
(2009) 07 PAT CK 0015
In the Patna High Court
Case No : CWJC No. 650 of 2003

Asha Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 15(1), 5(1)(iii)
Criminal Procedure Code, 1973 (CrPC) — Section 10(2), 5(1)(iii)

Citation : (2009) 4 PLJR 340

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : V. Nath and Kumar Shekhar, for the Appellant; R. Kant for the State,
for the Respondent

Judgement

Dr. Ravi Ranjan, J.—Heard counsel for the parties. Writ petitioners are aggrieved by the order dated 10.9.2002 passed by the respondent No. 2, whereby he has refused to reopen the case u/s 45B of the Bihar Land Ceiling Act, 1961 (hereinafter to be referred to as "Act").

2. Shorn of unnecessary details, the relevant facts, as per the petitioners, are reproduced as follows:-

3. The ancestors of the petitioners purchased in all 3.72 acres of land belonging to Khata No. 381 (K)2 pertaining to plot khesra Nos. 331, 332 and 356 of Village-Jaynagar by four registered sale deeds, as contained in Annexures-1, 2, 3 (of the year 1954) and 4 (of the year 1942), and apart from the above, 8 kathas 14 dhurs of plot Nos. 331 and 332 were claimed to have been settled in favour of their ancestors in the year 1944 by the erstwhile Raj Darbhanga. It was further claimed by the petitioners that after vesting of the Zamindari, the State Government created Jamabandi in favour of the ancestors of the petitioners and started accepting rent from them and they were granted rent receipts. Ceiling Case No. 6/73-74 was initiated against Rani Irawati Devi, wherein final draft

publication was made on 13.9.1995. Subsequent thereof on 17.10.1995 the gazette notification u/s 15(1) of the Act was published and the lands aforesaid of the petitioners were declared to be surplus lands of the landholders as aforesaid. The petitioners challenged part of the notification in writ petition before this Court bearing C.W.J.C. No. 2221 of 1996, which was disposed of on 28.2.1996, and this Court directed the petitioners to first approach the competent authority for reopening the case u/s 45B of the Act within the time as mentioned in the aforesaid order and the authority concerned was directed to dispose of the matter in accordance with law. Upon such petition filed by the petitioners for reopening the case u/s 45B of the Act the order under challenge dated 10.9.2002 has been passed by the respondent No. 2.

4. Learned counsel for the petitioners submits that the impugned order suffers from several illegalities. Firstly the ceiling authorities were not empowered to enquire into the transfers made prior to 22nd of October, 1959, as provided u/s 5(1)(iii) of the Act. Even if the transaction would have been after the aforesaid cut off date the requirement of law was to grant reasonable notice to the parties and after hearing them necessary order could have been passed by it, and secondly, since the Jamabandi is standing in the names of the petitioners and the Government was collecting rent from them and issuing rent receipts in their favour, the ceiling authorities should have considered them as landholders and, therefore, the service of a copy of the draft publication u/s 10(2) of the Act and as per its proviso, contained therein, was mandatory and the authorities having failed to comply that, it was a fit case for reopening the case by respondent No. 2. It is further submitted that respondent No. 2 has recorded his finding that it does not appear that Jamabandi was created prior to 22.10.1959. Such finding is erroneous and is also liable to be quashed inasmuch as there is no requirement under law that Jamabandi created prior to 22.10.1959 is condition precedent for exemption of transaction prior to the aforesaid date. According to the petitioners, only requirement is that that the deeds or the transfers concerned should be of the period prior to the aforesaid date to exclude the same from the purview of the ceiling proceeding under the Act.

5. A counter affidavit has been filed on behalf of the State. In paragraph 13 of the counter affidavit it has been categorically stated that the ceiling authorities have power to enquire into the transaction even made before 22.10.1959. However, learned counsel for the State miserably failed to show from the provisions of the Act as to how the ceiling authorities have any authority to enquire into the transactions made prior to the period before 22.10.1959.

6. It would be apt to quote the relevant provision of Section 5(1)(iii) of the Act, which is as under:-

"5(1)(iii) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority the Collector shall have power to make enquiries in respect of any transfer of land by a landholder whether by a registered instrument or otherwise made after the 22nd day of October, 1959,

and if he is satisfied that such transfer was made with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi land in excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transfer or for the purposes of determining the ceiling area he may hold under this section."

7. It is manifest from the aforesaid provisions of law that the ceiling authorities have been empowered to make an inquiry with regard to the transaction after 22.10.1959 and not prior to that. Even with regard to the transaction made after the aforesaid date, the authorities must issue notice upon the parties concerned and after hearing them only it could arrive at a decision. Admittedly, no notice under the provisions of the Act had been given to the petitioners.

8. Second submission made on behalf of the State is that since the sale deeds are of the period after vesting of the Zamindari, the same should be simply liable to be ignored. However, learned counsel for the State miserably failed to show any provision of law or authority in this regard also.

9. The counter affidavit is silent on point as to how could the settlement of the concerned land by the erstwhile landlord in favour of the ancestors of the petitioners be ignored. This question has neither been dealt with in the impugned order nor has the same been discussed or stated in the counter affidavit. In view of the aforesaid, in my considered opinion, the impugned order dated 10.9.2002, as contained in Annexure-8 cannot hold good. Accordingly, I allow this writ application, set aside the impugned order dated 10.9.2002, passed by respondent No. 2, and remit back the matter to the respondent No. 2 to decide the issue of reopening the case afresh in accordance with law after issuing notice upon all the necessary parties and upon consideration of all the relevant facts and documents. The petitioners are directed to appear on their own within 30 days from today as this order has been passed in presence of learned counsel for the petitioners. No notice would be necessary to be issued upon the petitioners and in case, they appear within one month, they shall not be forcibly dispossessed from the disputed lands measuring 3.72 acres, the description of which has been given in paragraph 2 of this writ application, till the final disposal of the matter by the authority concerned.