IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11112 of 2000

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1. Pushspa Rai @ Pushpa Kumari D/o Late Lal Bahadur Rai W/o Shri Anil Prasad Sinha resident of village Masnu Dih PS Domchach, District Kodarma
2. Neelam Rai @ Neelam Kumari D/o Late Lal Bahadur Rai W/o Colonel Anil kumar Rai resident of village Channi PS Bhanwarool, District Gajipur (UP) presently residing at Kalka, Himachal Pradesh

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Rohtas at Sasaram
3. The Additional Collector, Rohtas, Sasaram
4. Additional Member, Board of Revenue, Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Advocate
For the Respondent/s	:	Mr. Mukund Mohan Jha, AC to GP 27
For the Intervenors	:	Mr. Ramakant Sharma, Sr, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
Date : 09-12-2021

1. Heard learned counsel for the petitioners Sri Jitendra Kishore Verma and learned counsel for the respondents Sri Mukund Mohan Jha, learned AC to GP 27 and Sri Ramakant Sharma, learned senior counsel for the Intervenors.

2. The present writ application has been filed seeking quashing of Resolution dated 31.5.1996 (Annexure 5) passed by Sri M. Kumar, IAS, Addl. Member, Board of Revenue, Bihar, Patna in Revision Case no. 17/1994 whereby Addl. Member Board of Revenue remanded the Ceiling Case no. 102/1965 to the trial court for passing a fresh order after

determining age of the petitioners, further for quashing the District Gazette Notification no. 95 dated 23.6.1993 published by the Collector, Rohtas by which land of the petitioners has been included in the land of the land holders.

3. Learned counsel for the petitioners submits that issue which arises for consideration in the present case is whether the Addl. Member Board of Revenue while passing the order dated 31.5.1996 exceeded his jurisdiction, when issue had already attained finality in view of order dated 30.4.1989, passed by Addl. Member Board of Revenue in Revision Case no. 109/1988.

4. Learned counsel for the petitioners submits that certain relevant facts as culled out from the writ petition are necessary to be stated for arriving at just conclusion for deciding the case. Learned counsel submits that one Kedar Nath Rai had three sons namely, Jang Bahadur Rai, Lal Bahadur Rai and Tej Bahadur Rai. It is submitted that Land Ceiling Case no. 102/1965 was initiated against Jang Bahadur Rai, the land holder and uncle of the petitioners, in ceiling proceeding the land holder was shown to have possessed 214.22 ½ acres of class III land, further the verification report pointed out that there are six adult members in the family and also gave details

of alienation of land by gift and sale. Learned counsel for the petitioners submits that SDO, Bhabua allowed four units to the land holder, as such the land holder was allowed to retain 100 acre of land and 114.22 ½ acres of land was declared surplus. Thereafter, land holder preferred Ceiling Appeal no. 8/1984 before the Collector, Rohtas but the same was rejected by order dated 10.2.1984. After the Ceiling Appeal no. 8/1984 of the land holder came to be dismissed by order dated 10.2.1984 passed by the Collector, Rohtas, land holder filed Revision Case no. 104/1984 before the Board of Revenue which was allowed by order dated 13.8.1985 and the matter was remanded back to the Collector for disposal in accordance with law, accordingly, file was transferred to the Addl. Collector, Rohtas. Learned counsel submits that when the matter was remanded back by order dated 13.8.1985, petitioners appeared in the case and filed their objection stating that 19.84 acres of lands were gifted to the petitioner no.1 by two registered gift deeds dated 16.1.1962 and 18.4.1963 respectively by her father and grand father and the land gifted pertained to plot no. 477 khata no. 40 and plot nos. 478 and 489 khata no. 31 and plot nos. 382, 391, 344, 380 and 346 of khata no. 109. Learned counsel submits that thereafter 6.02 acres of lands pertaining to plot nos. 355, 376, 390, 367 and 389 of khata no. 109 was also gifted to petitioner no.2 by her father by gift deed dated 18.4.1963, it is submitted that after the lands were gifted the same came in possession of the petitioners and land was mutated, Jamabandi was created and they were paying revenue to the government. Learned counsel further submits that apart from objection raised by these petitioners, the land holder also raised objection before Addl. Collector stating that 3.30 acres of land was gifted to Ramgarh college and 8.25 acres of land was transferred to Pradhlad Rai much prior to commencement of the Act.

5. Learned counsel for the petitioners submits that the Addl. Collector disposed of the appeal by order dated 8.3.1988 rejecting the claim of the petitioners but allowed the objection of the land holder regarding gift in favour of Ramgarh college and Prahlad Rai and accordingly, 88.23 acres of land (Annexure 1) of land holder was declared surplus. Learned counsel submits that against the order dated 8.3.1988, Jang Bahadur Rai filed Revision Case no. 77/1988 and the petitioners filed Revision Case no. 109/1988 before the Board of Revenue, Patna. It is submitted that learned Addl. Member Board of Revenue after hearing the parties was pleased to allow the Revision Case no. 109/1988 (filed by the petitioners) and

dismissed the Revision Case no. 77/1988 (filed by Jang Bahadur Rai) by order dated 30.4.1989 (Annexure 2) and directed the authority to exclude the land of the petitioners from ceiling proceeding as land was validly transferred to the petitioners under the existing law and it was further held that the land sold to the petitioners was rightly not excluded from the ceiling proceeding.

6. Learned counsel for the petitioners thus submits that in view of order dated 30.4.1989 in Revision Case no. 109/1988 it was conclusively decided and held that land gifted to the petitioners as aforesaid was valid gift and the same should not have been included in the ceiling proceeding, learned counsel submits that neither the State nor anyone else challenged the order dated 30.4.1989 in Revision Case no. 109/1988 before any superior forum and thus, in absence of challenge, order dated 30.4.1989 attained finality.

7. Learned counsel for the petitioners submits that the petitioners in pursuance of the order dated 30.4.1989 in Revision Case no. 109/1988 filed an application before the Addl. Collector, Rohtas for excluding land of the petitioners in terms of order order dated 30.4.1989 passed by the Board of Revenue, but the Collector, Rohtas for the reason best known to

him and in complete breach of order dated 30.4.1989 of the Board of Revenue made final publication in the official Gazette of the District showing that 88.23 acres of land as surplus in Gazette Notification no. 95 dated 23.6.1993 and the same was communicated to the petitioners vide notice dated 30.8.1993. Learned counsel submits that the act of the Collector in flouting the order of the Board of Revenue amounted to insubordination, more so when order dated 30.4.1989 in Revision Case no. 109/1988 had attained finality in absence of challenge. It is further submitted that petitioners against Gazette Notification no. 95 dated 23.6.1993 filed Revision Case no. 17/1994 before the Board of Revenue, Bihar, Patna, but the same was dismissed in default on 17.5.1995, accordingly petitioners filed restoration application on 23.2.1996 along with an application for condonation of delay on 22.4.1996. It is submitted that restoration application along with limitation application were heard by the Addl. Member Board of Revenue and order was reserved on 20.5.1996. Learned counsel submits that Revision Case no. 17/1994 was not heard on merit, rather it was only the restoration application along with limitation application, which were heard as aforesaid and the order was reserved. Learned counsel submits that after the order was reserved on 20.5.1996 after hearing restoration application along with limitation application, no information came to petitioners with regard to the case and whenever they enquired, they were informed that the order is still reserved. It was in June, 2000 that the petitioners came to know that final order dated 31.5.1996 was passed in Revision Case no. 17/1994 by the Addl. Member Board of Revenue whereby the matter was remanded back to the trial court for making enquiry about the age of the petitioners. Learned counsel submits that revision application was not heard on merit as aforesaid, rather Addl. Member Board of Revenue had only heard the restoration application along with limitation petition and order with respect to the same was reserved on 20.5.1996 but when they came to know about the order dated 31.5.1996, the same came as a shock to the petitioners as matter which had attained finality was again remanded back to the trial court for making enquiry with respect to the age of the petitioners to verify as to whether the gift made earlier was in accordance with law or not.

8. Learned counsel thus, submits that in view of the facts stated herein-above, it is clear that Addl. Member, Board of Revenue exceeded his jurisdiction while passing the order dated 31.5.1996, as an issue which stood concluded by a

competent authority and had attained finality in absence of challenge could not have been reopened, further the order was also bad for the reason that it was passed in complete breach of principle of natural justice as opportunity of hearing in revision case was never given to the petitioners. Learned counsel further submits that the order dated 31.5.1996 in Revision Case no. 17/1994 amounted to reviewing the order dated 30.4.1989 in Revision Case no. 109/1988, which was completely impermissible in law for the reason that quasi judicial authority do not have power to review their order until and unless the Act, Rule or Statute provides for the same but the Bihar Land Ceiling Act, 1961 does not contain any provision for review. The learned counsel for the petitioners relies on an order dated 25.9.1987 in the case of Dr. Smt Kuntesh Gupta vs. Management of Hindu Kanya Mahavidayalaya, Sitapur (U.P.) and ors, reported in AIR 1987 SC 2186 to contend that quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction.

9. This case was admitted for hearing by order dated 8.11.2000 and on 20.1.2011 an intervenor application came to be filed on behalf of alleged Parcha holders. Learned

senior counsel Sri Ramakant Sharma appearing on behalf of Parcha holders submits that intervenor application till date has not been allowed as such the intervenor application be allowed and the opportunity to the Parcha holder be given to contest the case, on which learned counsel for the petitioners submits that in the event if writ petition is allowed, Parcha holders will have no right in respect of land to which they claim that Parcha had been issued in their favour and in the event if writ petition is dismissed, the right of Parcha holders will automatically revive as such for the present parcha holders are not necessary party to the present writ petition.

10. Considering the submission on behalf of learned counsel for the petitioners, intervenor application is rejected, as the learned counsel for the petitioners rightly contends that the fate of paracha holders depends on the final outcome of the case.

11. Though the case was admitted in the year 2000 but till date State has not filed any counter affidavit rebutting the pleadings made by the petitioners in the present writ application, in absence of counter affidavit controverting the pleadings of the writ petitioners, stand of the writ petitioners in writ petition is admitted by applying the *doctrine of non-*

traverse.

12. After hearing learned counsel for the petitioners, the court comes to a considered conclusion that the order dated 31.5.1996 in Revision Case no. 17/1994 passed by Addl. Member, Board of Revenue was beyond his jurisdiction as the Addl. Member Board of Revenue had no jurisdiction to pass a fresh order when earlier order dated 30.4.1989 in Revision Case no. 109/1988 had attained finality in absence of any challenge, as such Addl. Member, Board of Revenue exceeded his jurisdiction in passing the order dated 31.5.1996, as it amounted to reviewing the earlier order dated 30.4.1989 when the Bihar Land Ceiling Act, 1961 does not provide for review. The Hon'ble Supreme Court in the case of Smt Kantesh Gupta (supra) has clearly held at para 11 that a quasi judicial authority can not review its own order unless the power of review is expressly conferred on it by the Statute under which it derives its jurisdiction. Accordingly, the order dated 31.5.1996 in Revision Case no. 17/1994 stands quashed.

13. Since the order dated 31.5.1996 in Revision Case no. 17/1994 stands quashed, accordingly, the District Gazette Notification no. 95 dated 23.6.1993 also stands quashed and the Collector, Rohtas is directed to forthwith exclude the

lands of the petitioners from Ceiling Case no. 102/1965 and thereafter issue fresh District gazette notification in accordance with law.

14. The writ application is allowed.

(Satyavrat Verma, J)

s.hassan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.12.2021
Transmission Date	