

## Shivanand Mandal @ Shiv Nandan Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Oct. 25, 2010

**Acts Referred:** Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 " Section 11(1), 15(1), 5

**Citation:** (2011) 1 PLJR 495

**Hon'ble Judges:** Sheema Ali Khan, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

Sheema Ali Khan, J.

The Petitioner is aggrieved by the order dated 31.1.2004 contained in Annexure-5.

2. The facts are that the Petitioner had purchased a piece of land, measuring 2 acres 41 decimals situated in Village-Kacheri Balua on 7.4.1989

from one Mostt. Shakuntala Devi. A land ceiling proceeding was started against Gangadhar Jha, who is son of Shakuntala Devi in which a chunk

of land was declared to be surplus. The lands of the Petitioner since they were purchased after the cut-off date as described u/s 5 of the Bihar

Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Ceiling Act) were included in

the units allocated to the landholder as it would be apparent from the gazette notification u/s 11(1) of the Ceiling Act. Subsequently, when the

surplus lands were notified u/s 15(1) of the Ceiling Act, the lands purchased by the Petitioner did not find place in the said notification. The

complaint of the Petitioner is that although the lands were not acquired by the State Government u/s 15(1) of the Ceiling Act, purchas have been

distributed to Respondents 10, 11 and 12 who have forcibly taken possession of the lands in question from the Petitioner. The Petitioner

approached the Collector of the district and his application was dismissed on the ground that the sale deed on which the Petitioner basis his title

was executed beyond the cut off date i.e. 9.9.1970.

3. Being aggrieved by the order of the Collector, the Petitioner moved before the Additional Member, Board of Revenue. The Additional

Member, Board of Revenue after observing that the lands in question have wrongly been distributed to purchadharis, has directed that the

Petitioner should file an appeal against the order of the Collector before the Commissioner. However, while doing so, the Additional Member,

Board of Revenue has virtually recorded his own opinion on the merits of the case which is quite erroneous and unfounded. The Additional

Member, Board of Revenue has held that the lands would be included in the unit of the landholder and thus it was incumbent upon the landholder

to object to the distribution of the lands to the purchadharis.

4. This finding, in my view, is completely erroneous. The landholder can hardly be interested in protecting the rights of the Petitioner, as in any

event, he would not have got possession of the lands in question, since he had already sold the lands to the Petitioner. It is the Petitioner, who is the

vendee from the landholder, who would have the right to protect his interest in a proceeding under the Ceiling Act. Once, there is a declaration that

the lands purchased by the Petitioner would come within the Ceiling unit of the landholder, the Petitioner would have the right to remain in

possession of the land so purchased by him by virtue of the gazette notification u/s 11(1) of the Ceiling Act. The landholder could have only tried to

explain that the sale in question was not for the purposes of defeating the provisions of the Ceiling Act. No other right would accrue to the

landholder vis-a-vis possession and title of the land in question. Much less, can the State Government acquire these lands without notifying the

lands u/s 15(1) of the Ceiling Act and as such, the finding of ne Additional Member, Board of Revenue, that the Petitioner does not have any right

in the matter is set aside. I quash the reasons aforesaid.

5. The Petitioner would have the liberty to move before the Commissioner by filing an appeal mainly for the purpose of establishing his possession.

At this stage, I may point out that although notices were sent to the purchadharis, to appear and object to this writ application, no steps have been

taken by them to appear and defend their rights. However, if, in case the Petitioner files an appeal within a period of six weeks from the date of

receipt of a copy of this order, the concerned authority ought to issue notice and ensure that it is validly served through the Officer-in-Charge of

Sarsi Police Station or through the Circle Officer, Incharge of Village-Kachery Balua in the district of Purnea.

6. The appeal may be disposed of within a period of six months of valid service of notice to the purchadharis.

7. This writ application is disposed of with the aforesaid observations and directions.