(1976) 02 PAT CK 0008

In the Patna High Court

Case No : C.W.J.C. No. 1132 of 1974

Baijnath Kumar APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 20-02-1976

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 6, 7, 8(1)

Citation : (1976) 9 PLJR 491

Hon'ble Judges : Shambhu Prasad Singh, J;Muneshwari Sahay, J

Bench : Division Bench

Advocate : Devendra Kumar Sinha and U.K. Verma in C.W.J.C. 1132 and 1133, Messrs J.C. Sinha, A.C. Sinha and Devendra Kumar Sinha in C.W.J.C. 1134, for the Appellant; Surendra Narain Jha, Standing Counsel No. 2 with Mr. Shashi Anugrah Narain in C.W.J.C. 1132 with Mr. Shardanand Jha in C.W.J.C. 1133 and Mr. B.P. Pandey in C.W.J.C. 1134 for the State, for the Respondent

Judgement

Shambhu Prasad Singh & Muneshwari Sahay, JJ.—These three writ applications, being inter connected, have been heard together Shambhu Prasad Singh and are being disposed of by a common judgment. C.W.J.C. No. 1134 of 1974 has been filed by one Mahanth Sunder Giri. The petitioners in C.W.J.C. No. 1132 of 1974 and 1133 of 1974 claim to be settlees from Mahanth Sunder Giri. It appears that a case record under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the ''Act'') was opened on the 5th March, 1965 and a general notice u/s 6 of the Act was issued. By the said notice, big land-holders were required to file their returns within 90 days. Mahanth Sunder Giri, who, according to the respondents, owns about 700 bighas of land, did not file any return. The case of Mahanth Sunder Giri is that he was not aware of any such notice. Be that as it may, on the basis of certain information gathered, the Deputy Collector Incharge Land Reforms, Saharsa (hereinafter referred to as the ''D.C.L.R.''), on the 1st August, 1970 started case No 279 of 1970-71 against Sunder Giri and ordered that a notice u/s 8 (1) of the

Act should issue to him immediately calling upon him to submit return in Form No. L.C. (II) within 60 days of the service of the notice. On the 4th August 1970, the D.C.L.R. directed the Anchal Adhikari, Sonbarsa to submit a detailed information u/s 7 of the Act, after making an enquiry, with regard to the lands held by Sunder Giri, by the 10th August 1970. In this order he referred to the proceeding of 1965 in which general notice u/s 6 of the Act had been issued. On the 10th August, 1970 the D.C.L.R. after examining the information report of the Anchal Adhikari, Sonbarsa ordered for furnishing more details immediately so that categories of the lands of Sunder Giri might be known. On the 13th August, 1970, he examined the further report of the Anchal Adhikari and ordered for making a draft statement u/s 10 of the Act. From this order it appears that Sunder Giri was found to be holding 607 acres of land, out of which he was entitled to retain 30 acres only, besides 2-95 acres of orchard and 5.87 acres of homestead lands. On the 14th August, 1970, the draft statement u/s 10 of the Act was prepared and published. The order-sheet dated the 18th August, 1970 shows that service return of the draft statement on Sunder Giri was received on that date. Learned Counsel for the petitioners pointed out that this order-sheet states incorrect facts as the service report throws doubt about the service of notice of the draft statement on Sunder Giri on or before the 18th August, 1970.

2. The case of petitioner Sunder Giri is that, when he came to learn of the issuance of the draft statement, he filed an appeal before the Commissioner against the order, dated the 14th August, 1970, according to which the draft statement was prepared and published. During the pendency of that appeal before the learned Commissioner, on the 17th December, 1970 Sunder Giri filed a return of the lands held by him. This was done under orders of the Commissioner. On the 23rd December, 1970, the Commissioner sent the return to the Collector, and, on the 3rd February, 1971, the Collector, in his turn, sent the return to the D.C.L.R. on the Ceiling Case No. 5 of 1971 was started by the D.C.L.R. on the basis of that return, and the Anchal Adhikari was directed to make a report. Without waiting for the disposal of that case, on the 17th May, 1971, the final publication u/s 11 of the Act was ordered. Thereafter, it appears that Sunder Giri filed an application before the Collector for staying distribution and settlement of the lands which were to be declared as surplus lands. Several objections were also filed before the Collector, by the petitioner of C.W.J. C. No. 1132 of 1974 and the petitioners of C.W.J.C. No. 1133 of 1974, in which they stated that the lands claimed by them were settled with them by Sunder Giri and they belonged to them and, therefore, they could not be declared as surplus lands of Sunder Giri. All these cases were transferred to Additional Collector for disposal. Vide order, dated the 17th March, 1972, the Additional Collector rejected applications, the main ground being that the claims and objections were not made u/s 15 (3) of the Act, nor appeals were filed under rule 44 (ii) of the Bihar Land Ceiling Rules. 1963 (hereinafter referred to as the ''Rules''). Against this order, three appeals were filed before the Commissioner?one by Sunder Giri, another by the petitioner in C.W.J.C. No. 132 of 1974 and the third by the

petitioners of C.W.J.C. No. 1133 of 1974. The Commissioner dismissed the appeal of Sunder Giri summarily, holding that, after the publication of the notification u/s 15 (3) of the Act, in the official Gazette, there was no provision for any further appeal by the land-holder, though he observed that the Additional Collector was not correct in saying that the land-holder could also file an objection u/s 15 (3) of the Act, or that an apeal could be filed by him under rule 44 (11) of the rules. It is strange that he dismissed the other two appeals also by reference to this order, without applying his mind to the fact whether the observations made by him in the appeal of Sunder Giri could apply to those two appeals, specially in view of the fact that no notices were issued to the appellants of those two appeals in the proceeding and they were entitled to file objections u/s 15 (3) of the Act.

3. Three applications in revision by the petitioners of the three writ applications were filed before the Board of Revenue. The Additional Member Board of Revenue, who has disposed of the applications in revision, has held them to be not maintainable, mainly on the ground that the Board has no jurisdiction to entertain applications in revision after final publications u/s 11 of the Act. In these writ applications, the petitioners pray for cancelling and setting aside the resolution of the Additional Member, Board of Revenue and also the entire proceedings of case no. 279 of 1970, 1971, including the Gazette notification published on the 17th/19th May, 1971.

4. In our opinion, in the circumstances of the case, these applications shall have to be allowed. Undoubtedly Section 6 of the Act casts a duty on a land-holder, who holds land in excess of the ceiling area, anywhere in the State, to submit a return containing the particulars as mentioned in that section. But, it does not follow from it that the land of a land-holder can be acquired without any further enquiry, merely on the ground that he failed to submit the return after the publication of the general notice u/s 6 of the Act. It cannot be done specially in cases where the land-holder claims subsequently that he does not hold lands in excess of the ceiling area unless he was noticed u/s 8 of the Act. Once such a claim is made, that claim has to be decided, Section 7 of the Act enjoins upon the Collector that, if any person holding land in excess of the ceiling area fails to submit the return u/s 6, the Collector may obtain the necessary information through the Executive Committee, of the Gram Panchayat of the area concerned, as constituted under the Bihar Panchayat Raj Act, 1947, or through such agency as he thinks proper. Section 8 lays down that, in cases where the returns are not filed by the landholders holding lands in excess of the ceiling area, the Collector shall cause a notice to be served on the land-holder or his guardian, if he is a minor or person of unsound mind, directing him to submit the return with the necessary or correct particulars within thirty days of the service of such notice; and in case of failure to submit the return within that period or further period allowed for the purpose, he may be asked to pay a fine, as provided in the said section. Section 9 gives option to the land-holder to select his ceiling area. Then comes Section 10 which deals with preparation of draft statement. The Rules

were framed in 1963 prescribing the procedure to be followed in the proceedings under the Act. Rule 8 of the Rules lays down that the Collector receiving the original returns u/s 6 or 8 or the information u/s 9, and the Collectors receiving copies thereof under Rule 6, shall call upon the Anchal Adhikari etc., in whose jurisdiction the lands are situated, to make verification and to send to him a report after verification and he shall comply with the requisition accordingly; and thereafter the same shall be further checked and verified by the Collector having jurisdiction over the area concerned with reference to up-to-date rent receipts and other relevant revenue records, including the record of rights maintained by the Collector. Sub-rule (2) of Rule 8 lays down that the Collector will examine any document which may be produced by or on behalf of the land-holder in support of his claim to the land. In Motilal Padampat Sugar Co. Pvt. Ltd. and Others Vs. The State of Bihar and Others, , a Bench of this Court held that the verification under Rule 8, after filing of return, must be made in the presence of, and on notice to, the land-holders. From the facts stated earlier, it is apparent that no verification, as required by Rule 8 of the Rules, has been done in the present case. Therefore, the draft statements prepared and published u/s 10 and finally published u/s 11 of the Act are not of any avail. They could bind down the land-holders only if the procedure laid down in the Sections preceding Section 10 and Rule 8 had been followed. In the instant case it is remarkable that, even after the Commissioner accepted the return filed by petitioner Sunder Giri and sent it to the Collector for disposal and a separate ceiling case No. 5 of 1971 was registered on the basis of that return, draft publications and final publications had been made, without disposing of that case and without following the procedure laid down by law. In such a case, the Additional Member, Board of Revnue was not justified in observing that he had no jurisdiction to entertain the applications in revision filed before him. In the result, the writ applications are allowed the orders of the respondents Additional Collector, the Commissioner and the Additional Member, Board of Revenue are quashed, and the authorities, are directed to dispose of ceiling case No. 5 of 1971 in accordance with law and also to dispose of the applications filed by the petitioners in C.W.J.C. No. 1132 and 1133 of 1974 in accordance with law. The Gazette notification will have no effect on the petitioners and it will be modified, if neccessary, in accordance with the final result in the proceedings. There will be no order as to costs.