(1996) 10 PAT CK 0041

In the Patna High Court

Case No : C.W.J.C. No. 4084 of 1985

Babban Prasad Singh and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(3), 11, 11(1), 15
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 — Rule 49

Citation : (1997) 2 PLJR 113

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S.S. Dwivedi and Anjani Kumar Sinha, for the Appellant; Ram Kumar Singh and Vasant Kumar Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The Petitioners have come to this Court for quashing the order dated 25th July, 1985 passed by the Additional Member, Board of Revenue in Ceiling Revision No. 184 and the order dated 11th May, 1985 passed by the Collector, Rohtas at Sasaram under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter to be referred to as the ''said Act'').

2. According to the Petitioners, in the year 1974, a proceeding under the provisions of the said Act was started in the Court of Additional Collector, Ceiling, Rohtas being Ceiling Case No. 1558 of 1974-75 against Sri Dashrath Singh, father of Petitioner No. 1 and husband of Petitioner No. 2. Aforesaid Dashrath Singh filed his return stating therein that there was no surplus land in his family. The Anchal Office of Nokha reported that the Petitioners held 14.36 acres of land out of which 4.78 acres of land is Class-I land and 9.58 acres of land is of Class-III. The Anchal Office, Kargahar reported that the Petitioners family held the entire 28.41 acres of land in the Kargahar Anchal out of which 11.21 acres of

land was Class-I land, 16.91 acres of land was Class-III land, 0.24 acres was Class IV land and 0.05 acres of class-V land. On the basis of the said report, the Respondent Additional Collector by his order dated 30th October, 1975 dropped the proceeding of Case No. 1558 of 1974-75 holding therein that there was no surplus land held by the Petitioner''s family. A copy of the said order is Annexure-2 to the writ application. Petitioner''s further case was that Anr. Additional Collector, Ceiling Sri I.D. Ram took charge and he reopened the case on 15th April, 1976 and by his order dated 16th September, 1976, he declared 14.28. 1/2 acres of land of Petitioners'' family as surplus without any fresh material on record which order was also illegal and without jurisdiction. A copy of the said order is Annexure-3 to the writ application. Being aggrieved by the said order, the landholder Dashrath Singh, father of Petitioner No. 1 preferred an appeal challenging the validity of re-opening and declaring the surplus land. The said appeal which was filed before the Collector was allowed in terms of order dated 30th March, 1977 whereby the Collector set aside the entire order passed in the ceiling proceeding against the Petitioners holding that all orders dated 17th December, 1975 were without jurisdiction and further ordered to reopen the case. A true copy of the order dated 30.3.1977 is Annexure-4 to the writ application. Dashrath Singh, father of Petitioner No. 1 then filed Ceiling Revision No. 440 of 1977 in the Court of Respondent No. 2 Additional Member, Board of Revenue who by his order dated 5th July, 77 upheld the order of reopening passed by Respondent No. 3. A copy of the said order is Annexure-5 to the writ application. Dashrath Singh, father of Petitioner No. 1 then filed a writ application in this Court and the same was dismissed and the order of Collector and the Additional Member, Board of revenue were upheld. Petitioners'' further case was that thereafter ceiling proceeding against the father of Petitioner No. 1 got reported and without following the facts on the record and law involved in this case, the Additional Collector by his order dated 9th February, 1983 declared 0.37 acres of land as surplus in the Petitioners'' family and accordingly gazette Notification was made on 22nd March, 1983 declaring 37 decimals as surplus. A copy of the said order dated 9th February, 1983 and the gazette Notification are Annexure-6 and Annexure-6/A respectively to this writ application. Against the said order, no appeal or revision was filed by the State Government. However, the private Respondents filed an application before the Collector on 20th September, 1983 which was treated as ceiling appeal No. 4 of 1984. Petitioners'' father appeared in this case .and filed his rejoinder to the said application. The Respondent No. 3 Collector Rohtas, after hearing the parties, by his order dated 11th May, 1985 set aside the order dated 9th February, 1983 and upheld the order dated 16th September, 1976 whereby 14.28 1/2 acres of land was declared as surplus. Petitioners'' further case was that during the pendency of this ceiling appeal No. 4 of 1984, the father of Petitioner No. 1 died and without substituting these Petitioners as party to it, the order was passed by the Collector. However, against the order dated 11th May, 1985 (Annexure-8) passed by the Collector, Petitioners filed Ceiling Revision No. 184 of 1984 in the Court of Respondent No. 2 challenging the validity and jurisdiction of the Respondent No. 3 in passing the impugned order. The Respondent No. 2 Member, Board of Revenue without appreciating the point of law and jurisdiction of Respondent No. 3 in passing the impugned order, dismissed the case on 25th July, 1985. A copy of the said order is Annexure-9 to the writ application.

3. No counter affidavits have been filed either by the Respondent State or by the private Respondents.

4. Mr. S.S. Dwivedi, learned Senior Counsel appearing on behalf of Petitioners very vehemently challenged the order of the Collector and the order passed by the Additional Member, Board of Revenue, as contained in Annexures-8 and 9 to the writ application, as being illegal and. wholly without jurisdiction. The learned Counsel submitted that the private Respondents had no locus standi to prefer an appeal against the order passed in a ceiling proceeding in which these private Respondents were neither party nor had any interest in the said land. The learned Counsel further submitted that the Collector had no jurisdiction to reopen the matter. The learned Counsel further submitted that the Collector committed serious illegality in entertaining the application filed by some of the Respondents in whose favour, the surplus land earlier declared was ordered to be settled with them. The learned Counsel then submitted that the Collector had no power under the law to treat such application filed by the private Respondent as an appeal.

5. On the other hand Mr. Vasant Kumar Chaudhary, learned Counsel appearing for the private Respondent submitted that the private Respondents in whose favour the land was ordered to be settled, have focus standi to challenge the subsequent order in appeal. Learned Counsel further submitted that the ceiling law was enacted and was aimed at benefitting the large number of persons, particularly the landless persons and if the principle of "party to suit" is made applicable, then the whole object and purpose of the Act shall be defeated.

6. Before appreciating the submission made by the learned Counsel, it is worth to be noticed the relevant provisions of the Act in order to find out as to whether the Collector was right in entertaining the application filed by the private Respondents and passing the impugned order by treating the said application as an appeal.

7. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the ''Act'') deals with ceiling on land which is used or is capable of being used for agriculture or horticulture purposes. The object of enacting the Ceiling Act is that any land in excess of the ceiling area ceases to belong to the erstwhile owner with effect from the appointed day. Section 4 of the said Act prescribed the ceiling limit which a family is entitled to hold. Section 5 says that no person shall hold land in excess of the ceiling area. Section 6 is the provision for filing return by the land holder. Section 8 deals with penalty for non-submission of return. Section 9 of the Act gives right to the family to exercise option of selecting the land within the ceiling area. Section 10 deals with the preparation of the draft statement, which is required to be

published in the Official Gazette of the District. Sub-section (3) of Section 10 provides that the Collector shall entertain objection to the draft statement. Section 10 provides that after the disposal of the objection u/s 10(3) of the said Act the Collector shall declare the surplus land and ''order for final publication of draft statement. Section 15 of the said Act deals with acquisition of surplus land. According to this section the State Government or the Collector of the district shall after the final publication and subject to appeal or revision acquire the surplus land by publishing in the Official Gazette of the District. It also empowers the State Government or the Collector to acquire the surplus land which is admitted by the Land holder to be surplus. Section 30 of the said Act prescribes a forum of appeal. For better appreciation Section 30 is quoted hereinbelow:

Appeal.- (1)(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 specially authorised in this behalf by the State Government within thirty days, of such an order.

(b) An appeal shall lie from any final order passed by the Collector of the district to the Commissioner of the Division within thirty days of such order:

Provided that no appeal shall lie against orders passed u/s 5 and Section 29 before the final publication of the draft statement under Sub-section (1) of Section 11:

Provided further that appeal against orders passed u/s 5 and Section 29 shall be filed within thirty days from the date of final publication under Sub-section (1) of Section 11.

2. An appeal under this section shall be heard and disposed of in the prescribed manner.

8. Section 33 confers power of Civil Court to the authorities under the Act. Section 33 reads as under:

Section 33.- Authorities under this Act to have powers 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 award of costs.

9. It would be appropriate to quote Rule 49 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 which reads as under:

Procedure for disposal of appeal under the Act (Sub-section (2) of Section 39).

The procedure to be followed by the appellate authority in disposing of appeals under the Act, shall, so far as may be practicable, be the same as provided for civil appeals under Order XLI of the Code of Civil Procedure, 1908 (Act V of 1908).

10. In the light of the aforesaid provisions of the Act, I have to consider the validity of the order dated 11.5.1985 passed by the Collector, copy of which is Annexure 8 to the writ application. As stated above, from perusal of the order dated 30.10.1995 (Annexure 2) it will appear that the Additional Collector dropped the ceiling proceeding holding that the Petitioner''s father did not hold any surplus land. However, the proceeding was reopened by Anr. Additional Collector who without any fresh material declared 14.2 acres of land as surplus land. The Petitioner moved in appeal before the Collector, Rohtas who by order dated 30.3.1977 (Annexure 4) set aside the entire order and re-opened the case again. The power of the Collector was challenged in revision before the Additional Member, Board of Revenue who by order dated 5.7.1977 affirmed the order of the Collector. It will further appear that after the ceiling proceeding was re-opened the Additional Collector after considering all the facts and evidence passed a final order on 9.2.1983 declaring 0.37 acres of land as surplus and ordered for final publication u/s 11 of the said Act. The order of the Additional Collector (Annexure 6) took its finality inasmuch as no appeal or revision was filed either by the Petitioner or by the Respondent-State of Bihar. However, private Respondent have filed an application before the Collector stating, inter alia, that although on the said proceeding some more land was declared as surplus but by the order dated 9.2.1983 the Additional Collector finally decided the matter holding that 0.37 acres of land is only surplus. The said application was entertained by the Collector treating it as an appeal and by the impugned order dated 11.5.1985 (Annexure 8) learned Collector set aside the order of the Additional Collector and declared 14.28 1/2 acres of land as surplus land. The question therefore, arises as to whether the Collector was right in entertaining application of the private Respondents and treating the same as an appeal. From the impugned order it would appear that the Collector has not given its own finding rather only narrating the previous history of the case held that the earlier order dated 16.9.1976 passed by the Additional Collector declaring 14.28 1/2 acres of land as surplus was valid. I have failed to understand as to under which provision of law the Collector assumed the power of appeal when the order dated 9.2.1983 took its finality as no appeal or revision was filed by the State of Bihar. From the order dated 11.5.1985 it does not appear that as to whether the Collector exercised its power as an appellate authority or exercised power u/s 45-B of the said Act. From reading of the different provisions of the Act and Rules it is clear that a restricted appellate power has been conferred to the appellate authority who was supposed to entertain and dispose of the appeal in the manner provided under the Act and not otherwise. In that view of the matter I am of the opinion that the impugned order dated 11.5.1985 passed by the Collector is wholly without jurisdiction. The Additional Member, Board of Revenue

before whom the impugned order dated 11.5.1985 was challenged also failed to consider this aspect of the matter and was influenced by the action taken by the Collector.

11. For the reason aforesaid, this writ application is allowed and the impugned orders passed by the Collector, Rohtas and Additional Member, Board of Revenue as contained in Annexures 8 and 9 to the writ application are hereby quashed. However, there shall be no order as to costs.

