

# STUDIES ON CEILING LAWS

**C. Ashokvardhan**



**CENTRE FOR RURAL STUDIES**  
**Lal Bahadur Shastri National Academy of Administration**  
**Mussoorie - 248 179 (Uttaranchal)**

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**CASE STUDIES FROM BIHAR**

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Presented to Shri Mukund Prasad, IAS (Retd.), Principal Secretary to Chief Minister, Bihar for all his inspiration in the study and analysis of revenue laws and land reforms in the country.

## FOREWORD

**D. S. MATHUR**  
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**Director**  
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The implementation of land ceiling programmes in the country has registered only a moderate success. A large gap remains in the estimated surplus land and declared surplus in various states. There were instances of transfer of lands just before the cut off date by landowners to circumvent the land ceiling provisions. Moreover, bulk of the area declared surplus is under litigation. Surplus lands even though acquired could not be distributed in many cases, the same being unirrigated or even unfit for cultivation.

A major portion of the lands in many states initially assumed surplus were released to the landowners mostly on the pretext of partition to the near relations. Most of such partitions were undertaken just before the cut off date in order to defeat the ceiling intent. The extent released invariably belonged to big landowners.

The socio-economic impact of the allotted land has been of a mixed kind. There has been marginal improvement in the socio-economic conditions of the allottees. However, economic assistance from the rural development programmes was not forthcoming. In numerous cases the allottees have not even come into physical possession of the allotted land.

The huge time span between the institution and disposal of the ceiling cases lends support to the general criticism that administrative and political will was lacking. There is no dearth of cases in which landowners take recourse to appeals, revisions and writs. Quick disposal of the pending cases is necessary to further the objectives of land ceiling laws. There may also be need to re-open some closed cases, so that lands in excess of ceiling limit are declared surplus after an appropriate application of objective yardsticks. Further, physical verification of the quality of land declared surplus is necessary to ensure quality distribution of lands among the allottees.

The average extent of land allotted has, by and large, not been economically viable and hence the allotment has been able to only meet partially the subsistence requirements of the beneficiaries.

The present volume is a compilation of the gist of some judgements delivered by the author during his stint in the Board of Revenue, Bihar. The legal framework even though state-specific, is common to many other states. The case study method to explain the intricacies of a cumbersome legal procedure is a novel means of approaching the subject. It sets in brief the perspective of a long drawn out case, tends to catch the basic facts of the case and the essence of the law points involved, summarises the respective stand taken by the landholder and the counsel for the state, and finally gives a gist of the order passed, explaining the rationale for the same.

The author Dr. C. Ashokvardhan deserves compliments for presenting a rather difficult theme in all its ramifications in a summary and lucid style. It is to be hoped, the work will fill a gap in training input on the subject and also give a fillip to adopting the same case study method in approaching other related themes in the land reforms and land management sectors.

**D. S. MATHUR**

## INTRODUCTION

**MANOJ AHUJA**  
**IAS**

**Coordinator cum Vice Chairman**  
**Centre for Rural Studies**  
**LBS National Academy of**  
**Administration, Mussoorie**

The Academy, in general and the Centre for Rural Studies in particular, will be looking forward to Dr. Ashokvardhan's continued interest in the field of land reforms and to his active association with the Academy and its objectives.

**MANOJ AHUJA**

Generally speaking, the ceiling laws on agricultural holdings have followed a common pattern across the various states. Yet there are variations in some of the important aspects such as the definition of family, ceiling limit, exempted categories, date of retrospective effect, rate of compensation etc. The extent of the availability of the ceiling surplus area for distribution among weaker sections of the people largely depends upon the definitions adopted by the states for a family, the ceiling area and exemptions.

Both the enactment of the ceiling law and its implementation leave much to be desired. The high levels of ceiling, numerous exemptions and widespread transfers, both legal and illegal, would have anyway led to a drastic reduction in the area of land that could be declared as surplus. Alert landowners disposed off the surplus land by resorting to partitions, transfers and a variety of other devices. Orchards were planted overnight and co-operative farms or other exempted categories of farms were established in great hurry. Formation of fake trusts for religious, educational and other purposes helped vested interests circumvent the process of law in a big way.

Given the complexities of the law and large scale evasion of whatever imperfect legal framework that holds good, it is quite an uphill task for any court of law to reach at the truth of the matter.

Given his strong revenue and land reforms background both as a trainer and as a practising administrator, Dr. C. Ashokvardhan has evinced once again his capability of presenting a rather complex theme in as lucid manner as possible. His earlier publications entitled 'Tenancy Reforms Re-visited' and 'Readings in Land Reforms' remain the guide- post for the fresh trainees in the Academy. This time he has chosen the case study method, which hopefully will bring forth further studies on related themes.

## ACKNOWLEDGEMENT

This slim volume comprises 27 case studies on cases relating to ceiling on agricultural land-holdings, that were disposed off by me as Additional Member, Board of Revenue, Bihar. I used to pass fairly comprehensive orders. The enclosed case studies are a gist of the same. I have taken special care that each one of the case studies incorporates the following sections:

1. A brief history/ background of the case
2. The case of the petitioner
3. The case of the state
4. The stand taken by the original/ appellate courts
5. My own findings/ appreciation
6. My Order/Judgment

While preparing the extract of my Judgments, I have tried to cover the complex legal issues in as lucid and readable manner as I could, keeping in view the fact that while the IAS Officer Trainees will have the innate capabilities to grasp, in view of an absence of legal back-up till date, their interests will be best subserved if the technicalities are presented before them in a language they all know or might follow.

I may venture to suggest that the Centre for Rural Studies, LBS National Academy of Administration would like to treat this collection as the first in CASE STUDIES IN LAND REFORMS SERIES. The other collections may be addressed to tribal land, forest land, tenancy, land market and the like, all the major themes being covered through the case study method. I do hope the publications under the series will prove to be a landmark series brought out by the CRS. There are evidently two routes to developing an understanding of the subject; one through the shelf of heavy volumes that obviously make a rather heavy reading and the route going the Aesop's Fables way, teaching through palatable stories.

The present route and the presentation owe inception to Shri D. S. Mathur, IAS, Director and Shri Manoj Ahuja, IAS, Coordinator-cum-Vice Chairman, CRS, LBSNAA, Mussoorie. I express my sincere thanks and gratitude to them for lending me an opportunity to unfold certain layers of the land reforms scenario through the case study method.

This volume would not have reached the reader in its present shape, had it not got a careful touch and appreciation of Shri Subhansu Tripathy, Assistant Professor and Dr. A.P. Singh, Research Associate, CRS of the Academy. They have enabled me to visit the Academy frequently and use the stupendous volume of reading material available there.

Lastly, it will be difficult to ignore and forget the efforts of the staff of the CRS in the publication of this volume. I owe a special debt of obligation to every one on the staff over there. I wish to acknowledge, in particular, the fast and flawless computer type-setting by Shri Samar Singh Kashyap of the C.R.S.

**C. ASHOKVARDHAN**

## **ABBREVIATIONS**

<b>AC</b>	Additional Collector
<b>AGP</b>	Assistant Government Pleader
<b>BoR</b>	Board of Revenue
<b>CO</b>	Circle Officer
<b>DCLR</b>	Deputy Collector, Land Reforms
<b>DoB</b>	Date of Birth
<b>DP</b>	Draft Publication
<b>FP</b>	Final Publication
<b>GP</b>	Government Pleader
<b>JB</b>	Jamabandi
<b>LC Case</b>	Land Ceiling Case
<b>LCR</b>	Lower Court's Record
<b>LH</b>	Land Holder
<b>RA</b>	Revenue Appeal
<b>RM</b>	Revenue Miscellaneous
<b>RoR</b>	Record of Rights
<b>SDO</b>	Sub Divisional Officer
<b>U/S</b>	Under Section
<b>Vs</b>	Versus
<b>VOS</b>	Vide Order Sheet

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**STUDIES ON CEILING LAWS**  
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## THE LEGAL FRAMEWORK IN BIHAR

### THE BIHAR LAND REFORMS (FIXATION OF CEILING AREA AND ACQUISITION OF SURPLUS LAND) ACT, 1961

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter called the Act, mainly provides for the fixation of ceiling, restrictions on subletting, the acquisition of the status of raiyats by certain under raiyats and the acquisition of surplus land by the State.

#### A Short History of the Legislation

For reducing inequalities in the ownership of agricultural land as a measure of agrarian reform, the first step taken was the introduction of the Bihar Agricultural Lands (Ceiling and Management) Bill, 1955. The bill underwent changes in the following years. In 1959, the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Bill replaced the draft Bill of 1955. After having been passed by the State Legislature in 1961 it came as the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, which was assented to by the President of India on 8<sup>th</sup> March, 1962. The assent was first published in the extraordinary issue of the Bihar Gazette dated the 19<sup>th</sup> April, 1962.

The Act was amended at different points of time.

#### Salient Features of the Act

1. The Act fixes the 9<sup>th</sup> of September 1970 as the appointed day. The computation of the ceiling area is with reference to the position as availing on the appointed day.

2. The unit of ceiling is the family of a landholder. A family has been defined as a person, his or her spouse and minor children. A person in order to claim a unit has to be a major on the appointed day. Minor child means a person having not completed eighteen years of age on the appointed day. Personal law is not relevant in determining the composition of the family for the purposes of the Act.

For the fixation of the ceiling area of a family all lands owned or held individually by the members of a family or jointly by some or all of them, shall be deemed to be held by the family. Thus lands owned or held individually either by the husband or wife or any minor child shall be taken together for the purpose of the computation of the ceiling area. But the lands held by the major children cannot be brought within the fold of the family. All such major children or other major members, who own or hold land, are entitled to be treated as separate unit irrespective of the fact whether there has been a partition in the original family. A married daughter does not remain a member of her parental family. On marriage she constitutes a family with her husband.

#### 3. Transfers of Lands by Landholders

- (i) Transfer of lands made prior to 22.10.1959 is beyond the scope of enquiry. The total area of land held by a landholder on 22<sup>nd</sup> day of October, 1959 should be found out first.
- (ii) The Act provides for enquiry with regard to the genuineness of transfers made by a landholder after 22<sup>nd</sup> day of October, 1959 till the appointed day of 9<sup>th</sup> September, 1970 and if any transfer on dates in between the 22<sup>nd</sup> day of October and the 9<sup>th</sup> September, 1970 is found not genuine or to have been

made for the purpose of defeating the provisions of the Act the same is required to be annulled.

- (iii) Transfers of lands made after the 9<sup>th</sup> September 1970 are to be ignored completely.

4. Transfers on dates in between 22.10.1959 and 9.9.1970 which are annulled and also the transfers on dates after 9.9.1970 which are ignored, play a very important role in the allotment of lands to a landholder within his entitlement.

In the case of post 9.9.1970 transfers the entire land covered by such transfers will be kept within the unit area admissible to the landholder.

In case if there are only transfers on dates in between 22.10.1959 and 9.9.1970 which are annulled and there is no transfer after 9.9.1970, then to the extent of fifty percent of the ceiling area admissible to the landholder, lands covered by the annulled transfers will be allotted and the landholder will be free to select the remaining fifty percent out of the left over other lands.

Where, however, the lands held by the landholder include lands covered by annulled transfers (on dates between 22.10.1959 and 9.9.1970) and also transfers after 9.9.1970, the lands covered by transfers after 9.9.1970 will be allotted within his select area, the remaining land to the extent of fifty percent out of the lands covered by annulled transfers on dates between 22.10.1959 and 9.9.1970 and the balance will be selected by him out of his remaining lands.

## 5. Transfers by Gifts

- (i) Initially a landholder was given concession for making transfer of lands till the commencement of the Act or within

one year thereafter by way of gift to his son, daughter, children of his son or daughter or to such other person or persons, who would have inherited such lands or would have been entitled to a share therein had the landholder died intestate in respect thereof at midnight between the date of the commencement of the Act and the day just preceding such date. A restriction on this concession was that by the transfer the total land held by the donee should not exceed the ceiling area he can hold.

- (ii) Subsequently, amendments were made in the Act by the Bihar Ordinance No. 113 of 1971 and 64 of 1972. By each of the aforementioned ordinances three months time each was allowed enabling landholders governed by any law other than the Mitakshara school of Hindu law to make transfers by way of gift any land to their sons/ daughters, any children of son and daughter and other person or persons who would have inherited such lands or would have been entitled to a share therein, had the landholder died intestate in respect thereof at midnight between the 26<sup>th</sup> and 27<sup>th</sup> December 1971.
- (iii) Transfers by gifts are also to be enquired into if they are genuine and have been acted upon.
- (iv) There may be cases in which it is found that a landholder has dedicated his lands in favour of God or temple or deities and has created a trust. A trust may be generally public or private. In the case of a trust, the purpose for which it is created assumes importance. Certain exemptions have been provided in the Act for a public trust running educational institutions, research councils, research institutions, hospitals, maternity homes, orphanages etc. so long as they continue as such. However, dedications for religious purposes to deities are looked at with different angles. In case of dedication to deities, the legal ownership vests in the

deities. A debutter, may be public or private. Public trusts are those, which are constituted for the benefit either of the public at large or of a considerable section of it answering a particular description. While private trusts concern only individuals or families or groups, public trusts are generally registered with the Bihar State Religious Trust Board. In the case of a public trust only one unit is to be allotted. In case of private endowment and private trust, in view of the legal position that legal ownership of the lands vests in the deities, each family of the individual deity is entitled to a separate unit. When dedication is to a temple, the lands are held by the idols. But a privately run monastery, irrespective of the number of deities, is to get one unit only. The dedication can be oral also but the same has to be proved in an enquiry.

There may be cases in which dedication is only partial and not absolute. Where it is found that after applying the income for the purpose specified, the residue is to be applied for the maintenance of the executor's family, the dedication is partial and properties will be deemed to continue in private ownership subject to a charge in favour of the charities mentioned. The determination of ceiling is required to be made accordingly treating the lands belonging to the landholder.

6. The Act further provides some quantum of land against minors beyond three. Such family may hold in addition to the ceiling area land not exceeding 1/10<sup>th</sup> of a unit for every such additional minor but in no case it may exceed ½ of a unit.
7. The classification and the age of the person claiming majority are with reference to the appointed day i.e. 9.9.1970. However, the Act provides that the ceiling area shall be re-determined where subsequently the classification of land improves as a

result of irrigation work constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law in force, whether or not the landholder draws water from that source.

8. Persons holding lands beyond the ceiling area are to be proceeded against. There are provisions regarding issuance of notice to a landholder requiring him to file returns.
9. The returns filed are required to be verified. In case no return is filed the information received from various sources is verified.
10. Section 10 (1) and (2) of the Act provide for the preparation and publication of draft statement on the basis of the returns filed by the landholder or on the basis of the information collected by the Collector. Section 10 (3) provides for filing of objections by the landholder or any person having interest in the lands. Section 11 (1) provides for the final publication of the draft statement. Appeal and Revision may be filed thereafter. Section 15 (1) of the Act provides for the acquisition of surplus land. The provisions mentioned in the foregoing are mandatory. In case a provision is skipped, the entire proceeding will be rendered illegal.
11. The Act, however, provides for certain exemptions under Section 29.
12. Ascertainment of proper classification of lands and the age of the persons concerned plays a very vital role in determining the entitlement of a family to hold lands. Umpteen number of court cases hinge around these issues.

- (i) **Ascertainment of proper classification** – Classification for the purpose of determining ceiling is distinct from the classification of lands in settlement records prepared under the tenancy laws or survey and settlement regulations. Under the tenancy laws and settlement regulations the basis for the classification of lands is productivity. Hence, the classification is under heads like Dhanhar – I, Dhanhar – II, Dhanhar – III, Bhith I, Bhith II, Bhith III, Tanr I, Tanr II and Tanr III, Jungle, Bari, Homestead etc. While the said basis has, indeed, been kept in view under the land ceiling law, the guiding principle of classification is the availability of irrigation facilities. Under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1976, six classes of lands have been provided. The basis of such provision is two-fold: irrigated land and unirrigated land. Under the category of irrigated lands, the Act classifies lands as Class I, II and III. Under the category of unirrigated lands, the classification has been made as Class IV, V and VI.

So far as the irrigated lands are concerned, the source of irrigation and the productivity form the basis for judging the extent of irrigation. Lands irrigated or capable of being irrigated for more than one season by flow irrigation work or tubewell or lift irrigation work which are constructed, maintained, improved or controlled by the Central or State Government or by a body corporate constituted under any law and which are capable of growing two crops in a year are Class I lands. Lands irrigated for more than one season by private irrigation work or private tubewell operated by electrical or diesel power are of Class II. Lands irrigated by works which provide or are capable of providing water for only one season fall under Class III. Even if a certain land yields more crop in a year

and yet irrigation facility is available for one season only, it will fall under Class III and not under Class I.

Diara lands or chaur lands fall under Class V even if irrigation works are available thereon. Similar is the position with regard to hilly, sandy and forest land, or land perennially submerged under water or other kind of land none of which yields paddy, rabi or cash crops. Such lands have been classified under the Act as Class VI lands.

Lands other than those referred to above or lands which are orchard or used for any other horticultural purpose are of Class IV. It is a residuary class. Lands which do not fall in any of the remaining five classes belong to this class. Any of the following types of land would fall in Class IV:

- (a) Orchard lands – whether irrigated or not;
- (b) Lands used for other horticultural purpose – whether irrigated or not; and
- (c) All unirrigated lands which do not come under the category of diara land or chaur land (Class V) or hilly or sandy lands (Class VI)

Horticultural purpose has not been defined either in the land ceiling law or in tenancy laws. However, the explanation to clause (K) of Section 2 of the Bihar Land Reforms Act, 1950 provides that it means lands used for the purpose of growing fruits, flowers or vegetables. It would be expedient to adopt this definition for the purpose of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 cases also.

- (ii) **Determination of the age of the persons concerned** – The appointed day for determining the majority or otherwise of a person

is 9.9.1970. Generally, the date of birth mentioned in the school registers and Matriculation Certificates should form the basis for the determination of age. However, there may be cases in which it may be found that the date of birth was mentioned on the basis of information given by some relative or persons other than the parents. In such cases the date of birth mentioned in the school records carries no evidentiary value unless the person who made the entry or who gave the date of birth is examined with regard to the special knowledge about the actual date of birth. In practice, a guardian, keeping in mind the future benefit of his wards in matters of employment, generally does not mention the actual date of birth in the school records. In case the entries in school records are challenged, recourse may be taken to the medical examination of the person concerned by specialists in orthopaedics and by dentists. Examination by a medical board will be all the more useful and expedient. Horoscopes are generally fudged in such cases and are unreliable. The age mentioned in the voters' list may be used as a corroborative piece of evidence only. In the case of uneducated persons, the determination of their age by a medical board is advisable.

**13.** Though the Bihar Land Reforms (Fixation of Ceiling area and Acquisition of Surplus Land Act), 1961 is secular in character and the personal law is not relevant in determining the composition of a family for the purposes of the Act, still there are certain exceptions and deviations which may be found in Section 18 of the Act. It puts restrictions on future acquisition by inheritance, bequest, gift or alluvial action. If any person, after the commencement of the Act, either by himself or through any other person acquires by inheritance i.e. bequest or gift or by alluvial action land, which together with the land, if any, already held by him anywhere in the State, exceeds in the aggregate the ceiling area, he shall within 90 days of such

acquisition by inheritance, bequest or gift and within six months of an alluvial action, submit a return to the Collector. The appointed day of 9.9.1970 is replaced in respect of such future acquisition. The appointed day in matters relating to future acquisition is the date on which such acquisition takes place. This is vide Section 2 (eee).

- 14.** A daughter's share emanates out of her expired father's share. If the father was alive on 9.9.1970, the daughter will have no share at all. Hence she is not a raiyat. An adult daughter (on 9.9.1970) can claim a share in her father's share of family property only when her father had expired prior to 9.9.1970. In case she is married, lands held by her in the in-law's family and lands coming to her from her father's family will be clubbed together for determining her ceiling area.
- 15.** The adult son of a land holder governed by the Mitakshara law is entitled to a separate unit. But the situation is not identical with regard to the landholder governed by the Mohammedan law as well as by the Dayabhag school of law. A major son of a Hindu can get an independent ceiling determined provided he is a raiyat within the meaning of Section 2 (K) of the Act and has become a landholder whose ceiling is being determined on the ground that he has a right in the property by virtue of his birth. What is material is the word 'landholder' and not the word 'family'. Since a Muslim son or daughter cannot become a landholder in the lifetime of his or her father, it is apparent that he cannot claim a separate unit like a major son of a Hindu family.
- 16.** There are cases in which a landholder, having transferred his land to a cooperative society presses an exclusion of such transferred land from his ceiling area. The provisions relating to

cooperative societies are to be found in Section 5 (3) of the Act. In such cases, the position as on the appointed day of 9.9.1970 is to be looked into and considered. If the purported transfers to the cooperative society are after 9.9.1970, the same will have to be treated as invalid under the Act.

- 17.** The Act makes elaborate provisions with regard to appeals and revisions. An appeal shall lie from any final order passed by any officer vested with the power of the Collector of the District to the Collector of the district or any other officer especially authorized in this behalf by the State Government within 30 days of such order. An appeal shall lie from any final order passed by the Collector of the district to the Commissioner of the Division within 30 days of such order. However, no appeal shall lie against orders passed under Section 5 and Section 29 before the final publication of the Draft Statement under Section 11 (1) of the Act. An appeal against an order passed under Section 5 and Section 29 shall be filed within 30 days from the date of final publication under Section 11 (1) of the Act.

A revision shall lie to the Board of Revenue from any appellate order passed by a Collector or a Commissioner within 30 days of such order.

The Board of Revenue may of its own motion or on an application made to it, call for from the Collector any document or record in connection with any enquiry conducted by the Collector or may direct the Collector to institute an enquiry and to submit his findings to the Board.

There is a special provision in the Act relating to the abatement of appeal, revision or reference pending before any authority on 9.4.1981. On such abatement, the Collector shall proceed with the

case afresh in accordance with the provisions of Section 10. Several proceedings in the lower courts have been questioned as after the abatement the authorities did not proceed afresh in accordance with the provisions of Section 10 of the Act. As has been explained in the foregoing, Section 10 deals with the preparation of the Draft Statement. It contains the area and description of the lands held by the landholder, his option lands, the area and description of the land which is in excess of the limit permissible under Section 5 and which the landholder is not entitled to hold (surplus land), the area and description of the land transferred by the landholder after 9.9.70 as well as the substance of the findings of the Collector with regard to transfers between 22.10.1959 and 9.9.70. Form L.C. 5 with reference to Rule 8 of the Bihar Land Ceiling Rules, 1963 presents the Form of Draft Statement under Section 10 of the Act. The said Form L.C. 5 contains columns with regard to the total area and description of the land held by the landholder, his option lands, lands transferred by him after 9.9.70, lands transferred by him between 22.10.1959 and 9.9.1970, lands allowed to be held by him, lands exempted, surplus land and the like. The implication of the post abatement revival of a given case afresh lies in the fact that the pre-abatement Draft cannot and must not be the basis for fresh proceedings. There has to be a new Draft Statement if at all the proceedings are to start afresh, meaning thereby that there would be besides other things, a fresh enquiry into the transfers made by the landholder.

Lower court's proceedings are quite often challenged on account of the fact that with regard to the enquiry into transfers between 22.10.1959 and 9.9.1970, no orders of annulment were passed by the lower court and yet the landholder had to incur disadvantage. The Act provides for enquiry and recording of findings in passing a speaking order on annulment. Reasons for considering a post 9.9.1970 transfer as malafide have also to be recorded in writing.

## **18. Acquisition of the Status of Raiyats by the Under Raiyats**

If there is an under raiyat on the surplus land on the date it vests in the state, such under raiyat shall, if he makes an application, be allowed to remain as occupancy raiyat, subject to payment to the State Government annually for a period of thirty years, the amount specified in this behalf in part IV of the schedule to the Act. If an under raiyat does not make an application within three months of the vesting or within the time extended, his right may be lost.

**19.** The remaining surplus lands acquired by the State Government are required to be settled to eligible landless persons. The lands settled shall be heritable but shall not be transferable except that the settlee may enter into a simple mortgage with a society or a bank or a company or corporation as specified for raising loan for agricultural purposes.

## **20. Ban on Subletting**

After the commencement of the Act, no person, whether he holds lands in excess of the ceiling or not, is allowed to sublet for a maximum period of seven years if the raiyat is a minor or a widow or an unmarried, divorced or separated woman or is suffering from mental and physical disability or serving in the Army, Navy or Air Force or a public servant with a substantive salary upto rupees two hundred and fifty per month and the period of subletting may extend till the raiyat remains so incapacitated. But there cannot be any subletting without prior information to the Collector or the Executive Committee of the Gram Panchayat. The sublease should also be registered.

## **Case Study No. 1**

### **Board of Revenue, Bihar Revision Case No. 373/1984**

The revision petition has been directed against the order dated 10.10.1984 passed by the Collector, Gaya in ceiling appeal No. 19/81-82 by which the order dated 06.06.1981 passed by the Additional Collector, Gaya in Land Ceiling Case No. 51/1980-81 (Goswami Jai Ram Giri vs. the State) was reversed.

In 1980-81, a land ceiling proceeding vide ceiling case No. 51 of 1980-81 was initiated against Goswami Jai Ram Giri. The petitioners being purchasers from the landholder Goswami Jai Ram Giri filed an objection. The Additional Collector agreed that the said sale-purchase was genuine and that after excluding the sale area the landholder did not have any surplus land. Final Publication under Section 11 (1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was accordingly made. The State moved the Collector in appeal. The Collector allowed the appeal and held all transfers as farzi. Hence the present revision. The State had held that the transferees were Giris who came from the same stock of chelaship. Further nominal and low valuation rendered the transaction a sham one. Mutation and rent receipts were no proof of title.

In CWJC No. 11122 of 2000, the Hon'ble Patna High Court on 08.11.2000 directed the Board of Revenue to pass orders within 3 months on merits. Hence, I was obliged to take a view on the merits of the instant case. The following is a gist of my findings:

1. The following sale deeds have been examined by the Additional Collector, executed by the landholder in favour of different persons:

Sl. No.	Sale Deed No. and Date	Purchasers	Area	Consideration (Rs.)	Remarks
1.	148 Dt. 3.1.70	Radhanand Giri Chela of Mahanth Satanand Giri	16.08½ acres	1000.00	Excluded from landholder's area
2.	149 Dt. 3.2.70	Ram Vilas Giri Chela of Mahanth Satanand Giri	16.83 acres	1000.00	-do-
3.	18875 Dt. 7.9.70	Ravi Sankar Giri Chela of Mahanth Satanand Giri	15.00 acres	5000.00	-do-
4.	91 Dt. 2.1.70	Goswami Ram Giri	14.40 acres	5000.00	-do-
			(Village: Punaikala) 62.31½ acres		

There is a contradiction involved in the order dated 06.06.81 passed by the Additional Collector. The order states that the landholder had a total area of 90.98 acres of land from which 76.75 ½ acres of sold lands were excluded and the balance with the landholder came to 14.22 ½ acres. The area of 76.75 ½ acres shown as sold by the Additional Collector differs with the table given earlier (as per AC's order itself) in which the total sold area was 62.31 ½ acres. Obviously, an enquiry U/S 5 (1) (iii) remained incomplete.

2. The Additional Collector's enquiry further can easily be subjected to serious criticism in as much as it relied solely on the sale deed/ JB's/ Mutations and a bunch of rent receipts which are issued without prejudice. They did not confer any right and title whatsoever.
3. The Additional Collector's enquiry suffers from serious infirmity in as much as oral evidences of only the purchasers

have been recorded. This evidence remains partisan. There was no endeavour to get the sales verified through the SDO/ DCLR/ Circle Officer as on date to establish the bonafide or malafide of the transactions. Factum possession has not been looked into at all. Now a practical difficulty will be there in spot verification since with a lapse of time, the original purchasers of 1970 have sold to others. Discredit for not verifying the position of the original purchasers, thereby creating difficulties into the bonafide of the first sales by the landholder, lies squarely with the collusive and partisan order passed by the Additional Collector. Nonetheless, even now the villagers will come out with truth if a team pays a visit on the spot.

4. As per Section 9 of the Act, the sale lands aforesaid, whether the transfer was in contravention of the Act or not, have to be put into the category of lands held by the landholder. In the instant case, the same was excluded from the lands held by the landholder, thereby violating the provisions of law, rendering the Additional Collector's order dated 06.06.1981 illegal. This aspect seems to have been ignored even by the Collector in his order dated 10.10.84.
5. There is a general sweep in Collector's order dated 10.10.1984 holding impugned transfers as Farzi purely on academic premises. The mutations and assertions of the purchasers have not been verified through a spot enquiry and recording of the evidence of independent witnesses. A golden opportunity has been missed way back in 1984. Nonetheless, better late than never.
6. At this juncture, when the matter of limitation has been settled, and the revisional authority has to take care of merits, I feel inclined to requote the Bihar Ordinance – 202 of 1981 which provided that in cases where Final Publication could not be made U/S 11 (1) prior to 09.04.81, all proceedings were to abate and the matter had to be taken up afresh U/S 10 of the Act.

In the instant case, the Additional Collector's order itself is dated 06.06.81, the Final Publication was done on 26.06.81 and the appellate order was passed on 10.10.84. Since the Final Publication U/S 11 (1) was not made prior to 9.4.81, the proceedings had to abate and the matter had to be taken up afresh U/S 10 of the Act.

An order was passed on 10.01.83 ordering the preparation of Draft Statement U/S 10 (2) which was done and signed on 11.01.83. A copy of the same by registered post was sent to LH and to the Collector, Gaya for publication in the District Gazette. By 12.02.2003 no objections were received. The matter was stayed on 12.02.83 in view of the order passed by Hon'ble Patna High Court in CWJC No. 4663/1982.

In view of the order of the Hon'ble Patna High Court mentioned above by which the order dated 18.10.82 by Mr. P. C. Singh, Additional Member, Board of Revenue was quashed, it will be pertinent to ignore the non-filing of objections U/S 10 (3) by the LH/ Purchasers during the period between 11.01.83 and 12.02.83 and give them a chance to file objections within a fresh lease of 30 days after a fresh formulation of the Draft Statement. This will meet the purposes of law as well as the special contingencies that prevailed on the side issue of limitation in the past. I even reminded the Collector to direct the lower court to conduct a thorough enquiry into the impugned transactions, examine independent witnesses, conduct an on the spot enquiry by a team of officers into factum possession especially of the original purchasers through independent witnesses and on the conclusion of an enquiry under Section 5, place the transfer lands in the kitty of lands held by the landholder as per Section 9 of the Act. Form LC 5 (Rule 10) in any case entails an enquiry made earlier by the Additional Collector. A fresh enquiry as per law is the need of the hour.

The case was remanded back to the Collector, Gaya for disposal according to law afresh in the light of the findings and observations made in the foregoing.

## Case Study No. 2

### Board of Revenue, Bihar Revision Case No. 1/1986

This was a very old case pending in this court. The petitioners included Shri Radha Krishna Thakurji through its Sebait (Manager) Jitendra Narain Singh resident of village Chautham, District Khagaria.

The petitioners have submitted that the concerning Thakurbari was established in 1901 by Mahabir Prasad Singh, the father of the landholder Jitendra Narain Singh. There exist two separate deities in the Thakurbari namely Radha and Krishna and Shiva and Parvati. As such they were entitled to two units. The said Thakurbari being a juridical person, it was capable of acquiring, holding and vindicating legal right and ownership of property measuring 23.97 acres. The properties of the Thakurbari were wrongly included into the lands of the landholder Jitendra Narain Singh. On 08.03.1931, the properties had been donated and dedicated directly to idols by a registered deed of dedication. A recital of the deed vindicated that the properties were actually dedicated to the idol and not to any trust. The properties have been specified in the registered document itself. The petitioners have submitted that the Collector refused to give exemption.

On a perusal of the Trust Case No. 1/80-81 it comes out that vide his order dated 24.09.1975 in land ceiling case No. 108/73-74 the DCLR had granted exemption to the impugned land under Section 29 (B) (2) (ii) as one belonging to a religious trust. Order sheet dated 28.09.80 in case No. 1/80-81 further yields information that according to order sheet dated 24.09.80 the impugned lands had been dedicated vide a registered Arpan-nama in 1931 and there are

entries pertaining to fee receipts issued by the Bihar Religious Trust Board from 1951-52 to 1974-75. The concerned record was sent to the Additional Collector, Khagaria with a detailed enquiry report by DCLR Khagaria VOS dated 29.03.81. The enquiry covered the activities, income and expenditure, deed of dedication, registration by the Religious Trust Board and public activities of the Trust. It came out of the enquiry that:

- (i) The trust was entirely private.
- (ii) Daily Rag-Bhog is arranged. There is a priest and a servant. Since the landholder himself is a sebait, all expenses are borne by him.
- (iii) No separate account of income and expenditure is maintained.
- (iv) The deed of dedication was not registered and there was no immovable property in the deed prior to 1972-73.
- (v) The registered Arpan-nama No. 1386 dated 8.3.31 (referred to by the then DCLR in order sheet dated 24.09.75 in LC Case No. 108/73-74) did not exist. The lands bearing 23.97 acres had not been separately registered. The Chairman of the Religious Trust Board too vide his certificate dated 21.03.1975 explained that no properties had been dedicated prior to 1972-73. Hence, Board Taxes were imposed only from 1972-73.
- (vi) The Trust is registered with the Religious Trust Board, but details were not furnished at the time of enquiry.
- (vii) Though the Trust is private, it bears expenses on annual festivals in which other persons also participate.

The Collector held the Trust as entirely private, its income and expenditure account is not kept separately (separate from the landholder's property). The Arpan-nama is not registered. The land dedicated to the Trust is post 9.9.70 (the appointed date). Hence the

Trust did not qualify for exemption under Section 29 (2) (A) (ii) of the Ceiling Act.

Evidently the claim of exemption failed. Interestingly, the landholder had been simultaneously moving for the grant of units holding the deities as juristic persons. Thus in his petition dated 30.03.81, the landholder apart from praying to the DCLR for exemption under Section 29 (2) (a) (ii) of the ceiling Act, also submits as follows:

“7. That in Radha Krishna Thakurbari there are two individual deities, namely, (1) Radha Krishna Jee and (2) Mahadev Parvati Jee. Hon’ble High Court, Patna had held legal ownership in deities in 1978 BBCJ at Page 489”.

Then again, in his objection petition dated 15.12.81 under Section 10 (3) of the Act, the landholder relied upon an earlier enquiry by the then DCLR (Harendra Kumar) who vide his enquiry report dated 24.09.75 made recommendation for the exemption of the Trust property. The landholder alleged that the Collector did not peruse that report and did not give the party concerned an opportunity of being heard. The landholder objects to a second enquiry conducted by the DCLR on 29.03.81.

Needless to say, whereas the DCLR’s (Harendra Kumar’s) report dated 24.09.1975 favoured exemption, the subsequent DCLR’s report dated 29.03.81 went against the landholders. As far as noticing the landholder is concerned, in Trust case No. 1/80-81 the landholder had been duly noticed by the DCLR and the DCLR’s enquiry dated 29.03.81 was conducted in the presence of the landholder.

The state has made the following three contentions in this case:

1. Admittedly, a public trust has been created in favour of the deities. Trust Case No. 1/80-81 bears an enquiry by the DCLR. It has come out in the enquiry that the trust was entirely private. Since the exemption clause has been deleted and if at all there was a public trust, at best one unit will be granted. But since the trust has been found to be private, the impugned lands should be put into the ceiling area of the landholder and declared surplus since no further units are available. On account of the admitted registration of the trust as a public trust, deities in any case will not be entitled to a unit.
2. The DCLR’s enquiry brings out the fact that the registered Arpan-nama No. 1386 dated 08.08.31 (referred to earlier by the DCLR on 24.09.75 does not exist). A copy of the same may be called for.
3. The impugned lands bearing 23.97 acres had not been separately registered and dedicated. The Religious Trust Board Certificate holds that no properties had been dedicated prior to 09.09.70. Hence the proof of dedication prior to 09.09.70 may be called for. In case the properties were dedicated alongwith the purported deed of dedication on 08.08.1931 that has to be reflected in the said deed and cadastral and Revisional Survey entries. The whole body of proof has to be brought by the landholder.

On a perusal of the case record it comes out that the petitioner has not been able to furnish a copy of the purported deed of dedication. Further the actual dedication of impugned property since the execution of the deed has not been proved. Despite opportunity the petitioner has not been able to produce requisite proof in this court. Hence, the prayer to this effect made by the petitioner is fit to be dismissed, in the absence of the primary document on which the petitioner has relied upon and staked his claim in this court.

### Case Study No. 3

#### **Board of Revenue, Bihar Revision Case No. 261/1986 and 262/1986**

On a perusal of the case record I further found that the Draft Statement as published in the District Gazette on 16.07.82 was not at all circulated nor a copy of the same was sent to or served upon landholder.

The provision in the corresponding Rule 11 is mandatory. Nonetheless, this vital point has not been raised by the petitioner either at the appellate stage or during the proceedings of the present revision. Hence it will not be possible to pass any order in this regard, in the absence of any prayer for necessary relief. Since a major law point is involved, the petitioner will be at liberty to raise this issue before the appellate authority within 30 days of the passing of the order for disposal according to law.

The revision petition was accordingly dismissed.

The crux of the matter is whether Tapesara Kuer, the widow of Bandhan Singh was alive on 09.09.70 – the cut off date in the Act. I also heard the intervener purchasers and intervener red card holders in compliance of the Hon'ble Patna High Court's order dated 11.11.1997 passed in CWJC No. 5859 of 1986 with CWJC No. 368 of 1987.

On 02.11.1986, the Member, Board of Revenue, Bihar held with regard to the claim of Tapesara Kuer for 1 unit that since the husband of Tapesara Kuer expired prior to 1937, she could not get any share in the family property and was entitled only to Stridhan and Maintenance rights. Hence, in the absence of rights over land, no unit could be granted to her.

It was contended on behalf of the interveners that there is no averment that Tapesara Kuer was alive on 09.09.70. If she had died before 09.09.70, no unit of land could be allotted to her. The Hon'ble Court remanded the matter to the Revisional authorities vide their Lordships' order dated 11.11.97. The revisional court was directed to consider the sole question as to whether Tapesara Kuer was alive on 09.09.70, the relevant date under the Act. If the revisional court finds that she was alive on that date, one unit of land was to be granted to her from out of the lands which were recorded in her favour as a raiyat. Consequently, necessary correction shall be made in the final publication U/S 11 of the Act. The Hon'ble Court made it further clear that if the occasion arises,

the protection U/S 9 (2) & (4) of the Act shall be extended to the landholder including the purchasers from the landholders.

The revision Case No. 261-262/1986 has been pending in this Court since the remand order dated 11.11.1997 mentioned above. Further proceedings in the lower court were stayed on 22.08.2000.

The order dated 21.03.2002 passed by this Court mentions that a death certificate issued by the Varanasi Municipal Corporation had been submitted by the petitioner indicating the date of the death of Tapesara Kuer as 24.01.79. Further an extract from the voters' list had been submitted in which the age column was illegible.

The record further yields a Xeroxed copy of a will executed by Tapesara Kuer on 23.12.78. It further yields an affidavit furnished by Haridwar Singh nephew of Tapesara Kuer dated 09.09.2000 averring that his aunt (Tapesara Kuer) died on 24.01.79.

The Collector, Kaimur was directed to verify the genuineness of the documents concerned on account of the manifest fact that none of the aforesaid documents were certified copies from the original. The voters' list did not bear the year of revision of the age of the person concerned legibly. Regarding the purported will, the Collector being the District Registrar had better access to the original records.

It will be pertinent to point out here that in CWJC No. 5859 of 1986, the petitioners had impugned the order dated 16.07.1983 passed by the DCLR, Bhabua in LC Case No. 45/82 as also the appellate order passed by the Collector dated 29.09.1986 in Ceiling Appeal No. 74/84 in so far as it rejected part of the claim of the petitioners and also the order passed in revision by Additional Member, Board of Revenue in Revision Case No. 261/86 dated

29.11.1986. Apart from challenging the orders passed by the original, Appellate as well as Revisional authorities, the petitioners had also impugned the reopening of the proceedings and the publication of statement U/S 11 (1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act.

With regard to Tapesara Kuer, the undersigned had been directed by the Hon'ble Patna High Court to consider the sole question as to whether Tapesara Kuer was alive on 09.09.70, the relevant date under the Act. If it was found by the undersigned that she was alive on that date, the undersigned was to grant one unit of land to her from out of the lands which were recorded in her favour as a raiyat. This would further entail necessary correction in the Final Publication U/S 11 of the Act.

As per the directions of this Court, the Additional Collector got the following documents verified at his end and submitted a detailed report vide his letter No. 1271/Ra. dated 18.12.2003.

Sl. No.	Documents	Concerning Deptt./ Office	Enquiring Officer	Findings
1.	Registration of the death of Tapesara Kuer	Municipal Corporation, Varanasi	Shri Bipin Kumar Rai, C.O., Mohania	Document found genuine
2.	Sale Deed No. 69 dated 23.12.78	Registration Office, Sasaram	Shri Binod Kumar Singh, Revenue Section, Kaimur	-Do-

The Additional Collector reports vide his letter No. 1271 dated 18.12.2003 that as per the verified death certificate Tapesara Kuer died on 24.01.1979. Then again, as per the verification report the sale deed executed by her on 23.12.78 is genuine. Hence, it is evident that Tapesara Kuer was alive on 09.09.1970 and she was entitled to one ceiling unit being a raiyat and a landholder in her own right. The Collector was directed to modify the notification U/S

15 (1) in the light of the findings mentioned in the foregoing and in compliance of the order passed by Hon'ble Patna High Court on 11.11.1997 in CWJC No. 5859 of 1986 and CWJC No. 368 of 1987.

In compliance of the Hon'ble Patna High Court's Order (Para-18) the intervener purchasers were heard. The land sold away by the landholders has to be kept in any case in the unit to be held by the landholder. A prayer to that effect has been made by the landholder in Para-8 and 11 of his supplementary revision petition. The purchasers agree to the contention of the landholder. That will be in consonance of law as well.

The transfers made by the landholder as per Section 5 (1) (ii) and 5 (1) (iii) of the Act will be put into the unit held by the landholder in accordance with the stipulations made in Section 9 of the Act. The Collector under the Act will accordingly send notices by registered post to the landholder and the purchasers concerned and dispose off the issues relating to option in accordance with law.

The landholder has prayed for the grant of minors' units (as on 09.09.70) as admissible in law vide Para-12 of his supplementary revision petition. The same has not been raised or considered at the appellate stage. Hence there is no finding on this issue in the impugned Appellate order dated 29.09.1986 passed by the Collector. The petitioner was directed to raise this claim (as raised in this Court vide supplementary petition dated 03.01.2004) before the Collector within 8 weeks from the passing of this order who will dispose off the claims after due verification in accordance with law.

#### **Case Study No. 4**

#### **Board of Revenue, Bihar Revision Case No. 1/1989**

The petitioner Mosammat Sanichari Devi has made the following submissions in the main:

1. Since the Circle Officer, Forbesganj had furnished a report with regard to the majority of the three sons of Most. Sanichari Devi on 09.09.1970, the appointed date, the Additional SDO, Araria ought to have given credence to the said report by the CO and granted unit in favour of the major sons aforesaid.
2. That the Additional SDO, Araria did not concede the petitioner's prayer to hold the lands concerned as Class-IV without verifying the factual position of irrigation facilities.

The petitioners have singularly failed to adduce any proof or evidence in favour of their averments, at any level of adjudication.

Coming to the first contention of the petitioners, a submission was made by the landholder before the Additional SDO, Araria in LC Case No. 1/82-83 that Most. Sanichari Devi's three sons, namely, Taranand Yadav, Motilal Yadav and Paramanand Yadav were adults on 09.09.1970. Nevertheless, the LH never adduced any evidence in support of her claim. The CO's averments on the age of the said three persons is not based on any documentary proof rather the age is shown approximately, post facto. The Additional SDO duly noticed Tarachand Yadav, Motilal Yadav and Paramanand Yadav to adduce proof in support of age, but no such proof was ever furnished. This further falsified the later allegation of the petitioners that they were never asked to furnish proof of age, once the CO's approximate statement was not relied upon. Had there

been the force of truth and conviction in the petitioner's claim, they were free to ask for an oscification test through a Medical Board. It was not for the Additional SDO or the Collector to frame a prayer on behalf of the petitioners and then grant the same.

I further find from a perusal of the lower court's record that in view of the objection (on age) raised by the petitioners, yet another report was called for from the CO, Forbesganj by the Additional SDO. The CO reported that since the claimants never went to a school, there was no age certificate issued by the school authorities. In the circumstances, the CO prepared a report, basing itself upon the 1979 voter's list. This proves that the three claimants as aforesaid were minors on 09.09.1970. The CO further reports that Paramanand Yadav was an IA Student in 1980. That indicates a concealment of school certificates with regard to age by the said claimants.

The counsel for the state submitted the voters list dated 01.11.1975 in the Additional SDO's court in which the names of Taranand Yadav, Motilal Yadav and Paramanand Yadav do not figure at all, proving thereby that they had not attained the age of 21 on 01.01.1975.

In view of the facts and circumstances of the case mentioned above, and in view of the non-submission of any proof of age by the petitioner's themselves, I did not feel inclined to hold a view different from that of the lower court on the question of the age of Taranand Yadav, Motilal Yadav and Paramanand Yadav as on 09.09.70.

The second contention of the petitioners pertains to the classification of lands. Here again they have failed to rebut the lower court's findings by proof and evidence. A major portion of their lands fall in Mauza Kirkichia, Jholvajja and Samauj. Lands in

these villages are irrigated by the Kosi canals. The total area of the land held by this family is 74.97 ½ acres out of which 33.34 acres is shown as Class-I, 19 ½ acres is shown as Class-III and 39.65 acres has been shown as Class-IV. Prima-facie the classification appears to be correct whereas the petitioners make a sweeping submission that all lands in question are Class-IV. They have conveniently skipped the point of the Kosi canal irrigation relied upon at the lower court's level. Lastly, they have failed to specifically point out either at the original appellate or revisional level as to which plots of which Khatas are unirrigated regarding which an enquiry could be made or ordered.

In view of the above, it is clear that the two contentions of the petitioners fail to stand on their own for want of speaking proof and evidence.

The case was dismissed.

## Case Study No. 5

### Board of Revenue, Bihar Revision Case No. 118/1990

This matter is conjoint between Shanti Devi, the landholder, who is the petitioner in the revision case and seven sets of transferees or successive transferees. Earlier, the Board of Revenue had dismissed the Case on 14.03.1997. Shanti Devi, the landholder, thereupon, moved the Hon'ble Patna High Court. Three other landholders too, namely, Shyama Singh, Sushila Devi and Laxmi Devi, filed writ petitions. The Hon'ble High Court allowed Shanti Devi's writ in terms of certain observations and dismissed the rest of the petitions. Shanti Devi was given another opportunity to pray for option under Section 9 of the Act. Some interveners – purchasers as well, moved the Hon'ble Court and their case was remitted back to the Board of Revenue for a fresh consideration in the light of the documents already on record. Essentially, the case under study relates to the intervener – purchasers only.

Reports which were called for had since been received. Lower Court case records were not available in my Court. The same must be with the Collector, Purnea, as he would be engaged in deciding Shanti Devi's case on remand from the Hon'ble Court. However, since the case of the transferees was for decision and the reports after enquiry had been received, the claims of the interveners were taken up by me for decision in terms of the orders and directions of the Hon'ble High Court.

The State has not been able to specify as to which of the transfers are not genuine. On the other hand, the interveners have filed details of transfers through a note of argument.

There are three types of claims advanced by the interveners:

1. Lands which were not recorded in the name of the landholder or her family members but stood recorded in the record of rights in the names of outsiders and transferees from them.
2. Lands which were transferred by the landholder after 22.10.1959 but before 09.09.1970.
3. Lands which were transferred by the landholder prior to 22.10.1959.

#### 1. Transferees from persons, who were not landholders in the case

- (i) Juber Mohammed and six others (interveners) – According to them the lands of Khata No. 457 originally belonged to a third person, namely Ram Bujhawan Singh. On the latter's death, they purchased lands of the Khata from the nephew and heir of Ram Bujhawan Singh by different sale deeds. The lower court has found the transaction as benami and farzi as during the spot enquiry no Kamath, bullock, plough etc. of the appellant was found. I found this view of the lower court to be erroneous. There is a presumption of correctness of the entries of the Revisional Survey Khatian which cannot be rebutted on mere surmises. I directed the Collector, Purnea to take necessary follow up action accordingly.
- (ii) Ram Kishore Singh (intervener) – Since the lands concerned are recorded in the name of Krishna Devi who is the daughter of T. P. Singh in the record of rights, the said lands as claimed (on purchase) by the intervener petitioner, Ram Kishore Singh deserve to be excluded from the original Land Ceiling Case No. 68/73-74 and the related notification.

#### 2. Lands which were transferred between 22.10.1959 and 09.09.1970

- (i) Jugal Mandal (intervener) – So far the lands of Khata 231 and 221 are concerned, they have been transferred by Pratap Narayan Chand (deceased husband of the LH) by two registered deeds of sale dated 26.05.1960 and 31.10.1962 respectively. The lands of Khata 327 and 317 aforementioned have been transferred by the afore-named Pratap Narayan Chand by a registered deed of sale dated 20.08.1962 in favour of Bhajan Mandal. The land of Khata 318 has been sold by Pratap Narayan Chand also on 20.08.1962 to Bhajan Mandal afore-named. The names of the purchasers stood mutated in the revenue records with the grant of receipts. The sale deeds alongwith rent receipts have been filed with the intervention petition.

The Counsel for the intervener submitted that at the relevant time there was no restriction on transfer except that it should be by registered deeds. With regard to possession, a report submitted on the orders of the Board of Revenue was referred to. The report supports the claim of the intervener and he has been reported in actual possession of the lands. Some case laws reported in 1978 BBCJ 597 and 1986 BBCJ 794 have been referred to in which their lordships of the Patna High Court in cases connected with land ceiling law held that mutating the name of the purchaser followed by grant of rent receipts led to the conclusion with regard to the genuineness of the transfer. We also find that at relevant time there was no restriction on the transfer of land by a LH holding lands in excess of the ceiling limit except that it should be by registered deed. The provision with regard to enquiries under Section 5 (1) (iii) of the Act was for the first time introduced by Act 1 of 1973 which came into force from 09.09.1970. Enquiry report also supports the genuineness of the transfers. On the basis of the above discussions the aforementioned lands covered by the intervention

petition deserve exclusion from the original land ceiling case No. 68 of 73-74 and the related notifications.

Interveners: Anil Kumar Yadav and two others.

The lands involved situate at village Maharajganj appertaining to Khata 425, plot 353, 354, 355 and 356 measuring 4.38 acres and that of village Jianganj, Khata 286 plot No. 3424 measuring 0.87 acres are the subject matter of their intervention petition. Bir Narayan Chand – the original landholder had transferred the lands aforementioned by a registered deed of sale dated 14.06.1961 to Jagdish Yadav. The lands were recorded Sikmi in the name of Santokhi Sah and dar Sikmi in the name of Takhatmal Yadav. Both the under raiyat and the dar under raiyat transferred and relinquished their interest in favour of Suresh Yadav, who was the father of the original purchaser – Jagdish Yadav by registered deeds dated 14.06.1961 and 07.07.1961 respectively. Thus Jagdish Yadav is claimed to have come in actual physical and cultivating possession of the lands. Subsequently, Jagdish Yadav sold the land to Bimla Devi by a registered deed of sale dated 15.04.1963 and Bimla Devi sold the same to Roudi Yadav by registered deed of sale dated 14.11.1970. The lands were lastly acquired by the interveners by virtue of two registered deeds of sale dated 11.07.1976 and 03.05.1986. The original purchaser as well as the subsequent purchasers including the interveners stood mutated in the revenue records of the State Government and rent receipts were granted to them, copies of which have been filed alongwith the copies of sale deeds. The enquiry report of the Anchal Adhikari is vide his letter No. 735 dated 08.11.2001 which supports the genuineness of the transfers and holds that the interveners are in actual physical possession of the lands. The points involved in this intervention petition are almost the same as in the earlier petition of Jugal Mandal. Therefore, the aforementioned lands covered by the

intervention petition also deserve exclusion from the case and the related notification.

### **3. Transfer on dates prior to 22.10.1959**

I allowed the intervention petition of Nand Lal Mandal and 10 others, of Farooque Miya and two others, Baiju Mandal and Bhagwan Mandal since the concerning transactions were prior to the cut off date of 22.10.1959. No enquiry for purposes of determining the ceiling area is permissible under the Act. Since the transfers were prior to 22.10.1959; had been followed by mutations and grant of rent receipts and also because the enquiry reports supported the claim of genuineness of the transfers, the related lands covered by the aforementioned three sets of interveners' petitions deserved exclusion from the original land ceiling case and related notification.

In the light of the observations and directions made in the foregoing, all the intervention petitions were disposed off on merits as per the directions of the Hon'ble Patna High Court.

## **Case Study No. 6**

### **Board of Revenue, Bihar Revision Case No. 47/1998**

This revision application is directed against the order dated 29.09.98 passed by the Collector, Katihar in Land Ceiling Appeal No. 522 of 1995-96 by which the appeal was dismissed and the order dated 10.06.94 passed by the Additional Collector, Ceiling, Katihar in LC Case No. 11 of 1973-74 was affirmed.

A land ceiling case No. 11 of 1973-74 was started against the petitioner Prem Chand Sah. The proceedings had to be taken afresh in terms of the provisions of Section 31 A and B of the Act and a draft statement was published on 15.12.93 which was served upon the petitioner on 03.05.94.

The limited point in the present revision petition is that the landholder petitioner upon the service of the Draft Publication as above could not exercise his right to file objections under Section 10 (3) of the Act due to old age. The prescribed time lapsed and the appeal against the final publication under Section 11 (1) was dismissed.

The petitioner submits that the appeal filed in the Collector's Court was dismissed merely on the ground that the objection was not filed in time and the matter was not at all considered on merits on the basis of the reports and documentary evidence available on the case record. The petitioner submits that the private lands of other persons recorded as such in the Record of Rights were clubbed with the landholder's land. The lands covered by a registered deed of will dated 03.07.1939 (probated) too were put in the kitty of the landholder in entirety. Such lands measured 89.10 acres. The fact

that Puja, Rag Bhog was a charge on the family property, was ignored. According to the verification reports also the petitioner was entitled to one and 4/10 units. Besides Kedar Nath Sah and Govind Sah (who were in charge of the Rag Bhog of the deities) were also entitled to their units. Thus the prayer is for a grant of 3 and 4/10 units instead of 1 and 4/10 already granted. There is a further submission that the lands concerned should be re-classified into Class-IV and V (instead of in Class-III as was done). No opportunity to exercise option was given to the landholder.

The following law points were raised by the petitioner in a supplementary petition:

1. It appears from the order dated 03.06.94 that a copy of the draft statement was served only on 03.05.94 and as soon as the 30<sup>th</sup> day passed, the chance of raising objections under Section 10 (3) was finally closed and the matter was posted for orders on 03.06.94.
2. In terms of the proviso to Sub-Section 3 of the Act, the period of 30 days for filing objection may be extended for another 15 days. But in this case, in hot haste, as soon as the 30<sup>th</sup> day was over, the matter was closed and the orders were reserved.
3. In the Draft Statement it was not indicated clearly as to which lands were proposed to be allotted to the landholder and which of the lands were to be kept in the surplus column. This could have enabled all concerned to raise objections. The draft statement was neither affixed on the notice board of the Collector under the Act nor was a copy sent to the Gram Panchayat.
4. After the revival of the abated proceedings under Section 32 B of the Act, the proceedings were not started afresh. The fresh proceedings ought to have taken note of pre and post 09.09.70 transfers and fresh verification and enquiry under Section 5 (1)

(iii) of the Act was needed. This not having been made, the further proceeding from that stage is wholly illegal.

5. The report of the Anchal Adhikari dated 18.08.75 is never a verification report; rather it is an information under Section 7 of the Act which required verification under Rule 8 of the Rules framed under the Act. No verification was at all made which resulted in prejudice to the landholder in matters of the grant of units and also in classification etc.
6. The petitioner characterizes the Gazette Notification under Section 11 (1) of the Act, viz. Final Publication of the Draft Statement, as actually a notification under Section 10 (2) of the Act because the said Final Publication under Section 11 (1) neither bears any certification nor any signature by the Collector. Hence, proceedings subsequent to Section 11 (1) are illegal too.
7. During the pendency of the appeal a Notification under Section 15 (1) for the acquisition of surplus land was made. This was illegal because, first, the Final Publication under Section 11 (1) itself was void, and second, because till the disposal of the appeal or revision no such notification could be brought out. Hence, the proceedings under Section 15 (1) are illegal too.

As per the order sheet dated 03.12.93, a Draft Statement under Section 10 (2) of the Act was said to have been prepared in accordance with the verification report available on record. There is no evidence whatsoever of a fresh verification report since the revival of the case on 24.09.93 up to 03.12.93. Evidently, the verification report of the abated proceedings formed the basis for the Draft Statement after revival.

I treated the carrying forward of the verification report in the post abatement period as not in accordance with law. It was incumbent on the part of the Collector under the Act to call for a fresh

verification report or else the purpose of having a fresh Draft Statement would be defeated. In the instant case the mechanical formality of having a fresh Draft Statement on the basis of an old (abated) report leaves much to be desired in terms of the letter and spirit of law.

The date of the service of the notice is not indicated, yet the Additional Collector (Ceiling) must have reasons to believe that the statutory period of 30 days had lapsed. It is not possible to calculate whether the additional duration of 15 days as provided in law too had lapsed. But in any case the additional time may be granted by the Collector (in discretion) only when there is an application by the landholder or person having claim or interest in land. There is no such application on record.

As mentioned above, the established legal position is that after a case is taken up afresh in terms of the provisions of Section 32 B of the Act, fresh verification report is required for the purpose of Draft Statement under Section 10 (2) of the Act. Reliance only on earlier reports received prior to 09.04.81 for the purpose of Draft Statement is not allowed.

The Hon'ble Patna High Court in its different decisions have dealt with and explained the provisions. In a case reported in 1983 BBCJ Page 197 a Division Bench of the Hon'ble Court held as under:

“The combined effect of Section 32 A and 32 B, therefore, is that the entire procedure from beginning to end must be carried out afresh. Since the proceedings have got to be decided afresh, all finding arrived at earlier stages of the proceedings must be considered to have been wiped off”.

The above quoted view which was reported in 1983 BBCJ Page 197 was approved by a Full Bench of the Hon'ble Court in the case of Narendra Prasad Singh versus the State of Bihar and others reported in 1984 BBCJ Page 879 (F.B.) wherein it was held by the Full Bench as under:

“Under the mandatory provision of Section 32 B the Revenue authorities are obliged to dispose off afresh all pending proceedings except those in which Final Publication under Sub-Section (1) of Section 11 of the Ceiling Act has already been made prior to the 9<sup>th</sup> April, 1981, being the date of commencement of the Amending Act”.

In another decision in the case of Smt. Kunti Sharma and others versus the State of Bihar and others reported in 1990 PLJR Page 66 the relevant discussions and findings on point of law, are in Para 5 of the judgement which reads as under:

5 – Challenging the impugned order contained in Annexure 5 in the present case the learned Counsel appearing for the petitioner has contended that there is no fresh application of mind by the Additional Collector and the order has been passed in mechanical manner. A bare perusal of the impugned order shows that the Additional Collector has referred to the old verification report and jumped at a conclusion that the petitioner's family was entitled to only one unit. The petitioners were admittedly not heard by the Additional Collector who was required in law to decide the question afresh. In other words, a fresh application of mind had to be given to the whole question in accordance with the amended Section 10 of the Act. While deciding the proceeding afresh, the question whether the petitioner's family was holding lands as surplus had to be considered afresh in accordance with the various provisions of the Act contained in Section 6, 7, 8 and 9 read with Section 5 of the

Act. Mere reference to the old record and reliance on the earlier verification report was not sufficient.

In some other reported decisions the same principles were explained. In a recent decision in the case of Ram Ratan Roy and others versus the State of Bihar and Others reported in 2000 (1) BLJ 716 it was again held in Paragraph 6 as under:

“6. It has to be noticed that by reason of the Bihar Act 55 of 1982, amendments were brought at various stages under Sections 2, 4, 6, 8, 9, 10 and 11 of the Act in order to give effect to such changes. Therefore in unmistakable terms by virtue of Section 32 A and 32 B of the Act, surplus area of the land has to be determined afresh. Therefore, unless and until, the necessary formalities are observed, particularly, when basic changes were brought under Section 5 and 9 of the Act, no Draft Statement under Section 10 (2) of the Act can be held valid. As I have already noticed, the publication of Draft Statement under Section 10 (2) of the Act would be on the basis of the information collected under Section 6, 8 and 9 or the information obtained by the Collector under Section 7. Therefore, it would not be open to the state authorities to rely upon the same information and the materials with respect to which the amendments were brought by the instant Act.”

I held that the Draft Statement suffered from the illegality as discussed above resulting in rendering proceedings of the related LC Case from the stage under Section 10 (2) of the Act as illegal. The matter was found fit to be remitted back with a direction for fresh verification for ascertaining classification etc. afresh.

Accordingly, the impugned order dated 29.09.98 passed by the Collector, Katihar in LC Appeal No. 522 of 1995-96 alongwith the order dated 10.06.94 passed by the Additional Collector (Ceiling),

Katihar in the original ceiling case No. 11 of 1973-74 were set aside by me and the case was remitted back with a direction for fresh verification and for taking steps thereafter in accordance with law.

## Case Study No. 7

### Board of Revenue, Bihar Revision Case No. 22/1999, 35/1999 and 36/1999

The landholder's case is summed up in Revision Case No. 35/1999 (Dhanesara Kuer W/o Late Ram Dhawaja Singh and Paras Nath Singh S/o Late Ram Dhawaja Singh both residents of village Ekhlaspur, P.S. Bhabua, District Kaimur vs. the State of Bihar). The revision is directed against the order dated 05.04.1999 passed by Collector, Kaimur in ceiling appeal No. 27/1986 by which he refused to allow one extra unit for a minor apart from 3 adult units and did not allow option to the petitioners. It was submitted that no notice was served to the purchasers and the donees from the landholder. No enquiry as required in Section 5 (i) (iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was made.

Originally, the petitioner's husband Ram Dhawaja Singh had executed a registered deed of gift dated 22.09.1961 in favour of Savitri Devi in respect of 19.91 acres of land of village Assarti P.S. Chainpur and 18.71 ½ acres of land of village Chorghatta P.S. Bhagwanpur, District Shahabad, now Kaimur, and delivered possession to the donee. The donee's name was mutated and she had been paying rent. The donee in turn executed four sale deeds over lands held by her. There was delivery of possession, mutation and issue of rent receipts in favour of the vendees. There were entries in consolidation records in favour of the vendees.

In his order dated 05.04.99 in Ceiling Appeal No. 27/86 (Dhanesara Kuer vs. the State), the Collector maintained that the question of the majority of Paras Nath Singh could not be reopened and that he was

held to be a major on 09.09.70. With the grant of 3 adult units, the claim on major units has been finally and conclusively disposed off.

From the lower court case records, I found that previously a report dated 20.06.76 from the Anchal was received and the transfer by gift made in favour of Savitri Devi was reported to be genuine. From the reports as well as the documents produced by the purchasers, I found that in the report it was given out that the names of the purchasers were mutated in the revenue records of the State Government and separate Jamabandis were running in their names. Over and above, during the consolidation operations, the consolidation survey authorities recorded the names of the purchasers with respect to the lands covered by the sale deeds.

I held that a gift made in favour of minors is perfectly legal and the acceptance in such case will be through the natural guardian of the minor.

The names of the donees/ transferees have also been recorded in the consolidation survey records. In a full bench decision of the Hon'ble Patna High Court reported in 1989 PLJR Page 1203, it has been held that the objects of the consolidation Act together with the land ceiling Act are co-extensive and they seek to achieve a fair and equitable distribution of lands for agricultural and horticultural purposes to ensure maximum utilization and land resources and in case of conflict, a harmonious construction is required. Since the provisions of both the Acts are supplemental to each other, the orders and entries made in the consolidation records are to be given due weightage.

Moreover, in another decision reported in 1999 (3) PLJR Page 534 it was held that in case the deed of gift was followed by

consolidation entries, they should not be held to defeat the provisions of the land ceiling law.

In the instant case, I found that the transfer by gifts and sales were followed by mutation and opening of Jamabandi in the records of the State Government and during consolidation operations the names of the transferees were also recorded. Therefore, they lean towards the inference of genuineness of the transfers.

Since the gift to Savitri Devi was found to be genuine, subsequent transfer by her, naturally in similar circumstances could be held to be genuine, but before exclusion of the lands covered by the transfers it was required that the details of lands covered thereunder may be verified with the corresponding entries during the consolidation operation and if the Additional Collector found therein the names of the transferees, necessary steps for the exclusion of the lands may be taken.

## Case Study No. 8

### Board of Revenue, Bihar Revision Case No. 42/1999

Ceiling Case No. 39/1973-74 was started against Jai Narain Singh S/o Deo Dhar Singh, resident of village Pahsara, Anchal Bakhri, District Begusarai. According to the Draft Statement, the landholder owned 186.665 acres of land. While the landholder had demanded the grant of 13 units, the SDO granted 8 units to him as against 5 in the Draft Statement.

The landholder had furnished the school transfer certificates issued to Suman Kumar Singh S/o Sheo Chandra Prasad Singh (date of birth: 08.10.51), Sunil Kumar Singh S/o Baidya Nath Singh (date of birth: 18.03.51) and Binay Kumar Singh S/o Rajendra Prasad Singh (date of birth: 10.11.1951), by the Head Master, Primary School, Jaya Mangalpur. The landholder failed to furnish any age proof with regard to his daughters. The claim against the daughters was dismissed by the SDO. The SDO accepted the age proof with regard to Suman Kumar Singh, Sunil Kumar Singh and Binay Kumar Singh. The SDO ordered the final publication of the Draft Statement under Section 11 (1) of the Act on 30.03.1990.

Appeal No. 3/1990 was preferred by the State in the Court of the Collector, Begusarai. The State took the plea that the three transfer certificates as aforesaid were never brought on record. They were never exhibited in the court, either by the parents or their sons (to whom a unit each was granted). The evidence on which the SDO relied was no evidence at all in the eyes of law. In the absence of any substantive and corroborative evidence, the SDO should not have held Suman Kumar Singh, Sunil Kumar Singh and Binay Kumar Singh as majors.

The Collector ordered a fresh verification report regarding the age of the three sons named above from CO Bakhri. The Circle Officer held an enquiry into the admission register and school leaving certificate counterfoil according to which the DoB came out as follows:

1. Suman Bharti alias Suman Kumar Singh : 31.12.1969
2. Sunil Kumar Singh : 01.01.1962
3. Binay Kumar Singh : 18.02.1967

Since the SDO had granted 1 unit each to the persons named above, the Collector set aside the SDO's impugned order dated 18.08.89 passed in LC Case No. 39/1973-74 with respect to the grant of the said units. Subsequently, on a remand from Hon'ble Patna High Court, the Collector heard the matter again. Horoscopes were produced by the landholders in support of their claim of majority on 09.09.70. The Collector held that the CO Bakhri report prepared in the light of school documents had not been controverted. The age put on record was on the basis of the parents'/ guardians' averments. The landholders had even refrained from furnishing the purported transfer certificates issued by the Head Master, Primary School, Jai Mangalpur. The Collector refused to accept the horoscopes as a reliable proof of age.

In the light of the above facts and circumstances, the Collector ordered action under Section 15 (1) of the Act.

At the revision stage, in my court, the petitioners raised the following points in the main:

1. That there was no appeal (Ceiling Appeal No. 3 of 1990) on behalf of the state in as much as the same was filed by the

Assistant Government Pleader, Begusarai at his own sweet will without any authority from the state or the concerned District Collector.

2. That the appeal was filed in flagrant violation of the mandatory provisions of the Bihar Practice and Procedure Manual, the land ceiling Act, the land ceiling Rules and the Code of Civil Procedure.
3. That the appeal was badly time barred and no application for the condonation of delay was filed and in fact the delay was never condoned.
4. That in the absence of any appeal by the State before the appellate court it had no jurisdiction to reverse the orders passed by the trial court.
5. That the Gazette Notification under Section 15 (1) of the land ceiling Act was made in hot haste even before the expiry of the statutory period of 30 days for the filing of revision petition which was against the mandatory provisions of Section 15 (1) of the Act.

The following violation of the Bihar Practice and Procedure Manual is manifest in the instant appeal:

As per Rule 38 of the said Manual, where the decision in a case is adverse to the State, the Government Pleader shall with the least practicable delay obtain a copy of the decision and forward it to the Collector. Upon receiving the papers with the grounds of appeal from the Government Pleader, the Collector shall record his opinion and forward them through the Commissioner to the Legal Remembrancer. The Collector's and the Commissioner's opinion on the importance of the matter should always be stated.

In the instant case no permission was granted by the authorities concerned to the AGP to prefer an appeal on behalf of the State.

The Government Pleader, Begusarai never applied for permission. Instead, the AGP, although not authorized, filed the appeal at his own sweet will.

Before coming to my own findings in the instant case, I would like to make reference to the order dated 06.04.93 passed by the Hon'ble Patna High Court in CWJC No. 2237/1993. The said writ petition had been filed in the instant case itself by Baijnath Singh (father of the Revision petitioner No. 1 Sunil Kumar) challenging a Revision Court order in the instant case itself. It will be essential to quote from Hon'ble Court's order as aforesaid, as follows:

“The petitioners having come to learn of the appellate order preferred a revision application. The Member, Board of Revenue has narrated the grounds upon which the revision application filed by the petitioners was based. From a perusal of the said order, it appears that learned Member, Board of Revenue has not applied his mind at all as to whether the Assistant Government Pleader could prefer an appeal without any instructions from the Government in view of the provisions contained in the Bihar Practice and Procedure Manual nor has he taken into consideration the questions as to whether the appellate authority could condone the delay or not and that too without any application filed in that regard. As the main grievance of the petitioners before the Member, Board of Revenue was that the appellate order was in violation of the principles of natural justice as also the illegalities committed by the Collector in entertaining the appeal preferred by Respondent No. 7, in our opinion the impugned order (Annexure-6) cannot be sustained.”

“The application is therefore, allowed and the impugned order is set aside and the matter is remitted back for a fresh decision to the Member, Board of Revenue in accordance with law.”

“The Member, Board of Revenue shall call for entire records of the case and consider the points raised by the petitioner on their own merits and in accordance with law.”

#### **FINDINGS**

1. In compliance of Hon'ble Patna High Court's order dated 06.04.93 passed by their Lordships in CWJC No. 2237/1993, I perused the case record and heard the petitioners and the State at length. It is evident that the mandatory provisions of the Bihar Practices and Procedure Manual as well as those of order XLI Rules (i) and Rule 49 of the Ceiling Rules were not complied with while filing the Ceiling Appeal No. 3 of 1990 by AGP (purportedly filed on behalf of the State).
2. It is further manifest that the said appeal was barred by time (by 8 months). There was no application for the condonation of delay. Nor did the appellate court ever insist on taking one. Hence, the question of the condonation of delay does not occur in the mind of the learned Collector. Thereby, a new twist has been accorded to the provisions of law according to which an appeal before the Collector has to lie within a period of 30 days from the passing of the lower court's order. Section 30 (1) of the Bihar Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 runs as follows:

“30. Appeals (d) (a) An appeal shall lie from any final order passed by any officer vested with the power of the Collector under this Act other than the Collector of the District to the Collector of the district or any other officer specifically authorized in this behalf by the State Government within thirty days of such an order.”

No authority under the law should be allowed to circumvent the explicit provisions of law at his sweet will and give a whimsical twist to judicial proceedings in a court of law.

3. Finally, the Gazette Notification U/S 15 (1) of the Act becomes questionable as it is said to have been published without waiting for the expiry of the statutory period of 30 days since the passing of the impugned order (Ref. Section 32 (1) of the Act). This, in turn, has hit the provisions of Section 15 (1) of the Act whereby acquisition is to be subject to appeal or revision. This fact by itself will be sufficient to vitiate further proceedings in the case at the lower court level. According to Section 15 (1) of the Act:

“15 (1) Acquisition of surplus land. The State Government or the Collector of the District specially so empowered in this behalf shall after the statement under Sub-Section (1) of Section 11 has been finally published and subject to appeal or revision, if any, acquire, the surplus land by publishing in the official Gazette of the District, a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned.”

“Provided that without awaiting the result of appeal or revision the State Government or the Collector of the District specially so empowered in this behalf may proceed to acquire such of the surplus land of the landholder in respect of which there is no claim or dispute or which is admitted by the landholder to be surplus.....”

## **ORDER**

In the light of the facts, circumstances and judicial authorities cited above, the revision petition was allowed to the extent of illegality and irregularity in the impugned appeal as delineated in Para 1, 2 and 3 of the findings in the foregoing and accordingly, the impugned order passed by the learned Collector, Begusarai in Ceiling Appeal No. 3/1990 was set aside. The State will be at liberty to take steps according to law. This order had no bearings on the otherwise merits of the case.

## Case Study No. 9

### Board of Revenue, Bihar Revision Case No. 43/199

A land ceiling case was started against Opposite Party No. 2 Durga Prasad Singh S/o Late Jagdeo Prasad Singh in Begusarai which was later transferred to the Samastipur district. A land ceiling case No. 29/1990-91 was started afresh against Durga Prasad Singh in the court of the Additional Collector, Samastipur.

The petitioners Ramesh Singh and others on coming to know that their ancestral lands of village Bajitpur, P.S. Khodawanpur, District Begusarai had also been included in the said land ceiling case, as land belonging to Durga Prasad Singh, raised an objection in the court of the Additional Collector.

The petitioners submitted before the Additional Collector and at the appellate stage, before the Collector, that the impugned lands had always remained in continuing cultivating possession of their ancestors and themselves. The landholder (O.P. No.2) never had any connection with the land in question. References were made to the Khatian of the last cadastral survey and the original registered sub-bharna deed dated 16.7.1911 executed by the ancestors of the appellants in favour of Shiv Nandan Singh of Nayanagar for taking loan. Rent receipts issued by the ex-landlord were also adduced. A genealogical table was produced which connected the petitioners to Gorai Singh and to the Cadastral Survey entries. There had been a shift of the family to village Madhepur from Nayanagar but it was submitted that the family all along remained in cultivating possession of entire lands at village Bajitpur, Nayanagar and Dahepur. Cadastral survey Khatian was published jointly.

The petitioners have submitted that on 31.1.1994, Ganesh Prasad Singh S/o Late Jugal Prasad Singh and Bimalesh Prasad Singh S/o Late Chandrashekhar Prasad Singh, residents of Mauza Madhepur executed a deed of Vaibilwafa in favour of one Ram Prasad Mahto resident of Naya Nagar, P.S. Hasanpur Sub-Division Rosera. The deed bears a mention of the impugned Khata No. 188, Plot No. 287 Area – 2 Bighas & 10 Kathas, out of a total area of 05.11.05.

It is contended that the C.O. Khodawanpur has found the petitioner's possession over the impugned lands.

The petitioners have alleged that O.P. the No. 2 and his ancestors, being landlords did not submit Jamabandi raiyati return in favour of the ancestors of the petitioners with a dishonest intention.

The petitioners contend that the impugned lands were neither sold nor put on auction by the ex-intermediary.

The Additional Collector rejected the objection of the petitioners by saying that the Jamabandi was not running in their names. The Collector (on appeal) holds that there is every likelihood that after the final departure of the petitioner's ancestors from Nayanagar, the ex-intermediary (O.P. No. 2 in the Revision Case) dedicated the impugned lands to Durga Jee and accordingly filed return. The Collector is surprised to find that since zamindari abolition up to 1984, the petitioner never tried to get a Jamabandi in his name nor paid rents for the impugned lands. Further, the report of the Halka Karmachari/ Circle Inspector dated 25.08.1984 mentions that a Jamabandi was running (vis-à-vis the impugned lands) in the name of Shri Durga Jee Wasayat Durga Prasad Singh resident of Nayanagar. The appeal was dismissed.

The following is a gist of my findings in the instant case:-

The Jamabandi correction case No. 5/1984-85, started by the petitioners in the office of the circle office, Khodawanpur, is a speaking example of after thought on the part of the petitioners. While the ceiling case started in 1973-74, the J.B. correction was born in 1984-85. Evidently, ever since the abolition of the Zamindari, up to 1984-85 no steps were taken by the petitioners to have a J.B. in own name against the impugned lands and start the payment of rent.

In all likelihood, in order to save the lands from being declared surplus, the landholder Durga Prasad Singh invoked the ploy of deity with the said landholder as a sebit. Secondly, the cadastral survey tenants (petitioners) filed an objection praying for an exclusion of the impugned lands from the ceiling proceedings. The move for Jamabandi correction 11 years after the initiation of the ceiling proceedings puts the needle of suspicion on the petitioner's stand.

In the Jamabandi correction case No. 5/1984-85 in the C.O. Khodawanpur office, notices were sent to Durga Prasad Singh. No objections were filed. The C.O. referring to a spot enquiry by himself, finds the petitioners to be in cultivating possession over the impugned lands for about 20 years. The lands in question are the Khatiani lands of the petitioners. How come a J.B. was opened in the name of the present J.B. raiyat was not proved by the present J.B. raiyat. There is no objection to J.B. correction by Durga Prasad Singh. The C.O. concludes that the present J.B. is farzi and dedication to deity a camouflage to save the lands from the ceiling proceedings. The J.B. raiyat himself is ex-intermediary and putting his own name in the Return got the J.B. opened in his name. The C.O. recommended a correction in favour of the petitioner and sent

the record to the Deputy Collector, Land Reforms. The D.C. L.R. sought certain clarification.

Here a law point is involved too. From a perusal of the case record it appears that vide his letter No. 6/XI dated 07-12-1999 a draft statement for final publication U/S- 11 (1) of the Act was forwarded to the Incharge Deputy Collector, District Gazette Section, Samastipur for publication in the district gazette. No publication was ever made. In the circumstances, no appeal was maintainable in the court of the Collector. As per Section- 30 (1) (b) proviso:

“Provided that no appeal shall lie against orders passed under Section- 5 and section 29 before the final publication of the draft statement under Sub-Section (1) Section – 11.”

In view of the above, the order dated 23.10.99 passed by the Collector, Samastipur in L.C. Appeal No. 22/1999-2000 is beyond the scope and authority prescribed by law.

My order incorporated the following points:

1. The order dated 23-10-1999 passed by the Collector, Samastipur in L.C. Appeal no. 22/ 1999-2000 was set aside as there was no final publication of the Draft Statement U/S 11 (1) of the Act.
2. The Additional Collector, Samastipur was directed to initiate fresh and independent proceedings with regard to deities, to examine the veracity of the claim and to determine the units to be granted to the deities, if necessary. The present petitioners' objection had been disposed off at Sl. 110 of the Additional Collector's order dated 16.12.1998 in L.C. case No. 29/90-91. They will be duly noticed by the Additional Collector enabling them to present their claim vis-à-vis the

landholder/ deities. The Additional Collector will call for and examine the evidence in support of their respective claims and also direct a spot verification by a team comprising the D.C.L.R. and the circle officer. The Additional Collector will dispose off the case in the light of the observations made in the foregoing and in the light of fresh facts and evidence, if any, according to law.

3. In view of the fact that no revision has been filed with regard to other portions of the order dated 16-12-98 passed by the Additional Collector, there is no point in holding up a final publication U/S- 11 (1) of the Act, with regard to the same. As far as the claims of the present petitioners and the claim of the landholder with regard to deities, is concerned, there can always be a fresh consideration as per law. Nevertheless, it was left to the discretion of the Additional Collector to dispose off pending issues within reasonable time and go in for final publication in a composite manner.

The case was remitted back to the Collector/Additional Collector, Samastipur for disposal according to law.

## Case Study No. 10

### Board of Revenue, Bihar Revision Case No. 46/1999

This revision is directed against the Collector, Lakhisarai order dated 24.11.1995 passed in Land Ceiling Appeal No. 15/88-89 /25/94-95 (Anjana Devi & others vs. the State of Bihar) and against the order dated 07.02.89 passed by Additional Collector (Ceiling), Munger in L.C. Case No. 5/76-77 (State vs. Raghubir Narain Singh) since the grounds of appeal /revision are common, it will be pertinent to examine the orders passed by the Courts below with reference to the submissions made by the petitioners.

Sl. No.	Grounds of Appeal / Revisions	View taken by the Courts below
1.	The petitioner had got 3 major sons and a major daughter as on 9.9.70: Rabi Narayan Singh (B. 6.11.47), Lalit Narayan Singh (B. 14.11.1951), Nilam Kumari: eldest issue. Each entitled to 1 unit. Additionally, 1/5 <sup>th</sup> of a unit was demanded for two minor children. P.M.C.H. Certificates adduced.	On 5.10.87 petitioners submitted that Sheo Narain & Lalit Narayan were matriculates and yet no age proof issued by the Bihar School Examination Board was submitted. First a horoscope was submitted. Subsequently a Medical Certificate. Hence landholder, his wife and 3 minor children were granted 1 unit and for the remaining 4 minor children 1 additional unit was granted. P.M.C.H. Certificates were produced after the initiation of the case.
2.	6.63 acres of land in Barnaiya had an acre of orchard and an area of 4.95 acres was culturable which was wrongly treated as Class-II. No private irrigation medium constructed, maintained or controlled by the Government. No power supply to the private boring installed by the petitioner. Rainfed land.	A.C. Ceiling silent on this point. Collector makes a mention but does not give a conclusive finding. Lower Courts neither support nor contradict. Collector holds that connection or no connection, private boring exists.
3.	Family partition-Mundrika Kumari, the mother of the	A.C. ceiling silent. The Collector makes a reference but does not pass a reasoned

	landholder gifted her share's lands. The gift was ignored by courts below.	order.
4.	Sale by landholder of 18 ½ decimals of land in Barhaiya Tole English to Bino Singh on 2.9.57 and 26 decimals to Ram Kisun Singh on 19.9.60 ignored	The Collector makes a reference but does not pass a reasoned order.
5.	Sale by Landholder of 6.42 ½ Acres of land in village Biman ignored by the courts below (post 09.09.70).	No findings/ order.
6.	Transfer of 23 decimals of land of Mauza Chhabissaiya given to Babu Harikant Prasad Singh of Barhaiya vide a compromise in F.A. No. 211/55 in Patna High Court ignored by the Courts below.	No final decision by the Hon'ble Court. The Hon'ble Court only confirmed a compromise between two parties. 'Mutation' in the name of the landholder only. Rent (paisa) payment by landholder. How come ownership by "Harikant Babu"?
7.	A transfer of 14.19 acres of land of village Biman Tola Mahsona belonging to one Babu Pratap Narian Singh to the wife of the landholder was farzi. Hence it should be excluded from the lands held by the landholder.	The transfer was not farzi as the landholder was found to be in possession.
8.	An area of 5.64 ½ acres of land of Khata No. Khesra No. 497/364 and 707/413 (English Mouza) has been shown in the name of the landholder as well as his brother in a different L.C. case.	No specific finding/order
9.	DCLR, Lakhisarai had no jurisdiction to annul the transfers in question and that the order dated 19.2.83 passed U/S 5 (i) (iii) of the Act was illegal.	The courts below relied upon DCLR's Order.
10.	No proper enquiry as regards the nature of lands by C.O. or DCLR.	
11.	Transfers made during grace period under the Old Act (19.4.62-18.4.63) were ignored.	No specific finding/Order.

I reached at the following findings with regard to the merits of the case:-

1. The courts below have held the 3 sons of the landholder as minor on the appointed date on account of the fact that they failed to furnish Matriculation Certificates. The P.M.C.H. birth certificates were ignored as the same were issued to the landholder on 21.02.1983, much after the initiation of the landholder case.

Perused the Xeroxed copies of the 3 birth certificates issued to Shri Raghubir Narain Singh, the landholder. The following births of an alive male child was recorded in favour of Smt. Anjana Devi W/o Shri Raghubir Narayan Singh.

Sl. No.	PMCH Certificate memo No./Date	Register No.	Date of birth of an alive male child
1.	186/21.2.1983	G/4427-6.11.47	6.11.47
2.	187/21.2.1983	O/2677-3.10.49	3.10.49
3.	185/21.2.1983	O/4480-14.11.51	14.11.51

Simply because the said certificates have been issued by the Deputy Superintendent, PMCH in response to the application by the landholder after the initiation of the L.C. Case, the same have to be discarded, hardly appeals to reason. The Collector is free to get the same verified by suitable means and/ or even get an oscification test conducted by a regular Medical Board so as to match the Board's findings with the PMCH Certificates concerned pertaining to newly born male children.

2. The original landholder Raghubir Narayan Singh executed registered gift deed to Ravi Narayan Singh for 11.31 acres, Lalit Narayan Singh for 12.64 acres and Anjana Devi for

6.65 ½ acres of land on the same day i.e. on 16.04.1963, which is mentioned in the verification report dated 04.12.1976 of the Circle Officer, Barhaiya.

Mundrika Devi also executed registered gift to her grandson Ravi Narayan Singh for 10.46 acres and to the second grandson Lalit Narayan Singh for 10.65 ½ acres on the same day i.e. on 25.08.1962.

All gifts mentioned above were executed between 19.04.1962 and 18.04.1963, which is the grace period granted by the ceiling law. Therefore, the lands covered under the above mentioned gifts, be excluded in determining the ceiling area of the landholder in accordance with the provisions of law. Reference in this connection may be made to the case law reported in 1997 (2) PLJR Page- 516, wherein their Lordships clearly held that the lands which are gifted by the landholder to his sons and daughters, shall be excluded in determining the ceiling area of the landholder. Second, reference in this connection may be made to the case law reported in 1997 (2) PLJR page 12 (D.B.) wherein their Lordships clearly held that the persons who were gifted the lands are separate landholders in respect of these lands.

I held that all those lands be excluded from the lands of the landholder in accordance with the provisions of law.

3. Out of 6.63 acres of land of Mauza English, which are admittedly Tal-Chaur land should be classified as Class-V land and not as Class- II in respect of 5.60 acres and Class-IV land in respect of 1.03 acres of land. Reference in this connection may be made to the case law reported in 1978 BLJR- (26) page- 639 (D.B.) wherein their Lordships clearly held that the “Diara” and “Chaur” lands were similar and

were placed in separate and distinct category. In view of the above decision, it can definitely and safely be inferred that even if the alleged facility of irrigation is assumed to be available the land being Tal-Chaur land, it will be classified as Class- V land. A part of this land has already been classified as Class- V land in respect of the brother of the original landholder.

Therefore, it was held that the aforesaid 6.63 acres of “Chaur” land of Mauza English be treated as Class- V land.

4. In respect of 41.73 acres of land of Mauza Biman classification should be re-verified. I did not find any report about the realization of irrigational tax or water tax and the report is also silent on the point if the Government has constructed pucca construction of permanent nature for the flow of irrigation water.
5. The petitioner claims a transfer by registered sale deed dated 02.09.1957 to Bino Singh of Barhaiya which is mentioned in the verification report of circle officer, Barhaiya dated 04.12.1976. Because the transfer is prior to 22.10.1959, this land should not be clubbed with lands held by the landholder.

In the light of the above, it was held that the above mentioned 18 ½ decimals of the land be excluded from the lands of the landholder.

6. The petitioner claims a transfer by registered sale deed dated 19.09.1960 to the wife of Shri Ram Kishun Singh of Barhaiya. He should be directed to furnish a certified copy of the sale deed to ascertain the legality of the sale-deed.

7. Likewise, necessary verification of purported transfers in village Biman has to be made and decision taken on the legality of the transfers.
8. Whether after the compromise decree a real transfer of ownership and possession took place with regard to 23 decimals of land in Mauza Chhabisiya has to be verified with reference to Register-II and local enquiry in the presence of all concerned.
9. The Collector was right in ignoring the purported farzi transaction by Babu Pratap Narayan Singh.
10. It has to be verified if some lands are in the share of Shri Yadubir Narayan Singh, the brother of the landholder.
11. It has to be verified if some lands have been included in a different L.C. case No. 4/76-77 against Yadubir Narayan Singh, the brother of the landholder. The Collector has to call for the said case record and ascertain the veracity of the objection.
12. That the claim of the substituted landholder under section 18 of the Act shall be examined by the Court below in accordance with law.

Orders passed by both the Additional Collector and the Collector appear to be sweeping and guided by certain preconceived notions. Documents relevant to the averments made by the petitioners have to be called for and examined to dispose off the objections point-wise, systematically and in accordance with documents already on record, like the PMCH birth certificates which cannot be ignored altogether.

The case was remanded back to the Collector, Lakhisarai for disposal as per law in the light of the observations made above.

## Case Study No. 11

### Board of Revenue, Bihar Revision Case No. 21/2001

In the revision petition, the petitioner submits that vide his order dated 07.01.84 in L.C. Case No. 351/78-79, the D.C.L.R. had granted two units, one to the petitioner and another to the petitioner's mother. A notification to that effect under section- 15 (1) was published on 30-03-84. Subsequently, the landholder moved in an appeal on some other grounds before the Collector in L.C. appeal No. 30/83-84. The Collector vide his order dated 29.07.84 allowed the appeal and remanded the case to the Additional Collector. The Additional Collector vide his order dated, 13.07.96 slashed down the units granted earlier to the mother of the petitioner. The petitioner went to the Collector, Darbhanga in appeal again in L.C. appeal No. 23/96-97 who vide his order dated 28.04.2001 upheld the lower Court's order. The petitioner submitted that the unit granted earlier and duly notified cannot be withheld at a later date, especially when the State had not appealed against the grant of 2 units on 07.01.1984.

Perused the lower Court's Record. In his order sheet dated 31.08.1985 the Additional Collector records that the Collector sitting in appeal vide his memo No. 553 dated 7.8.85 had remanded the case to the Additional Collector with a direction to proceed afresh in the entire matter and hear the objection filed by the landholder U/S 10 (2). Accordingly, the Additional Collector stayed the distribution of land in the wake of notification U/S 15 (1). The Additional Collector called for statement of facts from the C.O.s concerned. After a rather long lapse of time, and after the receipt of the statement of facts from the Anchals concerned, the Additional Collector vide his order dated 31-07-95 concluded that

the total land held by the landholder was 88-97 acres. He granted two units of 30 acres of Class- IV land each (60 Acres in all) and declared balance 28.97 Acres as surplus.

It will be useful to summarise the subsequent objection against Section 10 (2) notification filed by the landholder in the Additional Collector's Court itself. The landholder contended as follows:-

1. 30 bighas of land in Mauza Simartoka in Anchal Kusheshwar Asthan belonged to the Nani of the landholder who had sold it away to different persons and that the J.B.s were running in the names of the said purchasers.
2. 1 bigha, 17 Kathas, 6 Dhurs and 83.5 dhurki land in Darbhanga town, were residential and non-agricultural.
3. The landholder and his mother had sold some lands prior to 09-09-70 (but no details were furnished).

The Additional Collector called for a report from the C.O. Kusheshwar Asthan on the objection petition of the landholder. The same was submitted vide the C.O.s letter No. 3 Dated 07.02.96.

The following is a gist of contentions made by the landholder and the findings of the Additional Collector:

Sl. No.	Contentions of L.H.	AC's findings.
1.	The mother of the LH sold 7 Bigha 19 Katha 19 Dhurs on 02.04.61.	Sale illegal. (Reasons not given)
2.	The L.H. sold his Nani's land by virtue of Nani's power of attorney.	Sale contravenous of ceiling law
3.	The Nana of the LH had by a registered deed of gift transferred 30 bighas to his (Nani's) wife, 30 bighas to LH on 03.12.1954.	No objection was raised by the LH at the time of DP to this effect.
4.	1.63 Acres falls in Darbhanga town	No proof adduced. Jeevach Jha, landholder has failed to prove that

		he was major on 09.09.70. Hence unit granted to him earlier was withdrawn.
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The Additional Collector finds a total of 88.97 Acres with the landholder and granted 1 unit to Brijbala Dai (the mother of Jeevach Jha) which came to 30 acres. The balance 58.97 Acres was declared surplus U/S 10(3) of the Act. Option was called for.

The landholder filed Appeal Case No. 23/96-97 in the Court of the Collector. The same was dismissed by the Collector on 28.04.2001. Hence this revision.

**FINDINGS**

1. The landholder has failed to adduce any proof or evidence in support of his contention of being a major on 09.09.1970. The unit of Jeevach Jha granted earlier by the D.C.L.R on 07.01.1984 and the Additional Collector on 31.07.1995 had to be withdrawn by the Additional Collector on 13.07.96 in view of this serious lapse of the landholder. Onus lay on him to prove his majority. In the absence of an authentic document, he could have even prayed for an oscification examination by a Medical Board.

It appears from the record that C.O. Darbhanga had in 1991 sent a genealogy according to which Jeevach Jha's age was 30 years on 09.09.70. Again, vide his letter no. 2106 Dated 01.10.94, the C.O. indicated the same age. A notable fact remains that in 1976, the C.O. Darbhanga had shown his age as 25 years on 09.09.70 and urged him to adduce proof. No proof was ever adduced by Jeevach Jha in support of his claim of majority on the appointed date. Hence, it is not possible to accept a baseless assertion or baseless report from the Circle Officer regarding age. In the absence of an authentic proof the Additional Collector was right in rejecting his

claim of majority vide Additional Collector's order dated, 13.07.96 in L.C. Case No. 351/78-79.

2. The landholder has failed to prove various purported sales and the legitimacy thereof vis-à-vis the ceiling law.

In view of the above, the lower court has done the right thing in granting one unit to Brijbala Dai and denying unit to Jeevach Jha, her son.

## Case Study No. 12

### Board of Revenue, Bihar Revision Case No. 23/2001

The revision is directed against the order dated 17.05.2001 passed by the Collector, Katihar in Ceiling Appeal No. 730 of 200-01. By that order, the Collector, Katihar has confirmed the order dated 30.12.95 passed by the D.C.L.R. Katihar in L.C. Case No. 12/74-75 State vs. Shri Radha Krishna Deoji. The Deputy Collector, Land Reforms had in the wake of the Bihar Ordinance No. 20/1995 declared 153.45 acres of lands held by the petitioners as surplus after leaving 1 unit of land i.e. 25 acres of class- II land with him. Originally, L.C. case No. 73/1974-75 had been started against Shri Radha Krishna Deo Ji through manager Pratap Narayan Mandal S/o Karamchand. The landholder never filed a return either vide notice under Section 6 (1) or 8 (1) of the Act. There is no mention of any objection or claim raised by the landholder under section- 10 (3) of the Act.

The record was reactivated after the Bihar Ordinance 20/1995 whereby Section 29 (2) (a) (ii) was deleted, options were asked for from the landholder/sebait. The same never came. The son of the deceased landholder despite having been noticed refused to receive it. All the interested persons/ heirs approached the Hon'ble Patna High Court challenging the proceedings. The Hon'ble Court directed them to file appeal and accordingly the appeal was filed in the Collector's court.

The petitioners in the instant revision refuse to admit the religious character of the lands in question and their use. They claim their title as well as continuous cultivating possession of lineal descendants and branches of the sebait's families as title holders

holding the deed of endowment as a family arrangement on the basis that the original executors of the deed as well as their descendants and family members are worshippers of Shri Radha Krishna Deo Jee. Neither there is any temple nor any idol of Shri Radha Krishna Deo Jee in the family, but since they have been the worshippers of Shri Radha Krishna Deo Jee within the family and in order that the worship may continue properly and also that the landed properties may not be wasted in future, they executed a deed of endowment. The deed stipulated that after meeting the expenses of the worship of Shri Radha Krishna Deo Jee, the residue will be applied for the maintenance of the executors and their descendants and for meeting the expenses of marriage, Shradh and the education of the children of the families from generation to generation. It is claimed that by the deed only a charge was created on the lands for the worship of Shri Radha Krishna Deo and the real beneficiaries are the executants, their family members and descendants. It is contended that it is the recital of the deed, which is decisive. In support of their contentions the petitioners have relied on some case laws reported in 1957 S.C.R. page 1157, A/R- 1972 S.C. 2069 and 1978 BBCJ- 60. The Judgments of the Hon'ble Supreme Court reported in 1957 and 1978 BBCJ- 60 have also been cited.

I framed the following issues for consideration: (a) the purpose or intention of dedication is said to be a primary thing in an endowment. The idol as a symbol and the embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests. The fictitious ownership which is imputed to the deity is determined by the expressed intention of the founder. The debutter property cannot be applied or used for any purpose than that indicated by the founder. The deity as owner, therefore, represents nothing else but the intentions of the founder. The object or purpose of the trust as indicated in the deed of endowment assumes importance.

(b) Gifts to the poor generally or gifts to a particular class of poor persons have been held to be charitable but gifts for the benefit of specific individuals, as for the children of the donor's tenantry or persons forming the members of a certain religious community are not charitable, even though the express purpose of the donor was to relieve property.

(c) Dedication ordinarily goes through the ceremonies of Sankalpa and Samarpan. The performance of these ceremonies is relevant only to show the intention of the grantor and if there is clear and unequivocal manifestation of the intention to create a trust and there is formal divesting of ownership in the property on the part of the donor with the intention of devoting it to religious or charitable purpose, dedication will be deemed to be complete. The absence of religious ceremonies may be taken into consideration along with other evidence for the purpose of determining the real intention of the donor. Mere performance of the ceremonies would not be conclusive if it is established from the document or other evidence that there was no real intention to create an endowment. Mere forms are not enough. There must be a real Sankalpa and real Samarpan. On the other hand, an absence of these ceremonies would not be material if the recital of the deed is sufficient to establish dedication.

The present deed of endowment has been executed by Karmachand Mandal, Pratap Narayan Mandal, Sheo Narayan Mandal, Chandra Narayan Mandal, Indra Narayan Mandal, Satya Narayan Mandal, (then minor through his brother) Bajit Lal Mandal, Mahabir Mandal and Din Dayal Mandal (total 9 persons). Except Indra Narayan Mandal, who is petitioner No. 6, other executants have died and their heirs and legal representatives are the petitioners. The deed has named an Arpan-nama i.e. a deed of endowment, which has

been executed in favour of Shri Radha Krishna Deo Jee through Managers, namely, Pratap Narayan Mandal and Har Narayan Mandal.

The subject matter of the deed are movables in the form of cattle as well as furniture of the house. So far immovable properties are concerned, the residential house of the executors as well as the lands of the family are the subject matter.

The recital of the Arpan-nama goes as follows:

“And after meeting the expenses on the worship as aforementioned the residue of the income from the property under the deed shall be applied for the maintenance of the execution and their family members and dependents for meeting the expenses of marriages, last rites and education of the children generation after generation.”

#### **FINDINGS**

(i) Prima facie we do not find that the underlying object of the executors was to divest themselves completely of the ownership of the property. The income from the property has not been directed to be applied fully for meeting the cost of the worship of the “Ishtha” Shri Radha Krishna Deoji. Not a word is there that the executors renounced their concern or ownership from the property. On the contrary, it has been recited specifically that because the executors have been worshipping Shri Radha Krishna Deoji and with a view that the worship may continue in future also, the deed was executed. Accordingly, the executors and their descendants have been appropriating the income of the property for their maintenance, marriage, Shradh and the education of children.

We do not find any charitable purpose in the recital of the deed. We do not find any mention of any ceremony with regard to Sankalpa and Utsarga, the two essentials of the endowment, though non-observance of the ceremony of Sankalpa and Utsarga cannot be said to be fatal to the endowment.

Further, from the recital of the deed, nowhere there is any mention of any temple or any deity and this supports the case of the petitioners that there is neither any temple or idol of Shri Radha Krishna Deojee.

(ii) Of course on the basis of the said deed of endowment record of rights entries have been made in the name of Shri Radha Krishna Deoji but it is the established view of law that by the record of rights entries no title can be created. The record of rights is not a document of title. The title may pass through a transfer deed and because by the deed at hand no title was created in favour of the deity and the dedication itself being not absolute, the deed remains a family arrangement deed only. Reference in this context may be made to a full bench decision in the case of Nand Kumar Rai and others vs. State of Bihar and others reported in 1974 PLJR 27 wherein it has been held that an entry in the record of rights does not create any title in favour of any person. An administrative order of mutation and creation of Jamabandi on the basis of that record of rights is not and cannot be a decision on the question of title. In the aforementioned decision reported in 1974 PLJR 27 it has been held that an entry in the record of rights does not create any title in favour of any person. An administrative order of mutation and creation of Jamabandi on the basis of that record of rights is not and cannot be a decision on the question of title. In the aforementioned decision reported in 1974 PLJR Page- 27, the full bench consisting of Shri Untwalia C.J., S.N.P. Singh and S.K. Jha J.J. held as under:

“I have already stated that an entry in the record of rights neither creates nor extinguishes rights nor does a commission of entry affects the rights of parties vide Mahendra Nath Biswas and other V. Shyam Lal Benerjee and another. Irrespective of the entry in the record of rights, the owner of the lands remains the owner. The person in possession remains to be so unless ousted in due course of law.”

(iii) Similarly in the case of the State of Bihar Vs. Ram Dayal Missir reported in 1962 BLJR (SC) 385 the Hon’ble Supreme Court held that the record of rights under the provision of the Act neither creates nor extinguishes the rights of the parties. In the case of Mohini Vs. Fariduddin reported in 1966 BLJR 761 D.B. it has been held by their Lordships that the record of rights is not a document of title and entries in such documents do not prove exclusive title of person so recorded. Therefore, neither the record of rights entries nor the Jamabandi can be said to be decisive in the matter.

(iv) So far the intention of the executors is concerned, it is to be ascertained from the construction of the deed of dedication. The case law cited by the petitioners supports the view also. The Hon’ble Supreme Court in the cited case reported in 1957 has clearly held that whether or not a dedication is complete must depend on the intention of the document in any particular case read as a whole. The same principle was followed in AIR 1972 SC 2069. Similarly, in another case cited by the petitioners reported in 1978 BBCJ 60 B.B. reliance was placed on the case of Bhekhdhari Singh vs. Shri Ramachandraji reported in ILR 10 PAT 388 where Mr. Ross and Mr. Dhavle J.J. considered the question of dedication in the case of endowment and observed that a dedication to be effectual must be real and not nominal and it must be shown that the grantor completely divested himself of every portion of the property which was the subject matter of the grant. In that case, endowment

was in favour of an idol and the observation was that the question whether the idol should be considered the true beneficiary subject to a charge in favour of the heirs for the upkeep of the heirs should be considered the true beneficiaries of properties subject to a charge for the upkeep of the worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire provisions of the instrument. Another decision in the case of Har Narayan and another Vs. Surja Kumari and another reported in ILR 43 All 291 was also referred to in that case wherein an Appeal from a decision of the Allahabad High Court was heard by the privy council where it was observed by their Lordships that although a will provided that the property of the testator shall be considered to be the property of a certain idol, the further provision such as that whatever may be saved after defraying the expenses of the temple and the pay of the servants shall be used by our legal heirs to meet their own expenses, was indicative of the fact that the intention was that the heirs should take the property subject to a charge for the performance of the religious purposes named therein.

In the case reported in 1978 BBCJ 60 (Muneshwar Vs. State of Bihar) the condition in the deed with regard to prohibition to the executors to make any alienation or transfer indicating that the property vested in the idol was also repelled in view of the observation made in the deed that the income derived from the property after defraying the expenses of the worship of the 'Istha' of the family, Sri Radha Krishna Deoji (for which neither any idol nor temple is there) shall be applied for the maintenance, it becomes a deed of family arrangement and title to the lands remains vested in the executors and their descendants including the petitioners who are the landholders entitled to units. There is no question of exemption and application of the provisions of section 29 (2) (a) (ii) of the Act and the ordinance No. 20 of 1995 with regard to the deletion of the provisions. Therefore, the courts below gravely

erred in basing their orders and decisions on the amending ordinance referred to above.

(vi) The landholders avoided the proceedings and after the notification under section- 15(1) of the Act, they woke up from slumber and approached the Hon'ble Patna High Court and after obtaining an order filed an appeal.

(vii) The petitioners submit that notices to the landholders under sections -10 (2) and 11 (1) of the Act were mandatory in the absence of which notification under section 15 (1) is rendered illegal. A gross irregularity had been committed at the lower level in as much as action under section- 15 (1) has been resorted to by altogether skipping the stages of section 10 (2) and section 11 (1) of the Act. It is apparent that keeping the record for years in dormancy, in the wake of ordinance 20 of 1995, the Deputy Collector, Land Reforms suddenly woke up to short-circuit action circumventing the mandatory stages of law. The Collector too kept his zeal above law.

In the light of the aforementioned findings, I set aside the impugned order dated 17.05.2001 passed by the Collector, Katihar in appeal case No. 730 of 2000 as well as the order dated 30.12.95 passed by the D.C.L.R. in L.C. case No. 1974-75. As a result, the District Gazette published on 30.11.1999 under Section - 15(1) was set aside also.

In the event of the mandatory requirements under the law to pursue the provisions of section 10 (2), 10 (3) and 11 (1) of the Act having been skipped, the Collector was directed to move afresh in accordance with the statutory requirements of the law in letter and in spirit and to re-classify the impugned lands as per section- 5(2) (ii) proviso, in case an improvement in irrigation facilities had taken place over a period of time.

### **Case Study No. 13**

#### **Board of Revenue, Bihar Revision Case No. 42/2001**

This revision is filed against the order Dated 19-03-2001 passed by the Collector, Kishanganj in Land Ceiling appeal No. 24 of 1999 by which the appeal was dismissed and the order dated 11-09-1995 passed by the D.C.L.R., Kishanganj in the original Land Ceiling Case No. 1 of 1992-93 was confirmed.

#### **BRIEF HISTORY OF THE CASE**

In terms of the provisions of Section 7 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 a report from C.I. Kochadhaman formed the basis for starting L.C. Case No. 1 of 1992-93 against Haji Samdan Ali. Karmachari's report was called for. The landholder was directed to file return, which was filed on 23-11-1992. Reports submitted under Section 7 were treated as verification. The return itself was not verified, as per the petition. The landholder was directed to produce original deeds for sales and gifts. No enquiry, it is submitted, was made U/S 5(1) (ii) of the Act. The Draft Statement showed the total land as 72-67 acres. Objections U/S 10 (3) were filed on 22-01-1994. The C.O. was asked to report on the objections. The C.O. submitted his report on 16-05-1995. In the meantime, the landholder Samdan Ali died and his widow Sabera Khatoon was substituted. It is submitted that other legal heirs were ignored.

#### **MAIN OBJECTIONS**

1. No proper verification or re-verification
2. Classification of land as Class III challenged

3. No enquiry U/S 5(1) (ii) with regard to sales and gifts. No order on annulment or acceptance.
4. Adult sons' and daughters' shares not excluded after Samdan Ali's death.
5. Lands of other persons were not excluded.
6. Entitlement of minor dependents beyond 3 was ignored.
7. Lands which are in the bed of flowing rivers or on which Bazar is held deserve exclusion.
8. Opportunity of exercising option in terms of Section 9 of the Act was not given.

The D.C.L.R. considered and disposed off objections as aforesaid on 11-09-1995.

The D.C.L.R. relies on the C.O.'s report that the lands held by the landholder had been duly verified through Khatian, Register II and spot enquiry on factum possession.

The Bihar School Examination Board's Certificate on the age of Sadiq Samdani (son) was given weightage as against a Madarsa certificate and the medical certificate produced by the original landholder. The D.C.L.R. found him to be a minor on 09-09-1970. The rest of the progeny being younger, none was an adult on 09-09-1970.

The entire land held by the members of the landholder's family irrespective of their shares was held to be landholder's land.

The gifts made to minor sons were never proved in the Court. No gift deed was ever produced by the petitioner. Hence gifts were ignored.

Sales were effected without the Collector's consent and after 09-09-1970. Hence claims with respect to them were rejected.

The land in Mauza Barijan Puthiari Jagir (khata No. 96 area 3.40 acres) was stated by the landholder to actually belong to one Taha, resident of Anarkali, P.S. Kochadhaman. The C.O. reports that the land is being cultivated by the landholder. Taha never put up any claims before the Court.

The claim for the classification is not based on facts and evidence, the onus to bring which lay on the objector.

The D.C.L.R. rejects the prayer of the landholder that the legal heirs of the landholder were to be given their respective shares in the land concerned. The D.C.L.R. holds that no such provision on legal heirs exists in the ceiling Act.

#### **FINDINGS**

1. Various discrepancies in the earlier report submitted by the C.O. and in the landholder's Return have been duly acknowledged by the D.C.L.R. in the order sheet dated 18.01.1993 and 09-07-1993 and vide his order dated 09-07-1993 the D.C.L.R. has called for a report on various points of discrepancy.

That the said report was called for from the C.O., Kochadhaman is obvious from the order sheet dated 01-09-1993.

A verification of return if viewed conjointly with the objections raised U/S 10 (3) of the Act, covers both the return and the objections. The Madarsa certificate of age has been sent to the C.O. for enquiry report. The D.C.L.R. has further put on record that the

landholder has not adduced any proof in support of the claims of the age of other family members. The D.C.L.R. records on 15-09-1993 that the landholder has not filed gift deeds.

On 15-1-1994 the verification report of the C.O. Kochadhaman (vide letter no. 2250 dated 31-12-1993) on the land particulars submitted by the landholder and on the objection petition was received. Hence it is far from truth to submit that no verification or re-verification was ever carried out. The C.O.'s report pertained to 72.22 acres and the Madarsa certificate in respect of Sadiq Samdani (son). Regarding the sale to Atafat Hussain by the landholder and gift to own children, the seller was noticed and the gift deeds/sale deeds in the original were called for by the D.C.L.R. on 15-01-1994. The said purchaser filed a photocopy of the sale deed but gift deeds were never presented by the landholder. On 16-03-1994 Iftekhar Anjum Choudhary filed a photocopy of Sadiq Samdani (son's) Bihar School Examination Board Certificate according to which the date of birth of Sadiq was 30-01-1958.

On 26-05-1994, on the basis of C.O.'s verification report and genealogy the landholder was given one unit (25 acres Class III) and 47.67 acres was declared as surplus, after correcting certain calculation error.

2. It will be evident from the above that the sale deeds purportedly executed by the landholder were not presented by the landholder in the court for scrutiny. The sole sale deed (photocopy) presented by Atafat Hussain was never pressed for written argument by the purchaser. However, there appear to be some more transfers by the original landholder in 1965 in favour of Mohini Prasad Singh and Sandhya Rani Saha. No enquiry under Section 5 (1) (iii) of

- the Act was held before the preparation and publication of the Draft Statement under Section 10 of the Act.
3. The gift deeds purportedly executed by the landholder were never presented for scrutiny before the D.C.L.R. The donees appear to have not been noticed. The gifts are of 21<sup>st</sup> March 1972. My attention was drawn towards the ordinance No. 113 of 1971 by which 3 months' grace period was initially given to a person guided by laws other than the Mitakshara School of Hindu Law to transfer lands by gifts to his son/daughter or any children of his son or daughter or to such other person or persons who would have inherited such land had the landholder died intestate in respect thereof at midnight between the date of the commencement of the aforesaid ordinance and the day just preceding such date. The ordinance was published in the Bihar Gazette dated the 27<sup>th</sup> December 1971. The time of 3 months was further extended for the next three months by Bihar ordinance 64 of 1972. The deeds of gift being of 21<sup>st</sup> March 1972 are within the said period. Two case laws of the Hon'ble Patna High Court have been cited which are reported in 1977 B.B.C.J. 54 AND 1993 (2) P.L.J.R. 451. In view of the transfer by gifts, the original L.H. may be directed to produce gift deeds for the purpose of the exclusion of the lands mentioned therein.
  4. The widow of Samdan Ali was substituted for the landholder on the basis of the C.O.'s report on genealogy. There was no question of inducting heirs who were minors on 09-09-1970. The personal law was not relevant or to be taken into consideration in determining the composition of the family for the purpose of the Act (Section 2 ee).

5. It has been submitted by the State in ceiling appeal no. 24/99 in the court of Collector, Kishanganj on 06-02-2001 that the lands sold by Samdan Ali have been declared as surplus without making enquiry U/S 5(1) (iii) of the Act.

The State held that the malafide and bonafide of the transaction had to be ascertained. The proposition of law is that the area sold by the landholder should be put under the unit of the landholder and not as surplus and the same will be deducted from the permissible area allowed to be retained by the landholder as provided in Section 9(2) of the Act. Strangely enough, the transfers which are of dates prior to 09-09-70, by sale deeds have not been looked into by the Collector, Kishanganj in his order dated 19-03-2001. Since there has not been any enquiry under Section 5(1) (iii) of the Act which is mandatory, the proceeding subsequent to that stage suffers from illegality in view of the decision of the Hon'ble High Court reported in 1993 (2) BLJR- 765 and 2000 (3) PLJR-780.

6. With regard to age, the Collector, Kishanganj has rightly relied on the Bihar School Examination Board Certificate which was entirely suppressed by the landholder and produced by a stranger in the Court.

7. It has also been submitted by the petitioners that the original landholder died in 1995 and thereafter there was devolution in view of the fact that the family is guided by the Mohammadan law. The provisions of Section 2 (eee) read with Section 18 of the Act were referred to. However, it is the appointed day of 09-09-1970 which is relevant and the Haji Samdan Ali was very much alive then. Therefore, there cannot be any devolution on the death of the original landholder Samdan Ali in 1995. However, lands which were acquired by purchase by the sons of Samdan Ali and which stand in the names of his son deserve exclusion from the case.

## Case Study No. 14

### Board of Revenue, Bihar Revision Case No. 44/2001

8. The Collector, Kishanganj is absolutely right in rejecting the personal law theory in ceiling matters.
9. So far the classification of land mostly as Class III is concerned there appears to be no basis or explanation for that. The case law reported in 1993 (1) BLJ 705 in similar circumstances directed ascertainment of classification afresh. Accordingly, the Collector was directed to get the classification ascertained in accordance with law.

In view of the foregoing facts and circumstances of the case the Collector was directed to pass an order on the limited point of transfers by sales and classification as also the entitlement of extra units to the landholder for extra number of minor dependents beyond number three, as submitted by the State in its written argument dated 06-02-2001 in L.C. Appeal No. 24/99. A last chance was to be given for the production of the concerned sale deed for documentary and factum possession enquiry and order as per law. If he chose not to cooperate or to linger disposal an explicit order as per law was to be passed U/S 5 (1) (iii) and on classification etc. and further the landholder of course may be given an opportunity of exercising option with respect to the land which she wanted to retain within the permissible unit.

The petitioner's prayer comprises in the main an exclusion of the land held by the late landholder acquired under the Kosi project, grant of units to minors in the family and consideration of the land as one belonging to Class – IV.

Perused the Lower Court's records. In the L.C. case No. 24 of 1981-82, the D.C.L.R., Jhanjharpur vide his order dated 02.03.1994 granted 1 unit and accordingly 30.00 acres of Class-IV land was declared as surplus U/S-11 of the Bihar Land Ceiling Act. The case had been disposed off earlier on 16.11.1971 and was re-started by the DCLR. U/S 4-A of the Act. Verification Report submitted by the C.O. Andhratharhi letter no. 121 dated 24-02-81 formed the basis for the initiation of the impugned proceedings. A subsequent verification report of the C.O., Andhratharhi vide his letter No. 148 dated 04-04-92 has also been cited by the DCLR. Yet another report from the C.O., Babubarhi vide his letter no. 723 dated 17.09.1992 has been relied upon by the DCLR. The land described in the aforesaid reports belong variously to Class- II and IV.

The petitioner pleaded before the D.C.L.R. that the late landholder's 1 son and 3 daughters had attained majority on 09-09-70. It was further submitted that the landholder had gifted his unit land on 20.03.89 vide registered will to certain persons in the family.

The DCLR held the transfers made by the landholder to two daughters namely Shanti Devi and Vimla Devi as invalid, since they were made in 1960. The DCLR further holds the transfers made in favour of the wife, son and daughter-in-law to be invalid, but no

details of the said transfers are adduced in the order. Similar is the case of the will dated 20.03.89 which aimed at frustrating the provisions of law. Transfers made to other persons, too, are bad and unacceptable in law. Lands falling in village Munga Madha too were clubbed with the landholder's lands. Lands acquired under the Kosi Project were excluded. In a nut-shell, only one unit could be decided in favour of the LH.

An appeal against the acquisition of surplus land U/S-15 (1) was filed by the L.H. before the Collector of the district on 26.03.1994. In C.W.J.C. no. 3422 of 1994 the Hon'ble Patna High Court quashed the Gazette notification no. 21 dated 24.03.94 and directed the petitioner to raise his case at the appellate stage. The Collector, Madhubani was directed to dispose off the appeal of the petitioner on merit. The Collector vide his order dated 03-09-2001 in L.C. appeal Case No. 1/94-95 upheld the D.C.L.R's order dated 02-03-1994. A gist of the Appeal petition and the Collector's findings is adduced as follows:

Sl. No.	Gist of Appeal	Collector's findings.
1.	The land held by Shanti Devi and others should be excluded from the appellant's lands as JBs have been started prior to 22.10.1959, 1959-60	C.O.'s report does not give the exact dates of the opening of the JBs concerned. The DoB certificates to support majority claims of children on 9.9.70 have not been adduced. As per the C.O.'s report, several plots are actually cultivated and rents against them paid by the LH and purported transfers are a sham.
2.	All heirs of late Mathura Prasad Mahatha, L.H. had not been made parties.	No specific comments in the order. Ground for denial of extra units mentioned.
3.	All lands should be classified as Class-IV whereas the lower court has held them to be Class-III and converted into Class-IV.	No findings.

4.	(i) Additional units to minors.	No findings of the Collector against section-5 (2) (i) if on the appointed date, minors as claimed existed.
5.	(ii) Land acquired under the Kosi Project be excluded.	The L.H. could not prove if the acquisition was prior to 9.9.70. Hence it was included in the L.H.'s land, as per the Collector's order.  The DCLR vide his order dated 2.3.94 in LC case No. 24/81-82 had earlier excluded the Kosi Project land from the lands once held by the L.H.

#### FINDINGS

1. The petitioner has singularly failed to establish that the purported transfers by sale deeds or gifts were made prior to 22.10.1959 U/S 5 (1) (iii).
2. The landholder has failed to establish that the transfers made between 22.10.1959 and 9.9.70 were not aimed at defeating the purposes of the Act U/S 5 (1) (iii).
3. The will dated 20.03.89 was on the face of it post – 9.9.70. No previous permission in writing from the Collector is available on record. Hence, the acquisitions pursuant to the will are bad in law as per Section- 5(1) (ii).
4. The landholder has failed to establish that the minors against whom units were claimed under section 5 (2) (i) were existing on the appointed date.
5. No proof is adduced to challenge the lower court's findings on classification.
6. No proof is adduced to get the land acquired under the Kosi project excluded from the land held by the landholder. The DCLR, however, had excluded the said land from the lands held by the landholder vide his order dated, 02.03.94 in L.C. Case No. 24/81-82.

The Sections dealing with transfers envisage voluntary transfers made by the landholder at his initiative. Conversely, the parting away of the land for the Kosi project was a result of State action under the Land Acquisition Act, for which the landholder was in no way responsible. The lands acquired under the Land Acquisition Act, cannot be deemed to be a transaction under the ceiling law. Hence, the same have to be excluded from the kitty of the landholder.

In view of the above, the revision petition did not find merit for acceptance. It was dismissed.

## Case Study No. 15

### Board of Revenue, Bihar Revision Case NO. 55/ 2001

The findings of the Additional Collector, Sitamarhi as recorded in the order dated 9.6.83, adverted to the following lands held by the landholders, after due consideration of transfers and inheritance.

Sl. No.	Landholder (who filed returns)	Land held (inclusive of land coming from father's side and owning with the husband, as the case may be)
1.	Abhiram Thakur	26.23 ½ Acres (Less than a Unit. Case closed)
2.	Vishakha Devi	26.44 Acres (Father's) 3.00 Acres (Husband's) 29.44 Acres (Less than a Unit. Case closed)
3.	Mina Devi	26.44 Acres (Father's) 40.22 ½ Acres (Husband's) 66.86 ½ or 66-87 Acres (Out of this, transfer of 9.06 Acres allowed. Hence net land held 57.81 Acres) Mina Devi/ Husband 1 Unit Husband's Mother 1 Unit Entitled to hold 60 Acres (Case closed)
4.	Mukha Devi	8.66 Acres (Husband's) 26.44 Acres (Father's) 35.30 Acres Entitled to 30 Acres, 5.30 Acres declared surplus.

On 30.12.1993, the Additional Collector, passed an order. It was known that the landholder Mukha Devi was dead. It was further stated that she had sold all land except 2 Acres to 51 persons. Since, the landholder was no more, her husband too had already expired and they had no issues, the Additional Collector ordered the issuance of notices to Mukha Devi's brother Abhiram Thakur, sister Vishakha Devi and Mina Devi on the father's side and to nephew Jagannath Singh and Baliram Singh, sons of her husband's brother

Kodal Singh and his nephew Manendra Singh and Ashok Kumar Singh sons of her husband's brother Ramdeo Singh, on the husband's side with a view to knowing their land details and then to club the lands belonging to late Mukha Devi with the lands held by the persons named above.

A comprehensive order by the Additional Collector dated 29.11.94 is on record which puts forth a chronological progression as well as factual analysis of the proceedings thus far. It has been adverted to in the said order that since the landholder Mukha Devi had died heirless, lands coming to her from her parents' side will revert back to the parents and lands coming from the in-law's side will revert back to the in-law's side. Nevertheless, and strangely, in the same sentence, all the lands of Mukha Devi had been clubbed with the lands held by her brother Abhiram Thakur alone.

In the ultimate calculation of the Additional Collector, Abhiram Thakur's land status is as follows:

		<b>Acres</b>
1.	After debiting pre 9.9.70 Sale and Gift.	9.79 ½
2.	Own family share	26.46 ¾
3.	Late Mukha Devi's share from parents' side	26.46 ¾
		62.73

As regards Sl. 3, all lands had been sold by Mukha Devi save 2 acres between 1981 and 1985. The sales were held void and malafide. Clandestinely, Abhiram Thakur, the brother of Mukha Devi was behind the scene and sales. 3.20 acres of sold land was reported under the possession of Abhiram Thakur by the Circle Officer, Bathnaha. No permissions for sale were taken. This extends suspicion to other sold lands as well. Hence, surplus was determined as follows:

		<b>Acres</b>
1.	Class-IV land held by Abhiram Thakur (inclusive of lands held and sold by Mukha Devi)	62.73
2.	Unit allowed	30.00
3.	Surplus	32.73

The main findings in the case were as follows:

1. During the 'abated' period, the D.C.C.R. vide his order dated 31.12.80 accepted the claim of possession by purchasers solely on the averments made by the purchasers. No cross verification was made by calling forth the C.O.'s report. I stated that the same baseless findings had carried forward in the post-abatement period.
2. A gift to mother during the grace period (after 9.9.70) was not admissible according to the letter of the law. The same was, however, admitted by the Deputy Collector, Land Reforms vide order dated 31.12.80.
3. Additional Collector's order dated 29.11.94 was silent about what will happen to 8.86 acres of land coming to Mukha Devi from husband's side. Since unit once granted cannot be allowed to vanish, it was imperative that the lands coming from the husband's side will remain intact with the heirs on that side.

The break-up of Mukha Devi's landholding vide Additional Collector's order dated 9.6.83 was as follows:

From husband's side           ...     8.86 Acres  
 From father's side           ...     26.44 Acres  
 Entitled to 30 acres of land.  
 5.30 acres declared surplus.

Granted that the father's side of the property will revert back to the father's side since after marriage, the father's family is rendered not own and the same is to be clubbed and calculated for ceiling

purposes, yet the question remains, what particular lands constituted the unit and surplus categories earlier.

4. The father's side property (whatsoever) has been clubbed only with the landholder Abhiram Thakur's lands. He has got two sisters also namely Vishakha Devi and Mina Kumari (so what married) who had filed returns in earlier stages. The exclusion of the sisters from reversion is a travesty of law. The clubbing ought to have been done equally with regard to the brother and the two sisters and ceiling area re-determined. The mischief in sales whatsoever done by Mukha Devi is to be borne by all concerned on the father's side, irrespective of who was behind the scene and real gainer. In any case, the sale lands were not excluded. Their load of invalidity was to be distributed equally.

I ordered as follows:

1. Late Mukha Devi's unit and surplus are to be determined specifically plot-wise in order that the surplus is kept aloof from reversion/ devolution.
2. The unit carved from 8.86 acres of land coming to Mukha Devi from the husband's side will go to her heirs in that family and will not be subjected to ceiling proceedings since unit once granted on the appointed date cannot be taken back subsequently.
3. The unit carved from 26.44 or 26.46  $\frac{3}{4}$  acres of father's side property will be (including sold land) clubbed equally with the lands held by Abhiram Thakur, Vishakha Devi and Mina Kumari and their respective ceiling areas will be re-determined as per law.
4. It is necessary to re-do the exercise of a verification of the transfers and any exclusion of transfer lands from landholder's

admissible area is to be supported by proper enquiry, after due notices to all concerned.

## Case Study No. 16

### Board of Revenue, Bihar Revision Case No. 4/2002

The Revision petition filed by Bibi Aflatun Nisa is directed against the appellate order dated 11.12.2000 passed by the Collector, Kishanganj in LC Appeal No. 34/94 rejecting the petitioner's appeal filed against the order dated 30.11.93 passed by the Deputy Collector, Kishanganj in LC Case No. 42/73-74 by which 18.54 acres of lands were declared surplus.

A brief history of the case is that a land ceiling case (No. 42/73-74) was originally started against the original landholder Rajan Ali son of Sher Mohammed on 13.2.74. After his death, he was survived by his wife Jebunissa, a son Jaakir Hussain and a daughter Aflatun. Subsequently, the son too died and next in the line came his mother, sister and uncle Ibrahim. Jaigun Nisa too died on 10.07.1989. Aflatun Nisa, the daughter of the landholder became the sole heir.

On 04.06.1990, the DCLR, Kishanganj found only 28.61 ½ acres in Aflatun's share, which being less than 30 acres, the case was closed. After subsequent verification, nonetheless, the Deputy Collector, Land Reforms, Kishanganj found 18.54 acres as surplus with the landholder. An appeal against the Draft Publication under section 11 (1) had been filed by the landholder in the Collector's Court. The appellant submitted that she was not a landholder on 09.09.1970. As per the survey khatian, Ramjan Ali was the raiyat of 29.09 ½ acres in Andhasur and 10.06 acres (total 39.15 ½ acres). According to the Muslim Succession Act, the appellant will have 27.35/30 acres, her uncle Ibrahim will have 07.17/18 acres and her maternal cousin Qamsul Huda will have 0.13/36 acres. Hence the

appellant owned only 28 acres of land which being less than the prescribed ceiling, an appeal was filed.

The Collector held that according to Section 3 of the ceiling Act it was a secular Act and while determining the ceiling of a given landholder, the personal law of that person will have no bearings. The Appeal was dismissed on 11.12.2000.

The State contends that all the provisions of the ceiling Act have been discussed distinctly in Civil Appeal No. 4336 of 1986, the State of Bihar vs. K. M. Zuberi 1996 (2) PLJR SC P.55.

The following is a gist of my findings:

1. In view of the law laid down by the Hon'ble Supreme Court in the State of Bihar vs. K. M. Zuberi & Others, the petitioner's prayer for her father's (original landholder's) property to be re-allocated and re-appropriated as per the rules of succession laid down in the Mohammadan Law, thereby reducing down land quantum held by herself, fails and is rejected. The approach adopted by the Court below towards the landholder's family (wife, husband and minor children) is legally sound and valid.
2. Finding zero area of land held by Bibi Aflatun as surplus, the Deputy Collector, Land Reforms vide his order dated 04.06.1990 had sent the Draft Statement to the Additional Collector for Final Publication under Section 11 (1). The Additional Collector returned the same vide his letter No. 2556 dated 10.06.1990 with instructions to re-verify land particulars through C.O. Kochadhaman. In my view, the Additional Collector's action was without jurisdiction and was sufficient to vitiate the entire proceedings.

In the light of the foregoing, the impugned order dated 11.12.2000 passed by the Collector, Kishanganj was set aside. The case was remanded back to him to start the proceedings afresh, take cognizance of the verifications made already and re-classify land according to improved irrigational facilities as per proviso to Section 5 (2) (ii) of the Act.

### Case Study No. 17

#### Board of Revenue, Bihar Revision Case No. 5/2002

The revision was directed against the order passed by the Collector, Samastipur in Ceiling Appeal No. 17/1996-97. By the impugned order, the Collector had allotted only 3 Units to the three 'Sthalas' namely, Maniar, Bhatara and Darsur and no units had been granted to the 9 deities located therein. The prayer was to allot 3 + 9 = 12 units.

I rejected the said prayer as deities were entitled to separate units only in case of private endowments. In cases of a public trust (as in the present case), the public trust would be entitled to only 1 unit irrespective of any deities installed therein.

It came out in course of the proceedings that Mahanth Karan Jyoti had executed a Samarpan-nama (1958: Registered in 1962) dedicating the total property of 357 Acres 60 Decimals to the following deities housed in the three 'Sthalas':

(i)	108 Shri Hareshwar Nath Mahadeo	Bhatara Math
(ii)	108 Shri Sitaram Jee	
(iii)	108 Shri Hanuman Jee	
(iv)	108 Shri Mahadeo Nityanand Jee	Darsur Math
(v)	108 Shri Gopal Jee	
(vi)	108 Shri Hanuman Jee	
(vii)	108 Shri Gopal Nath Jee	Maniar Math
(viii)	108 Shri Radha Krishna Jee	
(ix)	108 Shri Hanuman Jee	

Revisional survey entries were in the names of the 9 deities through Mahanth Chaitanya Jyoti and yet a notice under Section-6 of the Act was issued on 10.07.90 against strangers. The classification of land

was not done in the presence of Mahanth Ram Nihora Das, the authorized representative of the Sthalas and the deities. All the 3 Maths were stated to be 200 years old. Mahanth Chaitanya Jyoti died in 1971. He was succeeded by his Chela Indra Deo Jyoti. He too died in 1983 and was succeeded by Ram Nihora Jyoti. It was alleged in the revision petition that the notice under Section-6 of the Act was issued to Deo Kant Jyoti who was an outsider. The Bihar Hindu Religious Trust Board declared Ram Nihora Jyoti as the Mahanth and trustee of all the three Sthalas on 13.08.90 (communicated to the Collector on 27.12.90). And yet, the Collector accepted the Return filed by Deo Kant Jyoti on 9.10.91 in the ceiling proceedings.

In subsequent developments, the to-date Mahanths were duly substituted in L.C. Appeal No. 17/96-97. The Collector dismissed the appeal, confirmed the grant of 3 units by the Additional Collector and directed the Additional Collector to dispose off the case of the interveners afresh.

In my judgement and order dated 14.02.2004, I recorded my findings with reference to the points raised by the petitioner and the stand taken by the Appellate Court.

The Section-6 notice ought to have been served upon the deity landholder through the Manager. The Collector refers to the disputed Mahanthship as the reason behind issuing notice to Mahanth Deo Kant Jyoti. By the same logic, if a dispute is going on between two claimants, how can a notice be issued to any one of them without a resolution of the dispute. It was impertinent on the part of the Additional Collector to have issued notice to any one of the parties to the dispute especially when the matter was being raised by the Bihar Religious Trusts Board on orders from the Hon'ble Patna High Court. Incidentally, the person to whom notice

U/S-6 of the Act was sent was not declared a Mahanth. Hence, the proper and lawful course of action would have been to substitute Ram Nihora Jyoti as the Manager of deities (Maths) and call for a return afresh. It is all the more disturbing to note that despite the Board's order dated 13.08.90 and letter dated 27.12.90 ousting Deo Kant Jyoti from the scene, the Return filed by Deo Kant Jyoti formed the basis for verification by the Circle Officer and for the Draft Publication U/S-10 (2) of the Act. The action of noticing a person whose bonafides as Mahanth was still a subject matter of dispute and consideration and accepting a Return from him, getting the same verified by the C.O. and lastly relying upon the said Return for section 10 (2) publication of the Draft Statement renders the entire proceeding vitiated and mis-directed.

It will be obvious from a glance at the lower court's records that a mere classification and nature of land is alluded to. The detailed rationale for treating a given plot under a certain Khata with reference to the stipulations of Section-4 of the Act is manifestly absent.

Regarding intervener – transferees or settlees, the Collector (in appeal) had already remanded the matter to the Additional Collector for review. I agreed. The case of the interveners should be examined afresh after allowing them a reasonable opportunity of hearing and adducing evidence. Necessary precaution was, however, to be exercised in matters of illegal transfers which had to be dealt with firmly in accordance with law.

The Trust under consideration was admittedly a public trust, with successive interventions of the Bihar Religious Trust Board. The Collector was directed to take note of such interventions in proceeding with the ceiling case in accordance with law. He was further directed to pass a reasoned order with regard to the

objections and claims of the Mahanth, the prayer of the intervener-transferees and with regard to the dis-entitlement of the deities to units in accordance with law.

## **Case Study No. 18**

### **Board of Revenue, Bihar Revision Case No. 14/2002, 15/2002, 16/2002, 18/2002 and 19/2002**

#### **1. Revision Case No. 14/2002**

The petitioner Rajendra Biraji submits that no local enquiry had been done under Rule-8 and Sub-Rule (3) of the Bihar Land Ceiling Rules, 1963. The Bihar Bhoodan Yajna donations had been ignored. Voluntary surrenders were ignored. Acquired lands were ignored. The Bihar privileged persons homestead tenancy lands were ignored. The lands ought to have been classified as Class-VI. The claim for an additional unit too had been ignored. No fresh verification under Section-5 (1) (3) was done after fresh proceedings were started as a follow-up to abatement. The rights of Bindeshwari Devi and Yogmaya Devi as sisters of Rajendra Biraji over the ancestral property lands were not given any credence. Their shares ought to have been excluded from the proceedings. In the 1975-76 proceedings Rekha Devi was accepted as a major on 09.09.70 and the lands donated to her had been excluded from the proceedings. In the fresh proceedings she is being treated as a minor on 09.09.70.

#### **2. Revision Case No. 15/2002**

The objections by the petitioner Ramjee Biraji that Randhir Biraji S/o Hem Narain Biraji and a grandson of the petitioner was major on 09.09.70 went unconsidered in the lower courts. Four minor children of Hem Narain Biraji, too, were denied their rightful units.

### **3. Revision Case No. 16/2002**

On 18.02.1978 there was a finding that Vijay Biraji S/o Man Mohan Biraji was a minor on 09.09.70. The rest of the points are common with the previous two cases mentioned above.

### **4. Revision Case No. 18/2002**

The gift deed had been cancelled without holding an enquiry under Section 5 (1) (iii) of the Act.

### **5. Revision Case No. 19/2002**

The petitioners Bindeshwari Devi and others claim that after the death of their father as per the Hindu Succession Act, they became tenants in common, with others who had interest in their father's property. Before calculating any surplus land of Rajendra Biraji, the share of these two petitioners had to be excluded. Their inheritance lands cannot be clubbed with their brother's lands. They further stated that they were majors on 09.09.1970 and their lands ought to have been excluded from the lands held by Rajendra Biraji.

The appeals filed by the petitioners before the Collector, Araria had been dismissed. Hence, this revision.

The petitioner has submitted that in the records no fresh verification report had been submitted by the Anchal Adhikari after re-starting of the case under Section-10 and as such, the DCLR had passed his order on the basis of the verification report submitted by the Anchal Adhikari in 1976. Whatever report or finding was available before coming of the amending Act-55 of 1982 the earlier proceedings were obliterated and the whole matter had to be decided afresh. I found that the submission made by the petitioner was correct.

As regards Rekha Devi's claim of majority on 09.09.70, the Deputy Collector, Land Reforms clearly records in his order dated 21.01.1984 that a medical certificate issued by Dr. Geeta Prasad, Medical Officer, Forbesganj, certifies Rekha Devi's age as on 19.01.1977 (on the basis of X-ray) to be 26 years. It was found by the DCLR that actually the age certified was 20 years and was made 26 years by overwriting. Rekha Devi has failed to prove majority as on 09.09.1970. She has not even pointed out if her father was alive or not on 09.09.70. No share in father's property could be claimed had he been alive on 09.09.1970. Adult sons could have, daughters could not.

The petitioner, nevertheless, at the time of hearing, has submitted that the impugned gift deed was executed during the grace period allowed by the law itself as it existed then. A reference has been drawn to Section 5 (5) of the then relevant Act whereby during the grace period a transfer to the landholder's son/ daughter, grand children etc. was allowed provided the transfer did not exceed together with any other land held by the donee, the area the donee could hold under Section-5. I held that the impugned sale deed, its veracity and admissibility as per the said provisions of the Act had to be examined at the Collector's level so that the rightful dues were not denied to the landholder.

I further held that in case Vijay Biraji approached the Collector within 3 months of my order, the Collector will constitute a Medical Board and expeditiously dispose off the matter regarding the majority of the candidate on the appointed date.

I further held that the Revision nowhere carried evidence that Bindeshwari Devi's and Yogmaya Devi's father had expired as on 09.09.1970. A daughter's share emanates out of the expired father's

share. If the father was alive on 09.09.1970, the said daughters had no share at all. Hence, they were not raiyats at all. An adult daughter (on 09.09.1970) can claim a share in the father's property only when her father had expired prior to 09.09.1970.

Onus lay on the daughter petitioners to prove by a death certificate if their father was no more prior to 09.09.1970 in the absence of which the petition was fit to be summarily dismissed.

From a perusal of the appellate court records it appears that a death certificate about the death of Lakhanlal Biraji has been filed which shows that he had died in the year 1958. The said certificate has been granted by the Sarpanch of the Gram Panchayat in the year 1989. It is not possible to accept the said death certificate issued by the Sarpanch in a sweeping way at this stage without cross verification.

It is surprising to note that vide his enquiry order dated 21.01.1984 U/S 5 (i) (iii) the DCLR has approved the sales between 22.10.1959 and 09.09.1970 solely on the basis of the registered deeds, consideration paid and J.Bs.

There is no finding as regards factum possession of the transferees or otherwise which is a serious lacuna. In case, the seller's possession or donor's possession after a spot check up comes up, the transfers have got to be annulled.

Revision Case No. 14/2002 and 15/2002, 16/2002, 18/2002 and 19/2002 were remitted back to the DCLR, Araria with the following directions:

1. Since no fresh verification was ever carried out in the wake of the re-start of proceedings U/S – 10 of Act subsequent to

abatement, and since the foremost verification report was relied upon even after the revival of the case afresh, and since no rationale as per Section – 4 of the Act had been provided as to why a certain classification was being made by the courts and authorities below, a re-verification into classification appeared necessary. The said re-verification is also necessitated in view of the sweeping claim of the landholder claiming lands to fall under Class-VI only without adducing any rationale whatsoever as per Section – 4 of the Act. Either way the findings and claims need fresh verification on the spot with reasoned order, with regard to classification. It will be necessary for the enquiring authorities to notice by Registered Post the landholders concerned so that there was sufficient transparency in the proposed enquiry.

2. In the case of Hem Narain Viraji's and Kalanand Viraji's claims regarding the overlooking altogether of Randhir Viraji's and Bijay Viraji's age, if they approached the Collector within 3 months of this order, the Collector will constitute a Medical Board and expeditiously dispose off the matter regarding the majority of the aforementioned two persons on the appointed date.
3. Factum possession of all transferred lands between 22.10.1959 and 09.09.1970 was called for which will pave the way for either acceptance or annulment subject to Section – 9 of the Act.
4. Assertions made regarding acquired lands at the Revision stage have to be verified from acquisition records and necessary orders passed.
5. The Court below was directed to look into the veracity and admissibility of the gifts made by the landholder to his daughter Rekha Devi since the same was purported to have been made during the grace period given by the law itself in the original provisions contained in the then existing Section – 5 (5).

6. The Court below was directed to look into the claim of Bindeshwari Devi and others and decide the matter whether they were entitled to get share in her father's property or not, as per law and pass a reasoned order.

### Case Study No. 19

#### Board of Revenue, Bihar Revision Case No. 48/2002 to 51/2002

The following Revision cases were filed in my court in the Board of Revenue on 11.03.2002:

Sl. No.	Revision Case No.	Parties
1.	48/02	Surjesh Prasad Verma vs. the State of Bihar
2.	49/02	Shanti Devi vs. the State of Bihar
3.	50/02	Sarbesh Prasad Verma vs. the State of Bihar
4.	51/02	Rajesh Prasad Verma vs. the State of Bihar

The revision cases arose out of the following appellate cases pending since June 1997 in the Court of the Collector, West Champaran filed in appeals against the orders of the Additional Collector (Ceiling):

Sl. No.	Appeal Case No.	Parties
1.	75/1997-98	Shanti Devi vs. the State of Bihar
2.	76/1997-98	Surjesh Prasad Verma vs. the State of Bihar
3.	77/1997-98	Rajesh Prasad Verma vs. the State of Bihar
4.	78/1997-98	Sarbesh Prasad Verma vs. the State of Bihar

The appeals mentioned above were time-barred and in the absence of a condonation petition by the appellants were fit to be dismissed at the admission stage itself. But the same were admitted.

The four impugned appeals have been allowed to linger in the Collector's Court with adjournments galore, without a word anywhere on substantive issues involved from June 1997 till

25.01.2002, when a local enquiry was ordered by the then Collector. Even the said local enquiry was not completed within the time limit set by the Collector.

It will not be out of place to state that the Additional Collector (Ceiling) had, compared to the Collector, evinced far more sincerity in disposing off the cases originally. The Additional Collector (Ceiling), whose orders formed the basis for the appeals, examined and cross-examined a number of witnesses, produced by the landholders themselves, in scrutinizing the transfers made by the landholders transferee-wise. The cases of the transferees were uniformly and invariably rejected by the Additional Collector by indicating the following flaws in the evidence furnished by the landholder:

- (i) Non-filing of sale deed
- (ii) Lack of land particulars
- (iii) Non-examination/ cross-examination of witnesses
- (iv) Lack of evidence against some villagers
- (v) No evidence on factum possession
- (vi) Boundary raiyats not presented as witnesses
- (vii) Transferees are outsiders, not Jamabandi raiyats of the village in which the said sales were made
- (viii) Caretakers not examined
- (ix) Non production of rent receipts/ chakbandi papers
- (x) Caretakers unable to explain correct position
- (xi) Sales after 9.9.70 – No prior permission of the Collector

The Additional Collector (Ceiling) allowed Class-I 15 acres of land against one admissible unit to each one of the 4 landholders and incorporated the rest of the holdings in the surplus account. The following is a summary of the surpluses declared by the Additional Collector landholder-wise in 1996:

Sl. No.	Landholder	Surplus declared (Acres)	I	II	IV
1.	Rajesh Prasad Verma	63.24	--	--	63.24
2.	Shanti Devi	360.25	174.54	--	185.71
3.	Sarbesh Prasad Verma	122.25	13.69	53.61	54.95
4.	Surjesh Prasad Verma	134.04	20.94	52.59	60.51
Total		679.78	209.17	106.20	364.41

The revision petitioners contended that, as per the ceiling law (Section-32), they reserved full right to come to the Board of Revenue against any order of the Collector even though not final on 25.01.2002. The appellants had filed time petition before the Collector which was allowed and the next date was fixed. The appellants were denied an opportunity of being heard on the constitution of 3 Committees on the same day (25.01.2002).

Ever since appeals were admitted in the Collector's Court in June 1997, the Government Pleader who is supposed to represent the case of the State, did not appear on a single day even. Lower Court's records were shown as received in the order sheet dated 27.07.2000. It took exactly 3 years for the LCR to reach the appellate Court from another Court located in the same building. The appeal had not been heard on merits even once in 5 years of continued existence in the appellate court. The appellant had never been able to put up his case. The transferees never advanced their case at the appellate stage. There is unwarranted delay in the disposal of the appeal. Even the local enquiry ordered on 25.01.2002 was not concluded in time.

I directed the Collector vide my order dated 9.8.2002 to notice all parties concerned, hear them on the specific point of local enquiry into factum possession on lands concerned by groups of officers and after such hearing pass orders in accordance with law.

## Case Study No. 20

### Board of Revenue, Bihar Revision Case No. 114/2002 and 115/2002

The present revision application is directed against the order dated 20.3.2002 passed by Collector, West Champaran, Bettiah in RA case No. 94/97-98 whereby the Collector rejected the claim of the petitioner and confirmed the order dt. 31.3.97 passed by the Addl. Collector (Ceiling), West Champaran in LC Case No. 24/300/1973-74 on 31.03.1997.

#### Case No. 114/2002

**Neeta Kumari and Sneha Kumari: Petitioners**

The aforementioned petitioners have claimed to have purchased 39.11 acres of land, from Chandrika Pd. Thakur on 7.6.1962. The related landholder O.P. No.2 Shri Nripendra Kumar Roy's relations also purchased lands from the aforementioned Chandrika Prasad Thakur on the same day. The names of the petitioners were mutated in the revenue records of the State Government and they obtained rent receipt regularly on payment of rent. The petitioners also became members of the Shitalpur Joint Co-operative Farming Society and have been receiving proportionate dividends. The stand of the petitioners that they never purchased lands from the related landholders Shri Nripendra Kumar Roy also finds support from the previous Resolution dated 24.11.77 of this Board of Revenue. Since the petitioners are not the transferees from the landholder Nripendra Kumar Roy, there is no question of any enquiry under section 5 (1) (iii) of the Act in respect of the sale dated 7.6.1962. The Board of Revenue in its Resolution dated 24.11.77 had observed that for the purpose of enquiry to find out the genuineness or otherwise of

transfers a separate proceeding against Chandrika Prasad Thakur should have been started wherein enquiry under section 5 (1) (iii) could have been done. I did not find if any separate proceeding against Chandrika Prasad Thakur had been started. So far the related land ceiling case started against Nripendra Kumar Roy is concerned the transfer made in favour of these two petitioners of 1962 cannot be enquired into. Moreover, the fact of mutation lends support to the genuineness of the transfer as has been held by the Hon'ble Patna High Court in cases reported in 1978 BLJ Page 57 and 1986 BBCJ Page- 794. The lands covered by the sale deeds in the aforementioned circumstances deserve exclusion from the related land ceiling case of Nripendra Kumar Roy.

#### Case No. 115/2002

**Prabhu Jha and other ----- Petitioner**

The petitioners of case No. 115 of 2002 claimed to be the settlees of 1945 from Mahanth Prasad Roy. The settlement was followed by the grant of a Patta and payment of rent to the ex-landlord and thereafter from the year 1956 the creation of Jamabandi in the names of the settlees and payment of rent by them to the state government regularly. The Board of Revenue in its Resolution dated 24.11.77 in case no. 310 of 1977 had clearly observed that no enquiry was possible in respect of transfers made before 22.10.59 which applied to the petitioners of this revision case. It was also observed that the only ground on which such land could be treated to belong to O.P. No. 2 would be if the latter had continued to be in adverse possession of the land for 12 years despite the settlement in 1945 and for that purpose it was made clear that evidence should have been adduced that the O.P. No. 2 had acquired a title in the lands by adverse possession. On a perusal of the record I did not find any evidence adduced by the state as observed in the Resolution dated 24.11.77. There had not been any finding that the

landholder Nripendra Kumar Roy acquired title by adverse possession. On the contrary I found from the record that the Anchal Adhikari, Gaunaha vide his letter No. 1196 dated 29.11.76 admitted that the lands had been given by the settlees to the Shitalpur Co-operative Society which was a registered Society, Registration No. of which is 20 C dated 10.11.1956. The cultivation was done through the Society and the settlees received the dividend from the Society as was found on enquiry.

This Board of Revenue in its earlier Resolution dated 24.11.77 had also observed that enquiry with regard to persons receiving the dividends from the farming society should be worked into a determining factor. The Report of the Anchal Adhikari on enquiry leads to the genuineness of the settlement. Kedar Jha aforementioned is the father of the petitioner- Prabhu Jha.

Though this Board of Revenue by its Resolution dated 24.11.77 which stood upheld by a Division Bench of the Hon'ble Patna High Court, had observed that the settlement of 1945 was beyond the scope of an enquiry under section 5 (1) (iii) still it appears an enquiry was made and without any evidence having been adduced that Nripendra Kumar Roy had acquired a hostile title by remaining in adverse possession for a continuous period of 12 years and without a finding to that effect, the settlement was annulled; though the enquiry report of the Anchal Adhikari as contained in his letter no. 1196 dated 29.11.76 gives a contrary picture that in 1956 itself the lands were given to the farming society and they have been receiving dividends proportionately. Thus it is apparent that evidence with regard to adverse possession by the landholder was not adduced, rather the report on enquiry speaks contrary to the possession of the landholder---- Nripendra Kumar Roy.

No evidence to show the benami character of the settlement has been brought on record. It is also the established view that the report of the C.O. on the question of benami cannot take the place of evidence. This is vide case reported in 1977 BBCJ 728. In this view of the matter the genuineness of the settlement becomes apparent and the lands deserve exclusion. No proceeding has also been started against the Co-operative society with its members and the observation made earlier by this Board has not been complied with. It is also the settled view that the authorities have no powers to amend in case of transfer before 22.10.59. The settlement having taken place in 1945 followed by receipts granted by the ex-landlord and rent receipts granted by the State of Bihar regularly, further proves the genuineness of the settlement.

The related Notifications deserved amendment in the light of the aforementioned observations. The case was therefore remanded to the Additional Collector with the aforementioned observations and directions for further necessary action and compliance.

## Case Study No. 21

### Board of Revenue, Bihar Revision Case No. 117/2002

#### L.C. Case No. 108/75-76:

Land Ceiling Case No. 108/1975-76 was started by the Deputy Collector, Land Reforms, Bettiah on 26.07.74 against Babu Nandan Mishra S/o Kamta Mishra resident of village Gobraura, P.S. Shikarpur, District West Champaran. Since the lands fell in two Sub-Divisions, the record was sent to the District Office. The record ultimately found its way to the Additional Collector's court. On receipt of Circle Officer, Lauria reports, a felt need for enquiry under Sections 5 (i) (iii) was expressed in view of post 22.10.1959 transfers. On 25.05.76 an order to serve notices on the transferor and transferees was passed but there is nothing on record to suggest if a regular enquiry was held or hearing made on 02.06.76.

In the meanwhile, Draft Publication was made under Section 10 (1) of the Act. Objections were called for from the landholders and the transferees against the Draft Publication. Objections raised by the landholders were disposed off as follows:

1. Late LH Babu Nandan Mishra (Babulan Mishra) had two wives – Gauri (Gaura) Devi/ Gharbharan Devi. They were entitled to a single unit alone.
2. On the registered deeds of gifts and gifts by LH of 17.05 and 6.94 acres to the two wives, the AC held that the transfer lands fell within the single unit held by the two wives.
3. The issue of some lands held by the Sikmidar was dismissed in view of the enquiry reports and JB entries.

4. The contention of certain lands falling in the kitty of other landholders (namely, Janak Prasad Mishra, Nathuni Prasad Mishra and Bijendra Prasad Mishra) was accepted and the concerning lands were removed from the records of Gauri Devi etc. and inserted into the records of Madhusudan Mishra (S/o Nathuni Prasad Mishra) and Narmadeshwar Mishra (S/o Janak Prasad Mishra) against whom separate land ceiling proceedings were going on. Similar orders were passed with regard to certain land with respect to Bijendra Mishra (S/o Madhusudan Mishra).

The landholder's last objection regarding the exclusion of 5.82 acres of land dedicated to Lord Siva in 1957 by her (their) husband was conceded.

Final publication under Section 11 (i) was made on 30.10.76. 1 unit was granted and the balance 130.38 acres of land was declared as surplus. The landholders, namely, Gauri Devi and Gharbharan Devi W/o Babulan Mishra filed revision in the BOR (497/1977). The BoR vide order dated 29.08.77 directed the grant of one unit each to the two wives, a review of classification and allowed the right to exercise option by the LH. The said order was carried out by the Additional Collector vide order dated 27.04.1979.

It is noteworthy to point out here that in the margin of the order sheet dated 27.04.79 there is an office noting that the State Government had moved the Hon'ble Supreme Court challenging an order in CWJC No. 2543/75 (Ganesh Bharati vs. the State of Bihar) whereby two units had been allowed to two wives. In view of the similarity of the case, further proceedings in the instant case as well had been kept in abeyance. No further mention is made about the matter noted above.

The next order sheet of the Additional Collector is dated 12.10.88. What happened in the interregnum of 3 years and a half is not clear. Vide his order dated 12.10.88, the AC ordered the hearing of a petition by Madhusudan Mishra under Section 45 (C) whereby he had requested the amalgamation of L.C. Case No. 108/75-76 and 109/75-76. The former pertained to Gauri Devi. The hearing was fixed first for 08.11.88 and then on 26.11.88. But there is nothing on record to suggest if hearing was ever done and by whose order amalgamation took place.

**L.C. Case No. 109/75-76:**

The case was dealt with at the level of the Additional Collector. Verifications were made by the C.O. Ramnagar. The C.O. Ramnagar pointed out that the landholder Gauri Devi had made transfers in favour of 14 transferees after 22.10.1959. The C.O. Ramnagar was directed to verify factum possession and the fact of rent payment. The C.O. reported peaceful cultivating possession of the transferees. The transfers were declared valid and the transfer lands were excluded from the landholder's lands. The landholder was granted 6 units and 1/10 each for two minor children. Subsequently, the Department of Revenue & Land Reforms sought clarification on the proof of age and rationale for classification. The Additional Collector passed a comprehensive order meeting the Government's queries. Option was sought under Section 9 of the Act. Notification under Section 15 (1) was published. For three subsequent years, there was no action. Subsequently, it was found that other person's lands including Gauri Devi's lands had been included in Madhusudan Mishra's lands and had been included in surplus. The Collector directed the initiation of the proceedings afresh.

The landholder (Madhusudan Mishra) petitioned the Additional Collector informing him of the death of Gauri Devi (landholder of Case No. 108/75-76) and that he was heir. Hence a request was made to amalgamate the L.C. Case No. 108/75-76 and 109/75-76. The Additional Collector on the basis of a purported will by Late Madhusudan Mishra as legal heir of Babulan Mishra, amalgamated the two L.C. records as aforesaid. In my view, while after the death of Gauri Devi, her particular case record bearing No. 108/75-76 abated for want of substitution, there seems to be absolutely no legal basis for the amalgamation of her abated case record with L.C. Case No. 109/75-76 pertaining to Madhusudan Mishra. Competence of a legal heir is to be determined by the Civil Court not by the Additional Collector.

After an elaborate discussion of the transferee's case, the Additional Collector on 14.01.93 allowed 2 units to the landholder. No rationale was put forth for reducing the earlier allowed units from 6 to 2 (VoS dated 06.06.84) to 2. This leaves the said reduction out and out arbitrary.

From an analysis of the facts and materials of the case, the following legal lacunae surface ostensibly in the proceedings:

1. Gauri Devi's case (LC Case No. 108/75-76) abated for want of substitution. No report was called for on the point of substitution. The unit allowed to her, despite her death, will continue. Her subsequent death cannot wipe out the unit already granted to her. Reference in this connection may be made to the case law reported in 2000 (4) PLJR 708 wherein their lordships, clearly held that when a person was alive on 09.09.70 and was accordingly allowed a separate unit, the unit so allowed cannot be treated to have vanished on the ground of his subsequent death.

Application for the substitution of legal representative is required to be filed within 30 days of the death of the L.H. by the legal representative. In the instant case, the LH Gauri Devi died several years back. No substitution was at all ordered. If any person claims heirship after such a long span of time, he is free to approach the Civil Court for relief in accordance with law.

2. The order, passed by the Additional Collector dated 26.11.88, amalgamating L.C. Case No. 108/75-76 (State vs. Gauri Devi) and 109/75-76 (State vs. Madhusudan Mishra) was without authority, hence, illegal. On the basis of a purported will by Gaura Devi's late husband, Madhusudan Mishra cannot declare himself as a self-styled heir to Babulan Mishra, unless his claim is approved by a competent Civil Court.
3. Since, the very amalgamation of the two cases is void, all subsequent conduct of the courts below drawing intermittent cross-references, and admixtures of the two cases, becomes void ab-initio.
4. The proceedings with regard to LH Madhusudan Mishra (LC Case No. 109/75-76) had been closed in all respects after the publication of District Gazette No. 53 dated 27.5.85: Notification U/S 15 (1).

The same were started afresh on 12.08.88. A reference was drawn to Deputy Collector Legal Section W. Champaran Memo No. 404 dated 08.06.88 and certain orders in Collector's Court's RA/ RM Cases.

It is not clear if the L.H. was a party in the concerning RA/ RM cases mentioned earlier in the foregoing.

Further, no formal orders of the Collector for reopening the case U/S 45 (B) of the Act after following due procedure (Notices to all unit holders) exist anywhere on the record. It is nowhere clear at what point and by whose order a closed case was reopened. This serious lacuna renders the very reopening and subsequent conduct of the courts below without authority, hence, illegal.

5. Even as 'reopening' proceedings were ipso-facto illegal, a mention is necessary of the abrupt and unexplained reduction of units through the 'reopened' proceedings vide Additional Collector's order dated 14.01.93. Not a word in justification is given in reducing the earlier allowed units from 6 to 2 (VoS dated 06.06.84) to 2.
6. Neither any new facts or evidence has been taken, nor any enquiry, on notice, has been held. In fact, in the order dated 14.01.93 the issue of units has not at all been touched and yet units have been reduced. Nothing can be more irresponsible than the said unexplained summary reduction of units.

#### **ORDER**

In view of the above, the order dated 23.03.2002 passed by the Collector, West Champaran in RM 21/ 2000-01 was set aside. He was directed to dispose off the matter in accordance with law in the light of the observations made in this Resolution.

## Case Study No. 22

### Board of Revenue, Bihar Revision Case No. 129/2002

This application is directed against the order dated 10.4.2002 passed in RA Case No. 20/94-95 by the Collector. The said appeal arose out of LC Case No. 31/73-74 (State vs. Ista Kumari). The Collector vide his order referred above has rejected the prayer of the petitioner for excluding the land from LC Case No. 31/73-74. The lands have been detailed in para 1 and para 5 of the Revision petition which is on record.

#### Issues Raised in the Revision Petition

1. There was a deed dated 11.9.1942 executed by Mohan Bikram Shah alias Ram Raja of Ramnager Estate in favour of Fateh Bikram Shah.
2. Fateh Bikram Shah settled the land to several persons including the transferor of the petitioners by issuing patta.
3. A claim over the impugned land U/S 144/145 Cr. P.C., made by Ista Kumar Devi was concluded vide S.D.O. Bettiah order dated 29.4.1954. The possession on the impugned land was declared in favour of the transferor of the petitioners and the father of the petitioners.
4. Ista Kumai Devi filed T.S. No. 156/1957 in which the petitioner's transferors too were made defendants. Since the plaintiff did not make any pairavi, the said suit was dismissed vide order dated 28-4-1960.
5. The appellate court of the Collector in RA Case No. 20/94-95 ignored the decision of the SDO and the Civil Court as aforesaid.

In view of the above, the petitioners have objected to the clubbing of the impugned lands with those of Smt. Meera Kumari, who replaced Ista Kumari Devi after the latter's death in LC Case No. 31/73-74. In support of their claim, the petitioners have cited the following two documents:-

- (i) SDO Bettiah Order dated 29.3.1954 passed in a matter arising out of Sections 144/145 Cr. P.C.
- (ii) T.S. No. 156/1957 which was dismissed on 28.4.1960 since Ista Kumari Devi (Plaintiff) did not make any pairavi. Then she filed Misc. Appeal No. 53 of 1961 before the Hon'ble High Court, Patna. The same was dismissed vide order dated 11.1.1963.

In Revenue Appeal Case No. 20/94-95 (Abdul Hakim Ansari, Noor Hasan and 6 others vs. the State & Meera Devi), the Collector vide his order dated 10.4.2002 dismissed the appellant's case on the following grounds:-

1. As per C.O. Gaunaha Letter No. 290 dated 10.11.81, Raj Kumar Fateh Bikram Shah had filed the Zamindari return in the name of his mother Ista Kumari Devi instead of filing the same in the name of the transferors or transferee. The Collector holds on this basis that:-

“As a result, Jamabandi created by the erstwhile Ram Nagar Estate in the name of the above appellants discontinued after the vesting of the Ram Nagar Raj to the State Government.”

“This clearly means that the landholder of the above lands on the appointed date on 22.10.59 was Ista Kumari Devi and not the above appellants.”

2. The C.O. Gaunaha vide his verification report (Letter No. 290 dt. 10.11.81) found possession of the lands in question with the landholder and not with the appellants.

Hence, on the basis of the Zamindari return and factum possession, as adduced by the C.O. Gaunaha in 1981, the Collector found no merit in the appellants' prayer for an exclusion of their lands from the lands held by the landholder.

### **Findings**

The stand taken by the courts below suffers from the following shortcomings:

1. No court below has questioned or enquired into the oral settlement in 1942 made by Mohan Bikram Shah alias Ram Raja of the Ram Nagar Estate in favour of Fateh Bikram Shah. The lands said to be in the name of Ista Kumari Devi in the Zamindari return filed by Fateh Bikram Shah must have been a result of the latter's oral settlement with her mother. Hence, the Collector while recognising the oral settlement made by the ex-intermediary in favour of Fateh Bikram Shah extended to an oral settlement made by the latter to his mother Ista Kumari Devi, applying solely the crux of Zamindari return filed by Fateh Bikram Shah himself, derecognises the oral settlement made by Fateh Bikram Shah in favour of the transferors of the present transferees and the father of the petitioners.
2. While oral settlement, in the eyes of the Collector was bad in law, the same was validated in favour of Ista Kumari Devi quoting Zamindari return alone, uncorroborated by factum

possession. The stand of the Collector suffers from inherent contradiction.

3. The factum possession has been declared in Case No. 392/M/248 TR. U/S 145 Cr. P.C. by SDO Bettiah on 24.3.1954 in favour of the transferors of the Revision petitioners as well as in favour of their father.
4. No cognizance has been taken by the Collector of TS No. 156/1957 filed by Ista Kumari Devi against the petitioners, transferors and the father of the petitioner which was dismissed by the Civil Court on 28.4.1960.
5. Thus while the SDO's comprehensive order under Section 145 Cr. P.C. and the fate of the Title Suit were summarily ignored by the Collector, (while the court below him had looked into the same) a reliance was placed on Zamindari return (filed by a person who was the son of the plaintiff in both the cases) and C.O. Gaunaha's report dtd. 1981. The balance of justice cannot be allowed to shift sides as per convenience to suit one's bent of mind.

### **ORDER**

In view of the facts and circumstances of the case mentioned in the foregoing, the impugned lands mentioned in para 1 and 5 of the revision application deserve exclusion from the notification under section 11 (1) of the ceiling Act.

The case was remanded to the Additional Collector (Ceiling), West Champaran with the above mentioned observations and directions for further necessary action and compliance.

### **Case Study No. 23**

#### **Board of Revenue, Bihar Revision Case No. 134/2002, 135/2002, 142/2002 and 143/2002.**

The present revision petition is directed against the order dated 18.5.2002 passed by the Collector, West Champaran in RA Case No. 152 of 1983-84. Initially a Ceiling Case No. 6/1974-75 had been started against Late Bhumi Dutt Dubey, the father of the petitioner over 555-18 acres of land situated in three Anchals namely, Ramnagar and Nautan (West Champaran) and Ramgarhwa (East Champaran).

Having lost his case in the lower courts the petitioner moved in Revision, which too was dismissed on 28-9-85. Then he filed CWJC No. 5389/1985. The Hon'ble Court quashed the BoR order dated 28.9.395 and remitted the matter again to the BoR, which in turn remanded the matter back to the Collector, West Champaran (31.10.2000).

The petitioner moved the Hon'ble Patna High Court in CWJC No. 2980/2002 against the Resolution dt. 31.10.2000. But the Hon'ble Court directed (8.5.2002) the petitioner to raise his points at the level where the matter stood remanded.

The Collector heard the matter on 18.5.2002 on which date itself the order was passed and a Gazette Notification U/S 15 (1) of the Ceiling Act was issued and surplus lands were distributed on the self same date. It was only when the petitioner moved the Hon'ble High Court in CWJC No. 6458/2002 that his possession was restored and parchas were kept in abeyance.

### **CWJC No. 6458/2002**

Perused the order dated 14.5.2002 passed by the Hon'ble Patna High Court. The Hon'ble Court makes a reference to their Lordships' order dt. 8.5.2002 in CWJC No. 2980 of 2002, wherein their Lordships had been pleased to observe that "the authority to whom the matter has been remanded is expected to decide the dispute in accordance with law and all the points which have been raised by the petitioner before the learned Collector, who should consider those submissions as per law". The Hon'ble Court further observed that as per Section 15 (1) of the Bihar Land Ceiling Act, a notification for the acquisition of surplus land is subject to appeal or revision. It was submitted by the writ petitioners that while the appeal was heard by the Collector on 18.5.2002, on the self same date a notification U/S 15 (1) of the Act was published without waiting for final order or without extending an opportunity of preferring revision to the petitioners. It was further brought to the notice of the Hon'ble Court that on the same date the lands were shown to have been distributed to the parcha-holders.

The Hon'ble Court directed respondent No. 2 in the case to issue immediate orders showing that the parchas issued with regard to the lands of the petitioner had been kept in abeyance, until further orders and further that if the petitioner had been dispossessed from any of his land, he should be immediately put in possession over those lands.

In the aforesaid orders dated 24.5.2002, their Lordships adjourned this matter to 1.7.2002 as prayed by the learned counsel of the State.

In the meanwhile, on 7.6.2002 the present revision petition was filed by the petitioner namely Rewati Kant Dubey in my predecessor's Court U/S 32 of the Bihar Land Ceiling Act, bearing No. 134/02.

Three other Revision petitions were also filed U/S 32 of the said Act in my predecessor's Court. A gist of such cases is given below:

Sl. No.	BoR Revision Case No.	Petitioner	Collector's Impugned order/dated	Whether the petitioner has moved Hon'ble Patna High Court against the Collector's Order
1.	134/02	Rewati Kant Dubey	18.5.2002 in RA Case No. 152/83-84	Yes. CWJC No. 6458/2002 (Still under consideration)
2.	135/02	Radha Kant Dubey	18.5.2002 in RA Case No. 152/83-84	No
3.	142/02	Deshbandhu Dubey	18.5.2002 in RA Case No. 152/83-84	No
4.	143/02	Rishi Raj Dubey	18.5.2002 in RA Case No. 152/83-84	No

It has been submitted by the learned counsel on behalf of Rewati Kant Dubey that he had moved the Hon'ble Court against the notification U/S 15 (1), while he is here in my court U/S 32 of the Act against the appellate order. Hence parallel proceedings in both the Patna High Court and my court could continue.

It was submitted on behalf of Radha Kant Dubey, Deshbandhu Dubey and Rishi Raj Dubey that since they had not approached the Hon'ble Court at all, there should be no bar on further proceedings in my court.

On a close consideration of the matter I found that the arrangement in section 15 (1) of the Act was the culmination of preceding stages stipulated in various sections of the Act, including final publication of the draft publication U/S 11 (1) of the Act. The very quantum and otherwise description of surplus land to be acquired U/S 15 (1) is given shape to U/S 11 (1) of the Act, viz. final publication. Hence an act U/S 15 (1) of the Act cannot, in my opinion, be viewed in isolation.

Second, even if 3 of the 4 Revision petitioners did not approach the Hon'ble Court, the fact remains that the common cause of action in all the four revision cases is the Collector's impugned Order dated 18.5.2002 passed in the RA No. 152 of 1983-84 which again is common to all the 4 cases.

In view of the aforesaid facts and circumstances and in view of the stated position of the entire matter being considered by the highest court of Judiciary in the State, I did not deem it proper or within my authority to proceed any further in any of the four Revision Cases as mentioned in the foregoing.

The Revision cases were as such dropped.

## Case Study No. 24

### Board of Revenue, Bihar Revision Case No. 166/2002

This revision application is directed against the order dated 24.05.1999 passed by the Collector, Kaimur in Ceiling Appeal No. 3/1993-94 and also for quashing the letter dated 30.06.2001 issued by the Additional Collector, Kaimur by which he directed the preparation of settlement record for the distribution of the petitioner's land.

A Ceiling Case No. 130 of 1973-74 was started by the S.D.O., Bhabua against Ram Briksha Singh S/o Sukhdeo Singh. The landholder moved in appeal (No. 37/1980-81) having been aggrieved by the SDO's order dated 04.08.1980/ 30.10.1980. There was abatement and revival. The case initiated after abatement was decided by the Additional Collector and the Collector against the petitioner and thereafter the petitioner preferred revision in the Board of Revenue bearing Case No. 176/84. The Board of Revenue remanded the Case on 29.08.1985 for a fresh consideration with certain observations on the point of adoption and classification.

The case was transferred to the Court of the Additional Collector (Ceiling), Kaimur. The petitioner has submitted that the AC (Ceiling) did not make any enquiry and did not appreciate the provisions of the Hindu Adoption and Maintenance Act, 1956 in which it is provided that from the date of adoption all the relations of the child adopted shall be severed from his natural family and be replaced by the relations in the adoptive family. The Additional Collector (Ceiling) held the deed of acknowledgement of adoption dated 26.08.1966 to be invalid and illegal.

The petitioner filed an appeal against the order of the Additional Collector dated 19.02.1993 before the Collector which was registered as Ceiling Appeal No. 3/1993-94. The Collector confirmed the order passed by the Additional Collector vide his order dated 02.11.1994 and held the deed of adoption to be an illegal document and treated the petitioner's land measuring 19.59 1/3 acres to be the land of Ram Briksha Singh.

The petitioner filed a revision case (No. 11 of 1995) in the Board of Revenue. The matter was again remanded for reconsideration on the same point of adoption and classification on 25.05.1999, the case was sent to the lower court for the acquisition of the petitioner's land.

In his order dated 19.02.1993, the Additional Collector held that in the process of adoption the provisions of Section 9 and 11 of the Hindu Adoption and Maintenance Act, 1956 had not been adhered to. The Additional Collector held that as per Section 16, adoption vide a registered deed could be accepted but the adopting and natural parents must sign and record consent on the said deed. The registered deed No. 67 dated 13.08.1966 is not valid on account of over writing. Further, the natural parents, i.e. Ram Briksha Singh and his wife have never signed on the said registered document. The said adoption has merely been mentioned in the hand of the deed writer. Written consent of the natural parents, which is mandatory under Sections 16 and 11 of the concerning Act is missing. The age of Rang Bahadur Singh, the adopted son, is nowhere mentioned in the concerning registered deed, which again was mandatory under Section 10 of the Hindu Adoption and Maintenance Act, 1956. Finally, the Additional Collector points out that the Rent Receipt issued bears the names of two fathers against the name of Rang Bahadur Singh – Ramdin Singh and Ram Briksha

Singh. In the Chakbandi Khatian Ram Din's name comes as the father of Rang Bahadur Singh.

Vide his order dated 12.04.1993, the Additional Collector, Bhabua conclusively treats the impugned adoption as not in accordance with law.

In his appellate order dated 02.11.1994 (Appeal Case No. 3/1993-94), the Collector has held that the requisites of adoption and maintenance have been laid down under Section – 6, 7, 10, 11 and 16 of the Hindu Adoption and Maintenance Act, 1956. The Collector had to pass an order (dated 24.05.1999) a second time after getting the case on remand from the Board of Revenue. The Collector makes an altogether different interpretation of the registered deed pertaining to adoption. He concedes that while the actual adoption had taken place on the day of the Basant Panchami of 1966, the deed was executed on 13.08.66. The Collector quotes Ramdin Singh's (adoptive father's) recital from the said deed and digs out a self – contradiction. He holds that either the adoptive father was not issueless (since he had adopted Rang Bahadur Singh much before 03.08.66) or if he had an issue, the deed was invalid.

I recorded the following findings in my order dated 21.02.2004:

- 1) On a perusal of the Additional Collector's order dated 19.2.1993 and 12.4.1993 and the Collector's order dated 02.11.94, it is manifestly clear that a certain deed of adoption dated 13.08.66 and its lacunae became the guide post for the courts concerned for passing the orders concerned, whereas the fact remains that nowhere does the Hindu Adoption and Maintenance Act, 1956 make it mandatory for an adoption to be registered. Other material ingredients of adoption as stipulated in law have to be enquired into, not necessarily with a constricted reference to the

omissions and commissions of a given deed. Since a deed is not mandatory, other ingredients for a valid adoption like the age of the adopted child, issuelessness of the adoptive parents, consent of the adoptive and natural parents are always open to enquiry under the provisions of the Civil Procedure Code, 1908. A purported deed could be faulty and lacking in finer details but an order basing itself exclusively on the lacunae of the deed, will be all the more running short of justice. The ends of justice could meet, had the time honoured tests of validity, viz., summoning and examining witnesses, corroborative evidence, local enquiry after due publicity and notices had been resorted to – there being no bar on the same. According to Section 33 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961:

“33. Authorities under this Act to have power of Civil Court – The Board of Revenue, the appellate authority and the Collector shall have the same powers in making enquiries under this Act, as are vested in a Court under the Code of Civil Procedure, 1908 (V of 1908), in trying a suit, namely:

- (a) Admission of evidence by affidavits,
- (b) Summoning and enforcing the attendance of any person and examining him on oath,
- (c) Compelling the production of documents; and
- (d) Award of cost.”

The Collector would have felt free for example to enquire into:

- (i) The issuelessness or otherwise of the adoptive parents.
- (ii) The age of the adoptive child through educational certificates/ Medical Board findings etc.
- (iii) The consent or lack of it of the natural/ adoptive parents.

- (iv) The lacunae in the deed, for instance, overwriting by calling for of a certified copy.
- (v) The fact of disproving of the registered deed by calling for general objections through a public notice. Even the customary report of the concerning Circle Officer is wanting.
- (vi) Actual giving and taking in of the child to be adopted. The actual loci of the adopted child; in which family does he live?
- (vii) Factum possession over 19.59 ½ acres of the impugned land.
- (viii) RoR/ Khatian entries/ Rent Receipts.
- (ix) The fact of Final Publication.

It is clear that the Additional Collector and the Collector in their orders made a deed to be the crux of examining the validity of adoption, thereby closing themselves to other material evidence. The revision petition, too, wants in detailed information and interpretation of the fact of adoption in accordance with law.

- 2) Purported transfer by the landholder Ram Briksha Singh through the mechanism of giving away his male child (1 out of 3) to a different person in adoption, needs to be enquired into through the Cadastral Survey Record of Rights and other corroborative evidence.
- 3) It comes out that in the rent receipt based on the 1970-71 survey, the names of both Ramdin Singh and Ram Briksha Singh have been entered as the father of Rang Bahadur Singh. The concerning Revisional Survey entries and mutation records have, therefore, to be checked as regards the strange phenomenon of two diverse persons' names entered against the plots concerned.

The petitioner may raise his objections alongwith documentary evidence, if any, before the Collector for necessary enquiry and orders as per law, within a (one) month of the passing of this order.

The petition was dismissed since it lacked in detailed information and interpretation of the fact of adoption in accordance with law.

## Case Study No. 25

### Board of Revenue, Bihar Revision Case No. 170/2002

It will be pertinent to refer to the Department of Revenue & Land Reforms, Government of Bihar Notification No. 1522 dated, 01.05.1985 which exempted from the operation of Section 5 of the Act, 25 acres of impugned land under Section 29 (2) (Ka) (ii) of Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961 for a period of 5 years from the date of the said notification or till the Matha continues to function as such, whichever earlier.

The final publication was made U/S 11 (1) and the record sent to the Collector for the acquisition of balance 70.89 acres of land under section 15 (1) of the Act VOS dated 23.03.87. LCR from 1987 to 1995 are not available. The next LCR begins on 16.12.1995 (Case No. 40/1995-96 Collector, Gaya). What transpired in between is not known.

The given exemption was in any case to expire on the expiry of five years from the date of the Revenue Deptt. notification (1985). Since the exact date of the notification is nowhere mentioned, 1991 was to be the last year. This was as per the preceding order of the SDO dated 28.11.84 and that of the Collector dated, 01.08.1984. Obviously, the recourse was made to Section-29 (1) in lieu of the deleted section in 1991. Obviously, the said expiry had no effect on the L.H. continuing to enjoy the exemption.

The said concealed and clandestine enjoyment despite expiry of the period of 5 years could not continue as such since the promulgation

of the Bihar Act 8 of 1997 published in the Bihar Gazette (extraordinary) dated 27.3.1997.

Section 2 of the Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1995 stipulated that section 29 (2) (ka) (ii) of the Act will be deleted and will be deemed to be deleted for ever.

The landholder moved the Hon'ble Patna High Court. The Hon'ble Court directed on 21.12.1995 that the petitioner shall not be dispossessed from his land. The petitioner withdrew the writ petition and filed a revision in the Board of Revenue. The Board of Revenue vide its order dated 01.10.2001 remanded the case back to the Collector, Gaya for holding necessary enquiry and passing necessary order after giving an opportunity to the petitioner of being heard.

The Collector, Gaya passed an order on 29.07.2002/11.08.2002 in L.C case No. 40/95-96. The Collector alludes to an enquiry conducted by the Additional Collector in this regard. The A.C's enquiry report, submitted vide his letter No. 289/LC (C) dated 08.12.2001 is a part of the record. The same has been relied upon by the Collector in rejecting the claim of the petitioner of being entitled for exemption under a different section of the Bihar Act- XII of 1962. Hence, it will be essential to summarise the enquiry report of the Collector.

The Institution is affiliated to the main body in Allahabad, whose by-laws explain that it is devoted to the propagation of religious, metaphysical and philosophical tenets. Metaphysical and religious instruction and opening of Sanskrit Schools too is one of its objects. The objects mentioned above are related to the local chapters of the main body. As regards the first set of objects, nothing noteworthy

comes out so far as the petitioner institution is concerned. As regards the opening of Sanskrit schools, the achievement of the petitioner institution has been recognized by the Bihar State Religious Trusts Board.

I further perused the audit reports in the record. The audit pertains to the main parent institution at Allahabad and there are stray and scanty references to the petitioner institution having incurred extremely nominal expenditure on items not connected with either religious or charitable pursuits.

Perused the impugned order passed by the Collector Gaya on 29.07.2002/ 31.08.02 in L.C. Case No. 40/95-96 in which the learned Collector has examined in detail the petitioner's prayer for relief under Section -29 (1) (b) (v) of the Bihar Act XII of 1962. The Collector does not find, on the version of the enquiry report, the feeding of Sadhus and Saints coming from outside, by the petitioner. The running of free school, too, could not be proved in the enquiry. A registration with the Bihar State Religious Trusts Board does not amount to a recognition by the Government. The Collector further holds that it is a local body and cannot be said to be run on an all-India basis. The stated objectives remain on paper only.

#### **FINDINGS**

On the basis of the above facts and hearing all concerned I concluded as follows:-

1. That the petitioner institution had been given the benefit of exemption U/S- 29 (2) (a) (i) (ii) as a religious institution vide State Government's Notification No. 1522 dated

01.05.1985. The said notification did not mention the petitioner as a charitable body.

2. That the petitioner institution as a local chapter of the main institution with HQ at Allahabad does not as per the Additional Collector's enquiry report mentioned above, fulfil a single objective enshrined in the bye-laws of the main body.
3. That the Audit Report of the Chartered Accountant annexed with the record does not mention any expenditure incurred by the petitioner institution on either religious or charitable pursuits.
4. At the expiry of 5 years w.e.f. 01.05.1985 (the date of notification) the petitioner institution had to relinquish possession and the use of the exempt land as per the Government's notification cited above. But neither the petitioner made it over to the Collector, nor did the latter take over possession of the land concerned.
5. The Collector woke up to action only after the promulgation of the ordinance cited in the foregoing, deleting Section-29 (2) (a) (ii) of the Bihar Act 12 of 1962.
6. Having failed to foresee any relief under the deleted religious head, the petitioner institution showed the ingenuity of taking recourse to the charitable head U/S- 29 (i) (b) (v) of the Act. However, no charity is proved either by the AC's report or by the Chartered Accountant's Audit report furnished by the petitioner institution itself. The shift of the petitioner to a different section (which completely debars religious bodies, which the petitioner admittedly was) is an after-thought and a contrivance to frustrate the purposes of law.
7. A recognition by the Bihar Religious Trusts Board means nothing so as to subserve the interests of the petitioner in the instant case. In fact, in view of the fact that the institution is

a sham religious or charitable institution; the Collector should logically move the Board for a de-recognition.

I found no reason to hold a view different from that of the learned Collector, Gaya.

In the light of available information on record, I did not find, in the ultimate analysis to call for a further report from the Collector. He will ensure further necessary steps to comply with the order passed by the undersigned.

The petition was dismissed.

## **Case Study No. 26**

### **Board of Revenue, Bihar Revision Case No. 182/2002**

Ceiling Case No. 24 was initiated showing Baneshwari Kuer as the landholder. Ceiling Case No. 25/1973-74 was initiated showing Nagina Kuer as the landholder and Ceiling Case No. 26/1973-74 was initiated showing Baneshwari Kuer and Nagina Kuer as the landholders. At the joint request of both the landholders, all the three ceiling cases were amalgamated together.

Originally, all the proceeding land was that of Parameshwar Singh and Sudarshan Singh as their co-parcenary property. Parameshwar Singh executed a registered will in 1924 in favour of Baneshwari Kuer (wife) and Nagina Kuer (daughter-in-law) in satisfaction of their right of maintenance as a charge on family property. Parameshwar Singh died on 29.12.1925. The two ladies jointly filed probate case and obtained probate and letter of administration from the District Judge, Gaya, which was confirmed by the Hon'ble Patna High Court. With the passing of the Hindu Succession Act, the two ladies acquired absolute interest in the properties in their possession, given by way of maintenance. Originally, rent was fixed jointly in the name of the two ladies vide State of Bihar Case No. 410 (R)/ 1962-63 for all lands. Later, at their request, the demand was modified.

Nagina Kuer died in 1981. On 31-03-1981, she gifted out a portion of her land to Ram Nath Singh S/o Late Vishwanath Singh, Sudha Singh W/o Ramnath Singh, Pushpa Singh W/o Late Raghunath Prasad Singh and Vibha Devi W/o Devendra Prasad Singh. After Nagina Kuer's death her intestate properties were succeeded by Ram Dulari Devi and Ram Dulari's sons Ram Nath Singh,

Raghunath Singh and daughter Vibha Devi who acquired the properties of Nagina Kuer by succession/donation.

The S.D.O. ordered on 01-03-1983 the draft statement to be prepared allowing the family consisting of only Baneshwari Kuer which was allowed to hold one ceiling unit of land. The S.D.O. disagreed with the report of the C.O. Karpi and holding Tapeshwari Devi, Vijay Krishna Prasad Singh and Murari Prasad Singh as belonging to a separate family refused to implead them as parties. Notably, Tapeshwari Devi was the daughter of the first wife of Sudarshan Singh, Nagina Kuer being the second wife.

The S.D.O. had already held Nagina Kuer's gifts void vide his order dated 13.09.1975. The transfer after 09-09-1970 had not been backed by the Collector's prior permission. Relying on a joint petition dated 29.04.1978 by Baneshwari Kuer and Nagina Kuer stating them to be the members of a common family, took the entire proceeding land (after Nagina Kuer's death) to belong to her mother-in-law Baneshwari Kuer. Since Nagina Kuer had died intestate in a state of jointness and as a member of a common family admittedly, no lands can be retained by her. Hence one unit was allowed to Baneshwari Kuer.

The S.D.O. vide his order dated 14-04-1983 rejected the objections raised by Ram Dulari and five others under Section 10 (3) of the Act. Baneshwari Kuer had not been allowed to exercise option on the basis of time bar. The petitioner Baneshwari Kuer contended before the Hon'ble Court that (her daughter-in-law) Nagina Kuer had executed a deed of gift dated 30-01-1981 which mostly consisted of land belonging to the petitioner (mother-in-law). An opportunity must be given to her to agitate her grievance before the authorities concerned. The Hon'ble Court accepted the submission regarding the exercise of option. Secondly, the lands transferred by

the petitioner by gift after 09-09-1970 should be allowed to be retained by her. Thirdly, the petitioner should be given a chance to agitate that the lands gifted out by her daughter-in-law on 31-03-1981 actually belonged to the petitioner Baneshwari Kuer.

In yet another writ petition filed by Ram Dulari Devi and others, the Hon'ble Patna High Court observed that after the death of Nagina Kuer, the S.D.O. ought to have decided the question of heirship of Nagina Kuer in accordance with law. After remand from the Hon'ble Court substitutions were made for late Nagina Kuer. The S.D.O. vide his order dated 27-03-2000 granted one unit to Baneshwari Kuer of which a major portion was covered by the lands transferred by Nagina Kuer and a minor portion by fresh option was allowed to be retained by Ram Dulari Devi. The rest of the lands were declared surplus.

Baneshwari Kuer filed an appeal before the Collector against the S.D.O.'s order noted above. But Ram Dulari and others were not impleaded. The Collector set aside the S.D.O.'s order with a direction to grant an opportunity to Baneshwari Kuer to exercise option.

The S.D.O. accepted the option given by Baneshwari Kuer. He accepted the plea made by Baneshwari Kuer that 10 acres 66 ½ decimals of land of given khata/khesras (village not mentioned in the order) gifted out by Nagina Kuer belonged, in fact, to Baneshwari Kuer. This is done on the basis of rent receipts in favour of Baneshwari Kuer and the fact that the disputed lands had been shown in Baneshwari Kuer's name in the Draft Statement under Section 10 of the Act, a fact not objected to by Nagina Kuer.

Prima facie, I found the S.D.O.'s order (dated 06-11-2002) mentioned above to be a tame one, sweepingly approving the

contentions of the landholder Baneshwari Kuer. Nagina Kuer's heirs have neither been impleaded as parties nor heard. It is strange that Nagina Kuer's issue relating to the lands gifted by Nagina Kuer was decided at the back of her heirs. Even a semblance of justice is missing.

In their revision petition, Ram Dulari Devi and others (heirs of Nagina Kuer) have assailed the order (dated 25-10-2002) of the Collector Arwal in L.C. Appeal No. 8/DM/2002-2003 (Baneshwari Kuer vs. the State) by which the Collector set aside the order dated 27-03-2000 passed by the S.D.O. Jahanabad. They made the following further submissions-

- (i) That during the pendency of the revision application Baneshwari Kuer died on 18-12-2002.
- (ii) That after her death, the petitioners Ram Dulari Devi and two persons namely Vijay Prasad, Murari Prasad, sons of Jugleshwari Narain Singh filed substitution petition U/S 45 C on 17-01-2003 and remained the heirs of Baneshwari Kuer and they were entitled for the unit of the lands of Baneshwari Kuer
- (iii) That after her death, an advocate namely Kaushal Kumar Singh appeared in the Court claiming by a substitution petition on 24-12-2002 that he was the legal representative of late Baneshwari Kuer.

#### ISSUES FOR CONSIDERATION

1. The entire scenario had undergone a sea-change in the aftermath of the death of O.P. No.2, Baneshwari Kuer (issueless) during the pendency of the Revision petition. One of the two landholder parties to the protracted legal battle is

no more. Now the sole landholder party viz., the Revision petitioners are face to face vis-à-vis the State only.

2. In view of the above, it will be essential first to examine the claim of the Revision petitioners to be allowed to step into the shoes of the deceased OP-II namely late Baneshwari Kuer. If the claim is allowed and the rights to heirship vis-à-vis late Baneshwari Kuer's properties are recognised, the entire matter ab-initio from Section 10 will have to re-adjudicated. Hence, instead of examining the claims and counter claims of the petitioners vis-à-vis deceased OP-II, who is no more, it will be pertinent to take a view on the claim to heirship over deceased OP-II's properties first.
3. Kaushal Kumar Singh, Advocate, claiming himself to be the legal representative of late Baneshwari Kuer, submits that he is the son of Kusum Devi, who was the daughter of Chandeshwari Devi, who, in turn, was the sister of Baneshwari Kuer, deceased OP-II of the case. He claims to hold a will dated 28-02-2000 (No. 1228) in his favour executed by late Baneshwari Kuer. Whether the same is probated and confirmed by a competent Court is nowhere clear.
4. Luckily for the Revision petitioners, Kaushal Kumar Singh stakes a claim of heirship over the unit lands meant for his Nani's sister (OP-II) only and not over the unit lands of the Revisions petitioners. The right and title of the Revision petitioners over a unit to be held other than that of OP-II is not a subject matter of dispute.
5. As things stand, proper adjudication will unfold in either of the two diverse ways-
  - (a) If Kaushal Kumar Singh's plea is accepted, the further proceedings will revolve around the validity or otherwise of the impugned order of the Collector and a unit each

for both the petitioners and the OP-II will have to be determined according to law.

(b) If Kaushal Kumar Singh's plea is rejected, the unit admissible to OP-II will come over to the petitioners as an additional unit.

6. As regards the stay of lower Court's proceedings, a decision has already been taken by my predecessor and I do not find any reason to interfere with the same, especially as the case of OP-II has become all the more contentious.
7. Whether the Collector was right when he, in his order dated 22-11-2002 passed in Appeal Case No. 39 DM/2002-03 held that the appeal filed by Ram Dulari Devi vs. Baneshwari Kuer and the State was not maintainable since there was no final publication as yet of the Draft U/S 11 (1) of the Act.

That being so, how come the Collector passed a substantive order in Appeal Case No. 8 DM/2002-03 (Baneshwari Kuer vs. the State of Bihar) in which the present Revision petitioners were not even made parties and yet the S.D.O.'s order dated 27-03-2000 in L.C. Case No. 24/1973-74, 25/1973-74 and 26/1973-74 was set aside, without attempting an in-depth analysis of the order at all.

The stand of the Collector in rejecting an appeal with reference to section 11 (1) of the Act, and entertaining a different appeal in the same case earlier is self-contradictory.

8. Which one of the two orders passed by the S.D.O. was in consonance with the directives given in Hon'ble Court's order in CWJC No. 2187/1985: (i) S.D.O.'s order dated 27-03-2000 set aside by the Collector which appears fairly comprehensive and (ii) S.D.O.'s order dated 06-11-2002, which as stated in the foregoing left much to be desired.

9. The counsel for the petitioner had relied on a judgement reported in AIR 1974 SC 994, State of Punjab & others Vs. Amar Singh & others. The learned counsel for the petitioners had relied on Paragraph 84 of the judgement which runs as follows:-

“Firstly there is catena of authority which, following the doctrine of Lindley, L.J., in Re-securities Insurance Co. (1894) 2 ch 410 have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made ex-nominee a party.”

Further, the counsel of the petitioners had relied on a judgement of Division Bench United Commercial Bank / Hanuman Synthetic Ltd. Reported in A.I.R. vs. 1985 Cal. Page 96, in Para 16 of this judgement which runs as follows:-

“We were referred to a large number of decisions of various High Courts on this point but it is not necessary to discuss those Judgements in view of the clear enunciation of law by the Supreme Court in the case of Jatar Kumar Galcha (AIR 1971 SC 374). In our opinion, the appellant was entitled to prefer this appeal with leave of the Appeal Court. The appeal cannot be dismissed in limine as not maintainable.”

#### **ORDER**

1. It has come out from the submissions of the purported legal representative of late Baneshwari Kuer, erstwhile OP- II in this case that the purported will by Baneshwari Kuer has not

yet been probated by a competent Court. According to the provision of Section 213 of the Indian Succession Act 1925, an unprobated will carries no legal value whatsoever. Hence, subject to probate, the unit admissible to the late Baneshwari Kuer was additionally granted to the petitioners Ram Dulari Devi, Vijay Krishna Prasad and Murari Prasad as heirs of Baneshwari Kuer and accordingly, the case was remanded to the Collector for readjudication, as per law.

2. The order dated 28-09-2002/25-10-2002 passed by the Collector, Arwal in Land Ceiling Case Appeal No. 8 DM/2002-03 was set aside

## **Case Study No. 27**

### **Board of Revenue, Bihar Revision Case No. 3/2003 to 35/2003**

The revision cases have been filed against the order dated 20.11.2003 passed by the Commissioner, Tirhut Division, Muzaffarpur in Appeal No. 436/1995-96. The land ceiling case No. 79/73-74 is common. The petitioners are either settlees from the original landholder or purchasers. Originally a land ceiling case No. 60/1973-74 was started in the district of West Champaran against Shatru Mardan Shahi, who was the father of Ajay Kumar Shahi (petitioner in Board Case No. 2/2003). There was a partition in the family of the landholders through Title Suit No. 56/1968 which was decreed on compromise in 1959. Vide that partition shares were allotted to the two sons of Shatru Mardan Shahi- namely, Ran Vijay Shahi and Ajay Kumar Shahi. Therefore, two separate land ceiling cases were also started against the aforementioned two sons. L.C. Case No. 78/973-74 was started against Ajay Kumar Shahi and L.C. Case No. 79/1973-74 against Ran Vijay Shahi.

Ajay Kumar Shahi is the petitioner in Revision Case No. 3/3003. The other revision cases mostly related to the claims for the exclusion of the transferred lands. The transfers claimed are by way of settlement, sales, gifts and will. The settlees have also made a number of transfers to different persons.

In Revision Case No. 3/3003, the petitioner has stated that there was a partition suit in 1958 wherein, the petitioner got his share. Additionally, he acquired some land by purchase. His father namely, Shatru Mardan Shahi had already been allotted one unit. He died on 10.04.82. Therefore, lands which were the subject matter of Shatru Mardan Shahi's Case No. 66/1973-74 devolved on his heirs.

The petitioner had already been granted a unit for himself. His father had executed a will of his share's land on 24.02.82 in favour of his 5 grandsons. The entitlement of his father is to be seen with reference to the appointed date of 09.09.70. Since one full unit has already been allotted to Shatru Mardan Shahi, there is no question of allowing extra benefit through a will dated 24.02.82.

In Revision Case No. 22/2003 devolution on the death of the petitioner's (Ran Vijay Shahi's) father (Shatru Mardan Shahi) on the basis of Partition Suit No. 56/1958, has been referred to. It has been submitted by the petitioner that some of the lands belonging to him have been wrongly included in the L.C. Case No. 78 of 1973-74 started against his brother Ajai Kumar Shahi. No details of such lands had been given in the memo of revision to enable me to verify the position within the Draft Statement. The petitioner had already been allowed a unit in the case started against him. In case he exercised option for retaining lands within his unit and if any lands out of the list of option were found included in the final statement of Ajay Kumar Shahi, there might be occasion for the exclusion of such opted lands. I did not find any option had been exercised by the petitioner. Hence, it was not possible to direct exclusion of those lands if they had been included in the statement of Ajay Kumar Shahi. The point appeared to have been raised only for delaying disposal of the L.C. Case which had been pending since 1973-74. The revision case was accordingly dismissed.

In Revision Case No. 26/2003, the petitioner is Padma Kumari Devi who is the daughter of Late Shatru Mardan Shahi. She claims to have got settlement of lands from her father on 4.08.1948. The lands under settlement have been stated to have been included in the L.C. Case No. 78/1973-74 started against Ajay Kumar Shahi. A prayer was made for the exclusion of those lands from the L.C. Case No. 78/1973-74.

The area of settlement was claimed as 95 Bighas, 13 Kathas and 14 Dhurs. Neither any copy of the deed of settlement nor any proof of settlement had been produced. The records showed that at none of the stages any proof had at all been filed. The purported settlement/ lease itself could not be held to be final. I affirmed the impugned appellate order and dismissed the revision case.

Certain petitioners who claimed to be transferees from the original landholder had not been able to adduce any proof of transfer / settlement. Hence their cases were dismissed.

In yet another case Indira Kumari Devi daughter of Late Shatru Mardan Shahi, claiming a settlement (in 1948) from her father, prays for an exclusion of her settlement land from the Draft Statement of her brother Ajay Kumar Shahi. With regard to the claim of settlement, I found that at none of the stages of the case any proof much less any registered deed of settlement/ lease had been adduced. Hence the revision case was dismissed.

Three Revision cases have been filed on behalf of different deities through Ran Vijay Shahi and it was claimed that there had been trust deeds of 1960 and 1961. No deed had at all been produced at any stage of the case. The lands claimed for exclusion were said to be belonging originally to Shatru Mardan Shahi, who had transferred lands to Padma Kumari. Thereafter, Padma Kumari was said to have transferred the lands. In the case of Padma Kumari, the purported settlement/ lease ( by her father to her) had not been found to be legal or genuine. Therefore, transfers made by her, in turn, were of no consequence. Moreover, no document had been produced at the stage of revision also. It has been stated that in the partition decree lands had been set apart for the petitioner deity. Partition is never a transfer. Hence, it cannot be said to have created

title in favour of the concerning deity. In view of the above, the concerning revision cases were dismissed.

In my order dated 14.02.2004, I further examined the case of the transferees. The transferees prayed for an exclusion of their purchase – lands from the L.C. Case of Ajay Kumar Shahi, the son of the original landholder Shatru Mardan Shahi. In many cases, I found the transferees were related to the family of the original landholder. I further found that many transferees were residents of different states and cities/ villages. No local arrangement for cultivation or even temporary residence in the State of Bihar had been claimed. In many cases, cultivation was claimed through a cooperative society, namely, the Dumaria Joint Farming Cooperative Society. The surrender under Section 15-A of the Act in 1976 was found to be of no advantage to some petitioners since in 1976 no proceedings were there against the person who had made the surrender. In Case No. 11/2003, there is a mention of transfers by sale and gifts in favour of the mother of the petitioner and in favour of the petitioner. The large area with same dates of transfers spoke for themselves and showed that they were farzi and benami with the purpose of defeating the objects of the Act. The Collector as well as the appellate authority both had found the transfers as not genuine. There was nothing on record to show otherwise. I affirmed the impugned orders and dismissed the revision cases concerned.

A central point in the discussion has been that transfer by way of settlement by the original landholder to his daughters has not been found to be legal. Therefore, the transfers by such settlees and subsequent transfers by the said transferees collapse against the crux of validity.

Nevertheless, cases in which transfers were proved to have taken place prior to the fixed date of 22.10.1959, were remitted back by

me to the Collector for consideration as per law. For example, in Revision Case No. 30/2003, the petitioner has claimed to have purchased the lands measuring 18.57 acres through registered deed of sale dated 14.09.1959. He also claims to have acquired lands from persons other than the family members of the landholders. The name of the petitioner is stated to have been mutated. In this case, the petitioner is the resident of a village within the district of West Champaran. It is also claimed that the concerning lands have been given to the Farming Society for cultivation but no date of giving the land to the Society had been given and thus a doubt was created. However, in view of the petitioner being a local man and there being no evidence of direct relationship, the matter required a consideration. I remitted the matter back to the Collector, West Champaran with a direction to the Collector to look into the original deed of transfer. I directed that in case the petitioner's possession was found, action for the exclusion of the lands as per law must be taken.

Similarly, in Revision Case No. 6/2003 & 13/2003 claims for the exclusion of lands are based on the story of Brit Dan to the pujari of the family of the landholder. In case No. 6/2003 an area of 5.44 acres is claimed under the Brit Dan of the 1332 Fasli , corresponding to the year 1925. Rent is claimed to have been fixed in 1989 after enquiries by the Anchal Adhikari.

In revision Case No. 13 of 2003, 9.79 acres have been claimed under Brit Dan. Rent fixation has been done. It is also claimed that the father of the petitioner of Revision Case No. 13/2003 had acquired 25.38 acres from others and 8.26 acres from Ajay Kumar Shahi, landholder by a registered deed of sale dated 14.09.1959.

Since the transfer by sale was of a date prior to 22.10.1959 by a registered deed, this fact alongwith the rent fixation proceeding with enquiry by the Anchal Adhikari was required to be looked into.

I remitted back the two cases with a direction to the Collector to examine the genuineness of the claim of the petitioner again as per law.

Revision Case No. 23/2003 was filed by Ajay Kumar Shahi in the capacity of his being the Secretary of the Dumaria Joint Farming Cooperative Society Ltd. which was said to have been registered in 1964. It is the admitted fact that transfers were made in favour of the Society by a registered deed of sale dated 23.01.1976. It was also stated that the Society acquired lands by sale deed dated 25.10.1979. From the admitted facts it is clear that the transfers were made in favour of the Society after the cut-off date of 09-09-1970. I treated the same as invalid.

I further found that there was a partition in 1959 among Shatru Mardan Shahi and his sons, namely, Ran Vijay Shahi and Ajay Kumar Shahi. Shares were allotted to them. Shatru Mardan Shahi in his life time is said to have made transfers through settlement/ lease etc. some of which have not been found to be reliable and legal. Therefore, the lands relating to those transfers have to be treated as belonging to Shatru Mardan Shahi. Shatru Mardan Shahi died in 1982 leaving behind his two sons and three daughters on whom the lands of the share of Shatru Mardan Shahi devolved. Each of the five heirs and legal representatives become entitled to 1/5<sup>th</sup> share in the property held as per the ceiling law and left by Shatru Mardan Shahi. It is worth considering that there has not been any partition with regard to the lands of the share of late Shatru Mardan Shahi.

Since there was previously a partition prior to 22.10.1959 between the two sons, namely Ajay Kumar Shahi and Ran Vijay Shahi and their father and specific lands were allotted to their shares, lands allotted to the sons by that partition cannot be subjected to 1/5<sup>th</sup> division. The lands allotted to the share of Ajay Kumar Shahi by the Partition Suit of 1958 should remain in the L.C. Case No. 78/1973-74 lands which devolved upon him on the death of his father are also required to be added further. This requires to be verified plot-wise from the records and if any deviation is found, the same must be examined. The counsel for the petitioner has not submitted any specific details for a definite order in the matter.



### BIO DATA

#### DR. C. ASHOKVARDHAN, IAS

##### *Educational Qualifications*

**M.A.** (Political Science)  
Patna University: Gold Medalist

**Ph.D.** Patna University  
**Subject: Personnel Management and Financial Administration in the Bokaro Steel Plant.**

Sahitya Shastri (Sanskrit): Kameshwar Singh Sanskrit University, Darbhanga.

First Class with distinction (fifth position in India) in the **Russian Language Certificate Examination** conducted by the All India Russian Language Institute, New Delhi.

**D. Litt.** Patna University

Subject: The Concept and Practice of Training and Management Development : A Study of the Bokaro Steel Plant.

**Postings:** Lecturer, Deptt. of Political Science, Ranchi College, Ranchi: 6.1.1975-26.4.1975: Lecturer, Deptt. of Political Science, Patna College, Patna: 28.4.1975: 13.9.1980: Joined the Indian Administrative Service on 15.9.1980 (Bihar Cadre).

### Postings in the IAS

- i. S.D.O., Godda – 7.11.82 - 14.6.84
- ii. Dy. Development Commissioner, Saharsa – 19.6.84 - 21.12.85
- iii. Vice Chairman, Ranchi Regional Development Authority, Ranchi – 9.12.85 - 12.3.86
- iv. Settlement Officer, Dhanbad – 21.2.86 - 20.11.90
- v. District Magistrate & Collector, Sitamarhi – 23.9.90 - 3.11.92
- vi. Additional Secretary, Deptt. of Revenue & Land Reforms, Govt. of Bihar, Patna – 27.11.92 - 2.1.94
- vii. Special Secretary, Deptt. of Revenue & Land Reforms, Govt. of Bihar, Patna – 3.1.94 - 24.9.97
- viii. Director, Land Records & Survey, Bihar (Additional Charge) – 22.3.94 - 7.7.94
- ix. Director, Consolidation (Additional Charge) – 23.2.96 - 9.7.96
- x. Additional Member, Board of Revenue, Bihar, Patna – 23.8.97 - 12.6.98
- xi. Secretary, Deptt. of Parliamentary Affairs, Govt. of Bihar, Patna – 12.6.98 - 30.11.2000.
- xii. Administrator, Bihar State Scheduled Castes Cooperative Development Corporation, Patna (Additional Charge) – 21.5.99 - 19.6.2000.
- xiii. Managing Director, Bihar State Backward Classes Finance & Development Corporation, Patna (Additional Charge) – 26.5.99 - 19.6.2000.
- xiv. Secretary, Department of Secondary Education, Govt. of Bihar, Patna – 28.11.2000 - 1.12.2001.
- xv. Additional Member, Board of Revenue, Bihar, Patna – 1.12.2001 – 18.8.2004
- xvi. Secretary, Department of Raj Bhasha, Govt. of Bihar, Patna – 29.1.2002 - 7.1.2003
- xvii. Secretary, Department of Rajbhasha, Govt. of Bihar, Patna – 12.4.2003 - 7.11.2003
- xviii. Secretary, Dept. of Minority Welfare, Govt. of Bihar – 1.3.2004 - 9.8.2004
- xix. Secretary, Dept. of Relief & Rehabilitation (Disaster Management) – 24.2.2004 to date.

**Foreign Tours**

1. Visited Thailand, China and Hongkong in 1992 on a study tour sponsored by the MHRD Govt. of India and the UNICEF
2. Underwent training with International Training Service, London (organised by the British Council) in London and other places in the UK on the Management of Change in Government (28.9.1996-10.10.1996)

v. Appointed Member of a National Level Committee on Consolidation of Land Holdings, formed by the Ministry of Rural Development, Govt. of India, in 1999.

vi. Appointed Member of a National Level Committee on Tribal Land Alienation and its Restoration, formed by the Ministry of Rural Development, Govt. of India, in April, 2000, under the Chairmanship of Shri B.N. Yugandhar, IAS (Retd.).

**Govt. of India Assignments**

- i. Appointed Member of a Committee on the Revitalisation of Land Revenue & Land Records Administration in India (Ministry of Rural Development, Govt. of India) in 1994 and covered 14 States in the country. Submitted State Papers - the Committee was headed by Shri P.S. Appu, IAS (Retd.).
- ii. Prepared State Papers on Manipur-Tripura on an assignment given by the LBS National Academy of Administration, Mussoorie in 1994-95.
- iii. Appointed Member of an Expert Group, formed by the Dept. of Rural Development (Ministry of Rural Areas & Employment), Govt. of India in 1997. Assigned with the task of studying tribal land alienation and formulating a model law on the subject. Contributed paper entitled "**Continuity & Change in Tribal Tenancy Laws in Bihar: A Review of Transfer Provisions**".
- iv. Served as a member of an Expert Group set up by the National Commission for SCs and STs (GOI) to study issues pertaining to Land Rights (1999). Contributed paper entitled "**New Policy Options for Tenancy Reforms in Bihar**".

**PUBLICATIONS**

Sl. No.	Title of the Book	Publishers	Year
<b><u>A. BOOKS IN ENGLISH</u></b>			
1.	Arrah Goes to Polls	Shri Jagdish Niketan, New Sheoganj, Arrah	1972
2.	The Conversion (Poetry)	Bharati Prakashan, Varanasi	1985
3.	Active Ingredients of Rural Development	District Rural Development Agency, Saharsa	1985
4.	Human Resources Development in Bokaro Steel Plant	Steel Authority of India Ltd. Bokaro Steel Plant	1987
5.	Beyond Survey	Survey & Settlement Office, Dhanbad	1987
6.	Political Legacy of the Rigveda	Bharati Prakashan, Varanasi	1987
7.	Land Reforms in Kerala: the Myth and the Reality	National Institute of Rural Development, Hyderabad	1992

8.	Land Records Management in 14 States of India	- do -	1998
9.	Tenancy Reforms Revisited	LBS National Academy of Administration, Mussoorie	2000
10.	Reach out to me, yourself (A Collection of 101 Poems)	Chandravindu Prakashan, Shri Jagdish Niketan, New Sheoganj, Arrah	2000
11.	Fallen Leaves (A Collection of 178 Poems)	- do -	2001
12.	Readings in Land Reforms	Centre for Rural Studies, LBS NAA, Mussoorie	2003
13.	Socio-Economic Profile of Rural India (Vol. 2) North-East India (ed.)	Concept Publishing Company, New Delhi	2002
14.	Studies on Ceiling Laws	LBS National Academy of Administration, Mussoorie	2004
15.	Ceiling Laws in India	-do-	In Print

**B. BOOKS IN HINDI**

1.	cksdkjks bLlkr la;a= esa ekuo lalk/ku fodkl	LVhy vkWFkksfjVh vkWQ bafM;k fy-] cksdkjks bLlkr la;a=	1990
2.	cksdkjks bLlkr la;a= esa izf'k{k.k ,oa izcU/ku fodkl	pUnzfcUnq izdk'ku] Jh txnh'k fudsru] u;k f'koxat vkjk	1993
3.	iqfyl nkf;Ro ,oa	C;wjks vkWQ iqfyl fjlPZ	1997

	ukxfjd tkx:drk	,.M MsoyiesUV] x`g ea=ky;] Hkkjr ljdkj	
4.	iqfyl iz'kklu esa xq.kkRed lq/kkj	pUnzfcUnq izdk'ku] Jh txnh'k fudsru] u;k f'koxat vkjk	2000
5.	mRRkj&iwohZ jkT;ksa esa Hkw&vfHkys[k la/kkj.k	&rnSo&	2003

**ARTICLES/PAPERS**

Nearly 50 articles/research papers published in standard journals.

**AWARDS/HONORARIA**

Sl. No.	Book/Paper	Amount of Award/Honorarium	Received from	Year
1.	Human Resources Development in Bokaro Steel Plant (Book)	Rs. 10,000/-	Steel Authority of India Ltd. Bokaro Steel Plant	1987
2.	People's Participation in Planning (Article)	Rs. 2,000/-	Indian Institute of Public Administration, New Delhi. First Prize in IIPA Essay Competition, received from Dr. Shankar Dayal Sharma, the then Hon'ble Vice	1989

3.	cksdkjks la;a= esa lalk/ku ¼iqLrd½	bLikr ekuo fodkl	Rs. 10,000/-	President of India LVhy vkWfKksfjVh vkWQ bafM;k fy- cksdkjks bLikr la;a=	1990
4.	rFkSo		Rs. 7,000/-	dkfeZd] yksd f'kdk;r ,oa isa'ku ea=ky; ds iz'kklfud lq/kkj vkSj yksd f'kdk;r foHkkx }kjk yksd iz'kklu vkSj izcU/ku foKku vkfn fo"k;ksa ij fy[kh xbZ ewy iqLrdksa ds fy, ljdkj cYyHk HkkbZ iVsy iqjLdkj ;kstuk ds vUrxZr	1992
5.	cksdkjks la;a= esa iz'k{k.k izcU/ku ¼iqLrd½	bLikr esa ,oa fodkl	Rs. 7,000/-	bLikr ea=ky;] Hkkjr ljdkj }kjk oSKkfud rFkk rduhdh fo"k;ksa ij fgUnh esa ekSfyd	1992

6.	iqfyl nkf;Ro ,oa ukxfjd txk:drk		Rs. 10,000/-	iqfyl vuqla/kku ,oa fodkl C;wjks ¼x`g ea=ky;½ Hkkjr ldkj ¼ia- xksfoUn cYyHk iar iqjLdkj ;kstuk ds vUrxZr½	1995
7.	State Papers on Manipur and Tripura		Rs. 15,000/-	LBS National Academy of Administration, Mussoorie (Govt. of India)	1996
8.	iqfyl iz'kklu esa xq.kkRed lq/kkj		Rs. 5,000/-	iz'kklfud lq/kkj vkSj yksd f'kdk;r foHkkx] Hkkjr ljdkj dh ldkj cYyHk HkkbZ iVsy iqjLdkj ;kstuk ds vUrxZr ¼1994 ds fy,½	1996
9.	Continuity and Change in Tribal Tenancy Laws in Bihar: A Review of		Rs. 10,000/-	Department of Rural Development (Ministry of	1997

	Transfer Provisions		Rural Areas & Employment) Govt. of India, Nirman Bhawan, New Delhi	
10.	mRrj iwohZ jkT;ksa esa Hkw&vfHkys[k la/kkj.k	Rs. 15,000/-	- do -	2001
11.	Socio-Economic Profile of Rural India (Vol. 2) North-East India (ed.)	Rs.5,000/-	LBS National Academy of Administration, Mussoorie (Govt. of India)	2004