention of the provisions of clause (ii) of sub-section (1) of section 5, the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 5 shall, to the extent of the ceiling area admissible to the land holder, be deemed to have been selected by him for retention within the ceiling area, and where the total area of such land is less than the ceiling area admissible to him, the land holders shall select the balance of ceiling area from his remaining land:

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D Provided that where the land so transferred in accordance with or in contravention of clause (ii) of sub-section (1) of Section 3 is equal to or more than the ceiling area admissible to him and if because of the selection under sub-section (2) the land holder’s homestead cannot be trained within his ceiling area, the land holder may be permitted to hold his homestead subject to a maximum limit of two acres only.”

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F **“Section 45-B – State Government to call for and examine records -** The State Government [or the Collector of the district who may be authorized in his behalf]* may, at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act.

G * Omitted by Act 8/97.”

H 8. Insofar as the first contention regarding re-opening of the case under Section 45-B of the Act is concerned, it is seen that the District Collector, finding fault with the disposal of the case, re-opened the case after issuance of show cause notice

and after hearing the objection of the land holders. A reading of the above provisions, mainly Section 45-B, makes it clear that after affording an opportunity to the land holder, the Collector of the District (since omitted by Act No.8/97) or the State Government call for and examine any proceeding and direct the case to be re-opened and dispose of afresh. In absence of any time limit, the action taken by the Collector in order to ascertain the actual/eligible land holdings, cannot be faulted with. However, the said provision mandates that aggrieved person must be afforded an opportunity by way of show cause notice. It is seen from the order of the Additional Collector, the show cause notice was issued to the land holder and they were heard on the point of draft publication prior to passing of the order. The order further shows that the enquiry report was received from the Circle Officer, Belsand, regarding the partition taken place between the members of the family of the land holders. The order further shows that after taking into consideration all the relevant facts, the order regarding the draft publication was passed on 10.10.1995. Accordingly, we reject the contention of the appellants.

9. Coming to the other contention, it is seen from the materials that Ram Nandan Pandey and Rajendra Pandey on 11.2.1966 had mortgaged 6 Bigha 15 Katha and 6 Bigha 4 Katha 10 Dhur to Md. Kuddus and Md. Alam respectively and both the land holders executed registered sale deeds in favour of the mortgagees on 4.8.1972 and 2.8.1972 respectively. It further shows that at the time of passing of the order of draft publication, the issue had already been discussed at length and the title of the land was not transferred. The mortgaged land is essentially considered as the land of the land holder. In those circumstances, the mortgage of the land in 1966 cannot be considered as a transfer prior to 9.9.1970. Admittedly, the lands were transferred by registered sale deed after 9.9.1970 and the title has passed only thereafter.

10. As per the provisions of Section 18 read with Section 2(eee) of the Act, Ashok Kumar Pandey and Arun Kumar Pandey

A were allowed to retain 30 acres of Class IV land each by treating them major on 9.9.1970 and both the land holders have inherited 10 acres each after the death of their father. After coming into force of the Act, no person can hold the land beyond the ceiling limit after the appointed day i.e., 9.9.1970. It is further
B seen that Ashok Kumar Pandey has inherited 10 acres of land from his father and after the death of his father he was holding 40 acres of land. Similar situation was there in the case of Arun Kumar Pandey. Taking note of all these relevant materials, the Additional Collector, by proceedings dated 22.12.1995, arrived
C at a conclusion that an extent of 24.11 acres of land is left as surplus and declared the same as surplus land.

11. The abovementioned order of the Additional Collector was duly considered by the Collector and by order dated 3.6.1996 after finding no error, he refused to interfere and dismissed the appeal. The revision filed against the order of the
D Collector was heard by the Board of Revenue. The Additional Member of the Board also considered the relevant materials including the orders passed by the Additional Collector, Collector and other documents and concurred with the decision. In
E fact, the Board has permitted the appellants herein to approach the Collector for exercise of option for retaining the land of their choice in accordance with law.

12. Dissatisfied with the order of the Revenue Authority, the appellants took the matter to the High Court. The learned
F single Judge correctly concluded that transfers made on 2.8.1972 and 4.8.1972 having been made after 9.9.1970 with or without permission be treated as lands selected by the land holders for the purpose of retention of their lands within their ceiling units in terms of Section 9(2) of the Act and dismissed
G their writ petition. The said order of the learned single Judge was confirmed by the Division Bench.

13. As pointed out earlier, in view of Section 45-B of the Act and the fact that the transfers of land in favour of mortgagees on 2.8.1972 and 4.8.1972 having been made after the no-
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tified date, i.e., 9.9.1970 without prior permission from the authority concerned, the same are to be treated as lands selected by the land holders for the purpose of retention of their lands within their ceiling units and consequently, the orders of Revenue Authorities cannot be faulted with. It is also not in dispute that the show cause notice was issued to the appellants and thereafter after affording a further opportunity, an order was passed determining their surplus land.

14. In view of the statutory provisions and of the fact that the appellants were afforded adequate opportunity before passing the order declaring certain lands as surplus lands and all the relevant aspects having been duly considered by the hierarchy of revenue authorities as well as the High Court, we do not find any valid ground for interference. Consequently, the appeal fails and the same is dismissed. There shall be no order as to costs.

B.B.B.

Appeal dismissed.