

(1993) 04 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 572 of 1992

Akhileshwar Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-04-1993

Acts Referred:

Citation : (1993) 04 PAT CK 0025

Judgement

S.B. Sinha, J.—This application is directed against a letter dated 9-12-1991 issued by the Circle Officer, Bagha-2 and addressed to the Land Reforms Deputy Collector, Bagaha whereby a purported verification report had been sent to him as contained in Annexure-7 to the writ application as also the verification report as contained in Annexure-8 thereto.

2. One Girdharan Prasad Mishra, grand father of the petitioner was the landholder. A proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act) was initiated against him being Ceiling Case No. 14 of 1975. The landholder filed objection which was rejected. The matter went up to the Member, Board of Revenue, who held that the petitioner is entitled to five units. The Member, Board of Revenue further allegedly upheld the objections filed by the petitioner with regard to exclusion of lands transferred or donated by (sic) virtue of deeds of gift. However, the objection of the petitioner with regard to exclusion of 16.49 acres of land which was allegedly dedicated in the year 1965 to Lord Shiva and Mata Parvati did not find favour with the Member, Board of Revenue. Allegedly a deed of Samarpannama was executed on 27-1-1973. The petitioner thereafter filed a writ application before this Court being C.W.J.C. No. 2643 of 1976 which was disposed of by an order dated 4-4-1977, in terms whereof the matter was remitted to the Deputy Collector, in charge Land Reforms, Bagaha with a direction that the matter as to whether the dedication was in fact made in the year 1965 or not should be decided. By an order dated 19-5-1983 the Land Reforms Deputy Collector, however, took into consideration other points also and inter alia held that the petitioner's family was entitled to three units and not five

units. He further held that a proceeding u/s 48E of the Bihar Tenancy Act was initiated at the instance of Bataidars and the said lands and other lands are also to be clubbed with the lands held by the petitioner and his family members. He further held that the lands acquired for laying down Railway Lines and for construction of a paper factory were also not to be excluded from the purview of acquisition. He further disallowed the claim of the petitioner to exclude the land which was covered by the deeds of gift. He further gave certain other directions. The said order is contained in Annexure-3 to the writ application.

3. The petitioner filed an appeal against the said order being Ceiling Appeal No. 192 of 1983. The Appellate Authority by his order dated 16-5-1986 remanded the matter to the Collector under the Act.

4. The land holder expired in 1988 and his interest devolved upon his sons and grandsons in terms of the provision of Hindu Succession Act. However, according to the petitioner, all the landholders were not given notice and only Janardan Prasad Mishra was substituted in place of the original landholder. The petitioner has alleged that Sri Ram shobhit Paswan, Sub-Divisional Officer, Bagaha misbehaved with him in November, 1991 for which a notice was served upon him u/s 80 of the Code of Civil Procedure. The petitioner has contended that the Sub-Divisional Officer, Bagaha influenced the Collector under the said Act (respondent No. 3) and thus another report from the Anchal Adhikari was called for. Petitioner has questioned the veracity of the said verification report. The petitioner has further contended that respondent No. 4 organised the members of the Scheduled Castes so as to enable him to distribute the lands belonging to the petitioner and pursuant thereto the aforementioned purported verification reports were submitted by the Anchal Adkhikari.

5. The writ application was filed on 20th January, 1992. An application was filed by the petitioner on 9-3-1992. In the said application, it has been brought to the notice of this Court that the report of Karamchari was submitted on 5-12-1991 and the same has been signed on 8-12-1991. On 12-12-1991 which was the date fixed in the aforementioned case, the petitioner went to the Court and was told by the Peshkar that no work will be done on that date because of the non-gazetted employees strike. He, however, filed an application before Respondent No. 3 which is contained in Annexure-10 to the writ application, when he came to learn that some order was going to be passed in the case. The Land Reforms Deputy Collector, however, ignoring the said objection of the petitioner passed a final order u/s 11(1) of the said Act, although a certificate granted by the lawyer regarding filing of the writ application was filed before him. The said final publication was signed on 30-1-1992 and was allegedly served on him on 8-2-1992. However, on 3-2-1992 itself even without awaiting the service of gazette publication requisition for acquisition of lands had been sent to the Collector and the said acquisition was sanctioned on the same day. On 4-2-1992 a distribution chart was also called for from the Anchal Adhikari by 10-2-1992. On 7-2-1992 the matter was heard by this Court and upon prayer made by the

learned counsel appearing on behalf of the State, time was granted to him to seek instruction, However, till further orders it was directed that the lands mentioned in Annexure-9 shall not be distributed. In the mean time a notification u/s 15(1) of the Said Act was published in the Gazette and the same was served upon the petitioner on 8-2-1992. 9-2-1992 was Sunday and on 10-2-1992 the petitioner went to the office of the Land Reforms Deputy Collector where (sic) he came to learn that his lands have been shown to have been distributed. The petitioner met some people of his village who disclosed that they were called for to receive Parchas and in fact Parchas to some persons have already been distributed on 10-2-1992 but all the Parchas had not been distributed till then. The petitioner has further contended that the Land Reforms Deputy Collector, Sri Sitaram was out of station on 3-2-1992, 4-2-1992, 6-2-1992 and 10-2-1992 and the Order in fact had been signed on 10-2-1992 by ante-dating the same.

6. When the matter was to be brought to the notice of this Court on 19-1-1993, notices were issued to respondents Nos. 3, 4 and 5 as to why a proceeding under the Contempt of Courts Act shall not be initiated for wilful disobedience of the Court's order.

7. A counter affidavit was thereafter filed on behalf of respondents Nos. 2, 3 and 4. In that counter affidavit, it has been contended that the lands had been distributed prior to -2-1992 i.e. before the order of this Court was communicated to the said respondents. It was stated that the order u/s 10(3) of the said Act was passed on 27-1-1992, and final publication u/s 11(1) of the said Act was made on 30-1-1992 and thereafter gazette publication u/s 15(1) of the said Act was made on 6-2-1992. It has been stated that upon complying with the legal formalities in respect of distribution of surplus land, a proposal for distribution of the same was sent by the Deputy Collector Land Reforms to Anchal Adhikari, Bagaha by letter No. 45 dated 6-2-1992 who upon taking steps for distribution of lands informed the Deputy Collector about the compliance thereof by his letter No. 37 dated 8-2-1992.

8. According to the respondents for the first time on 8-2-1992 an application was filed by Sri Akhileshwar Mishra intimating the order dated 7-2-1992 passed by this Court. Allegedly upon receipt of the said letter the Sub-Divisional Officer directed the Anchal Adhikari to stay the distribution of the land which has been declared surplus by his Memo bearing No. 155/R dated 9-2-1992 (Annexure-C).

9. A counter affidavit on behalf of the State has been sworn by one Sita Ram, Land Reforms Deputy Collector, Bagaha. It may be mentioned that counter affidavit dated 18-2-1993 filed on behalf of respondents Nos. 2, 3 and 4 has also been sworn by him. According to the State as the proceeding abated in 1982-83, the matter was directed to be started from the stage of Section 10 of the said Act and it was inter alia found that Rabikesh Mishra's matriculation certificate has not been produced and thus, the report of the Anchal Adhikari was accepted. Thus, only two units were allotted to the family. It was submitted that the case was remanded by the High Court to examine on the point of dedication and after

verification it was apparently found that it was farzi transaction as the land in question was in possession of the petitioner. It was further found that the other deeds of gift and transfers also were farzi ones. It has been submitted that as Janardan Mishra was substituted in place of Girdharan Mishra and the Collector under the said Act was within his jurisdiction to call for a fresh verification report.

10. This is one of the cases which ex-facie proves the allegations of mala fide made by the petitioner as against the respondents. The personal bias of an Officer as against the landholder when brought in fray for the purpose of the disposal of the land ceiling proceedings, injustice is bound to be caused.

11. Mr. Jamilur Rahman, learned Standing Counsel appearing on behalf of the State as also the respondents Nos. 2 to 4 could not justify the unjust and undue haste on the part of the respondents 2, 3 & 4 in passing issuing final order u/s 10(3), notification u/s 11(1), notification u/s 15(1) as also the steps taken in relation to the purported distribution of lands. Judging at the efficiency that is normally shown by the Officers of the State of Bihar, we are inclined to think that some orders must have been antedated and parchas had been shown to be distributed, although they had not been distributed in fact on 7-2-1992. From the order sheet, it appears that the Land Reforms Deputy Collector passed the order dated 27-1-1992. It appears strange that on 17-1-1992 no argument was heard and 27-1-1992 was fixed for passing judgment. The last sentence of the order sheet appears to have been written after the order dated 17-1-1992 was passed. It further appears strange that some order was passed on that day itself. Later on, from a perusal whereof it appears that two witnesses were examined on that date. If two witnesses were examined on that date, the question of hearing the argument prior thereto does not arise. There does not appear to be any reason as to why the factum of examination of two witnesses did not find place in the order sheet dated 27-1-1992. The purported order sheet dated 27-1-1992 is on typed sheet but the date of order has been written by hand. On that day itself, however, it was mentioned that an application was filed for stay of the said proceedings on the ground that the writ application has been filed but the said application has been rejected and the Land Reforms Deputy Collector directed for preparation of the final publication. The L. Rule D.C. signed the said final publication on 30-1-1992 itself. From a perusal of the order sheet dated 3-2-1992, it appears that it was recorded that a copy of the final publication had been sent to the landholder under registered cover and thereafter a direction has been made to send a copy thereof to the Collector for the purpose of publication of the notification u/s 15(1) of the said Act. On 3-2-1992 itself the draft publication u/s 15(1) the Act was received by the Collector and he approved the publication of the draft u/s 15(1) of the said Act on the same day. It is not understood as to how the Collector approved the draft to be published u/s 15(1) of the said Act in the records of the land ceiling proceeding itself. On 4-2-1992 in view of the order of the Collector, the Land Reforms Deputy Collector while sending a copy of the said draft publication of the Circle Officer, Bagaha directed him to send proposal for distribution of the lands. The said proposal was

purported to have been received on 6-2-1992 and necessary distribution of the lands were directed to be made by 10-2-1992. In the order sheet dated 10-2-1992/15-2-1992 it had been noted that Anchal Adhikari Bagaha had informed that the lands have been distributed and zamabandi has been prepared in their names and even possession has been delivered. From the records produced before us, it appears that a notification u/s 11(1) of the Act was published on 30-1-1992. No gazette publication u/s 15(1) of the said Act is on the records. From the records of the Anchal Adhikari, Bagaha-2 it appears that the purported notification No. 70 dated 3-2-1992 was received on 5-2-1992 and Halka Karamchari was directed to prepare a proposal for distribution of the land as early as possible. All the concerned Halka Karamcharis by 6-2-1992 not only prepared the list of landless persons, details of the lands, but, also prepared maps which are in several sheets. The Anchal Adhikari took note of the reports of the Halka Karamchari and the plans prepared on 6-2-1992 itself, purported to have verified the same, found the same to be satisfactory and sent the same to the Deputy Collector Land Reforms for his approval. However, from the order sheet dated 7-2-1992 itself, it appears that he received the letter dated 6-2-1992 approving the draft and he, therefore, directed that all concerned Karamcharis should prepare Parchas. He further directed that even zamabandi be prepared in the names of the persons in whose favour parchas are to be distributed and they should be handed over possession also. From the order sheet dated 8-2-1992 it appears that all the concerned Halka Karamcharis had reported that possession have been delivered to the Parcha-holders and delivery of possession have been effected and zama-bandis is have also been prepared in their names.

12. Any resident of the State of Bihar far less ourselves, possibly even in dream cannot think that the authorities of the state of Bihar would act at such a Jet speed. The entire order sheet recorded by the Anchal Adhikari appears to have been written in one sitting. Therefore, the allegations against the concerned Officers made by the petitioners appear to be correct. It is further surprising that even the Collector of the district apart from the Land Reforms Deputy Collector, Bagaha and Anchal Adhikari, Bagaha-2 have become parties to the aforementioned illegal acts. Such irresponsible behaviour on the part of the Officers of the State cannot but be deprecated.

13. Recently in *Bal Kalyani v. State of Maharashtra*, AIR 1993 Bombay 10 noting various texts about the history of the Indian Administrative service it was held as follows (at p. 23 of AIR) :

"Against, the plea of mala fides has been made in a pointed manner. The heavy burden in establishing mala fides is certainly to be reckoned by Courts in that connection. Helpful guides are available from leading judgments of the apex Court. We do bear in mind that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. Care is therefore taken, as cautioned by the Supreme Court, that dubious inferences are not drawn from incomplete facts (see *E.P. Royappa Vs. State of*

Tamil Nadu and Another, . We also note that the charge of mala fides is more easily made than made out (see Kedar Nath Bahl Vs. The State of Punjab and Others, . It is to be ensured that the plea of mala fides is not made "the last refuge of a losing litigant" as indicated in Gulam Mustafa and Others Vs. The State of Maharashtra and Others, .

While evaluating a plea of mala fide, quite often, the Government files would give helpful clues, about objective facts. A party, totally strange to the notings in the file and the processing of the papers, would not be in a position effectively to mention with precision the events which twisted a given trend of opinion. The files, therefore, would throw such light when the court is confronted with allegations of one party and denial of the other. The Supreme Court has indicated that while moving along the track of Government's decision making process, the Court should not be unduly swayed either by a feature like excessive speed or a flash pointed expeditious action. The following observations of Chandrachud, J. speaking for the Supreme Court in K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, are appropriate :

"The reasonableness of a decision, in any jurisdiction, does not depend upon the time which it takes. A delayed decision of the executive can also be had as offending against the provisions of the Constitution and it can be no defence to the charge of unconstitutionality that the decision was taken after the lapse of a long time. Conversely, decisions which are taken promptly, cannot be assumed to be bad because they are taken promptly. Every decision has to be examined on its own merits in order to determine whether it is arbitrary or unreasonable."

14. The learned judge further observed : (AIR 1993 Bombay 10 at p. 25) :

"While evaluating a plea of mala fides, Court has to bear in mind that all the allegations are to be taken together and an inference to be drawn (see observations in Hem Lall Bhandari Vs. State of Sikkim and Others, , Deepak Sibal Vs. Punjab University and Another, and Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . We would consider all the allegations together, we will see whether the allegations are established, we will further consider the question whether, if such allegations are established, they are sufficient grounds to prove that malice has vitiated the impugned order. The speed with which some of the proceedings have been conducted, are referred to as indicative of the existence of adventitious propellants giving the drive and momentum to an otherwise slow operating machinery of the State."

15. We respectfully agree with the aforementioned observations. In this case, respondents have not denied the fact that the petitioner had issued a notice against the Sub-divisional Officer, Bagaha, The Land Reforms Deputy Collector although has sworn two affidavits but therein has not denied the fact that he was absent on 3-2-1992, 4-2-1992, 6-2-1992 and 10-2-1992. It is, in our opinion, humanly impossible regard being had to the procedures adopted in the matter of movement of files to complete the entire transaction, i.e., from rejecting the

objection u/s 10(3) of the said Act to distribution of the lands including publication of gazette u/s 11(1) of the said Act as also approving the draft notification u/s 15(1) thereof within the short period of 27-1-1992 to 7-2-1992, particularly in view of the fact that the orders had to be passed, draft notification had to be approved, copies of the draft notification as also the final notification were required to be sent to the landholder, draft notification u/s 15(1) of the said Act had to be approved by the Collector and directions had to be given for preparation of parchas and distribution of land etc. Apart from the fact that the action on the part of respondents Nos. 2, 3 & 4 are mala fide prima facie they appear to have been prepared and/or manufactured the records in order to save their skin from being proceeded against in this Court under the Contempt of Courts Act, 1970. They have thus thrown all judicial norms to the winds.

16. Section 11 of the said Act provides that after the disposal of claim u/s 10(3) of the said Act, the Collector has to make alteration in the draft statement as may be necessary and cause the said statement to be finally published in the official gazette of the district and at such places and in such manner as may be prescribed and a copy thereof is required to be duly certified by the Collector in the prescribed manner and the same is required to be sent to the landholder by registered post with acknowledgment due. Sub-section (2) of Section 11 of the said Act provides that copy of such statements duly authenticated in the prescribed manner would be sent by the Collector to such authority or authorities as may be prescribed. A purported gazette notification u/s 11(1) of the said Act was published on 31-1-1992. although the Land Reforms Deputy Collector, Bagaha signed the details of the final publication only on 30th January, 1992. By the said order only he directed that a copy thereof may be sent to Zila Gazette Department. Bettiah for its publication and demand be made for supply of sufficient copies thereof. There is nothing on the records to show as to when the said order was sent to the Officer in charge of the District Gazette, Bettaih and when it was received by the concerned Officer.

17. As noticed hereinbefore, from the order sheet dated 3-2-1992 it appears that a copy of the final publication was directed to be sent to the landholder under registered cover with acknowledgment due but even in that order sheet it was not recorded that a copy of gazette publication was being sent. Interestingly on that day itself a copy of the said final publication was directed to be sent to the Collector for his approval with regard to the publication of the notification u/s 15(1) of the said Act and the same was sent from Bagaha to Bettiah. On that day the draft appears to have been approved by the Collector, West Champaran on 3-2-1992 itself and the same had also been received by the Land Reforms Deputy Collector from the Collector, West Champaran on the very same day.

18. This Court had all along held that the service of notice upon the landholder must be made in terms of Rule 3 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 which is mandatory.

(See K. H. P. Singh v. State of Bihar 1976 B. B. C. J. (HC) 646 and Ram Chandra

19. Rule 11 provides that the draft statement in Form L.C. 5 together with a notice in Form L.C. 6 should be published under Subsection (2) of Section 10 of the Act by way of gazette publication, meaning thereby a copy of the gazette shall be served on the landholder under registered post with acknowledgment due. Copies of the draft statement had also to be sent to the office of the Collector, Officer of the Anchal Adhikari and the office of the Gram Panchayat. Rule 12 of the Rules Provides that copies of the statement as finally published shall be certified under Sub-section (1) of the Section 11 of the said Act and authenticated (sic) under Subsection (2) of the said Section by the Collector by signing every page thereof and by giving a certificate at the end that it is the true copy of the statement as finally published. No certificate appears to have been given in Form L.C. 6 which was prepared on 30-1-1992. Sub-Rule (2) of Rule 12 provides that a copy of the statement mentioned in Sub-rule (1) of Rule 12 shall be published in the official gazette of the district and a copy thereof shall be served on the landholder and the landholder concerned by registered post with acknowledgment due. Sub-rule (3) of the said Rule also provides that a copy of the statement mentioned in Sub-rule (1) shall be affixed on the notice-board of the Collector, the office of Anchal Adhikari and the Office of the Gram Panchayat in whose jurisdiction the land or part thereof is situated.

20. There is nothing on the record to show that there has been any compliance of Sub-rule (2) of Rule II and Sub-rule (3) of Rule 12, so far as the issuance of notice at least to the Gram Pachayat or affixation thereof on the notice board in the office of the Gram Panchayat is concerned. Sub-rule (5) of Rule 12 enjoins the Collector with a duty to send a copy thereof within seven days of the publication of the notification to the Revenue and Land Reforms Department for information.

21. Section 30 of the said Act confers a right upon the landholder to prefer an appeal within 30 days from the date of receipt of a copy of the final order. Admittedly, the collector under the Act did not wait for the service of notice upon the landholder nor gave him an opportunity to prefer an appeal against the said order.

22. Sub-section (1) of Section 15 of the said Act empowers the Collector to acquire any land by publishing in the official gazette of the district a notification to the effect that such land is required for public purpose. Proviso to Sub-section (1) of Section 15 of the said Act further reads thus :

"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 land holder in respect of which there is no claim or dispute or which is admitted by the landholder to be surplus :

Provided further that a copy of the notification shall also be sent to the

landholder concerned by registered post with acknowledgment due."

23. There is nothing on the records to show that publication of notification u/s 15(1) of the said Act was made. The lands can be acquired only upon publication of notification u/s 15(1) of the said Act and service of copy thereof upon the landholder. The State authorities are also bound to give an opportunity to the landholder to prefer appeal inasmuch as the lands can be acquired without awaiting the result of the appeal or revision only in respect of which there is no claim or dispute which is admitted by the landholder to be surplus. Thus, (sic) apparently the not only normally bound to give an opportunity of preferring an appeal but also is prohibited from publishing a notification acquiring the lands in relation whereof a claim has been made by the landholder i.e. the lands which are subject matter of dispute and pending consideration in appeal.

24. Sub-section (3) of Section 15 of the said Act provides that subject to any order made in appeal or revision, the Collector after publication of the notification u/s 15(1) can take possession of the land specified in the notification. Thus, possession of the land can only be taken upon publication of a notification under Sub-section (1) of Section 15 of the said Act and not prior thereto.

25. In this case, however, we are not concerned with the interpretation of Section 15(3) of the said Act vis-a-vis the proviso appended to Sub-section (1) thereof.

26. It is also not understandable as to why the Land Reforms Deputy Collector refused to stay the further proceedings, although he came to learn about the filing of the writ application on 27-1-1992 itself.

27. For the reasons aforementioned, this application is allowed. The order dated 27-1-1992 and all proceedings subsequent thereto including the notification u/s 11(1) of the said Act are quashed. Respondent Nos. 2, 3 and 5 are hereby directed to cancel all Purchas. In other words, the petitioners must be put back to the same position, prior to issuance of the notification u/s 11(1) of the said Act.

28. In view of the fair stand taken by Mr. Rahman, learned Standing Counsel in this case, we, however, do not propose to proceed with the contempt matter at this (sic) propose to proceed with the contempt matter at this stage but the contempt proceeding being M.J.C. No. 182 of 1993 is directed to remain pending so that if necessary respondent Nos. 2 to 5 may be proceeded against at an appropriate stage. The petitioner in the facts and circumstances of this case is also entitled to exemplary costs which is assessed at Rs. 5,000/-. It will be open to the State of Bihar to realise the amount of costs from the concerned-respondent either jointly or individually. The State of Bihar may also take such administrative action against the erring officer, as it may seem fit and proper.

29. The Registrar of this Court is hereby directed to send to a copy of this order to the Secretary, Revenue Department who shall ensure that in future the

authorities enjoined with the duties to enforce the provisions of the said Act do not behave in the fashion in which respondent Nos. 2, 3 and 5 have done in this case.

R.M. Prasad, J.

30. I agree.