
(1980) 07 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 3682 of 1979

Beuni Yadav and Others

APPELLANT

Vs

Land Reforms Deputy Collector and Others

RESPONDENT

Date of Decision : 24-07-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (1981) PLJR 433

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma, for the Appellant; Chunni Lal, G.P.V., for the Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—This application is on behalf of under-raiyats and is directed against the order of the Land Reforms Deputy Collector, Madhubani (Respondent no. 1), dated 27.6.79 contained in Annexure "1". By this order the Deputy Collector has held that the petitioners had failed to make out a prima facie case with respect to their rights calling for any investigation. It appears from the order, and which is not controverted, that all the petitioners on an earlier occasion had filed bataidari cases in the year 1973-74 against the same landlord. The dispute was referred to the Bataidari Board and their claim was found to be false. The order of the Deputy Collector was also confirmed on appeal. An attempt was made also in this Court to challenge the said order by filing a writ application (C.W.J. No. 1680 of 1977), but, as I am informed, the said application was dismissed for non-compliance of some peremptory order. The learned Deputy Collector has also observed in his order that they had also lost a criminal case u/s 144 of the Code of Criminal Procedure in the year 1974 and in the Sessions Trial also the claim of one of the petitioners, namely, Ramdeo Yadav, over plot no. 6683 was not found established in the sessions case, being Sessions Trial No. 97/77-78 by the Sessions Judge, Madhubani. He has also

referred to the fact that the bataidars also failed to establish their claim over the lands in dispute before the survey authorities.

2. The above order is challenged by the petitioners on the following facts and circumstances:

On the filing of the cases by the petitioners the Deputy Collector by an earlier order dated 3.5.1979 had issued of the proceeding to the landlord asking him to nominate his Panch and accordingly after receipt of the notice the landlord appeared in the proceeding and filed a petition for dropping the same on the ground that it was malafide.

On these facts and circumstances he has come to the conclusion, as already said earlier, that the claim was not genuine.

3. The proposition that a Collector under the provisions of the Act has to apply his mind and to initiate a proceeding only after he feels satisfied that a prima facie case calling for an investigation of the dispute cannot be questioned in view of the Full Bench Case of (1) Dhanji Singh Vs. State of Bihar and Others, . Mr. Yogesh Chandra Verma, however, submitted that, in as much as, the Deputy Collector had already initiated the proceeding by his order dated 3.5.1975, he had no jurisdiction to re-examine the question and that after the proceeding was initiated, it was bound to proceed in accordance with the procedure laid down under the various Sub-sections of Section 48E of the Act and the Rules.

The argument as put forward cannot be doubted as such but looking to the facts and the circumstances of the present case it has got to be rejected. The order dated 3.5.1975, on which the argument of the learned counsel is based, appears to be the very first order that was passed on receipt of the application by one of the petitioners, namely, Sonai Yadav, and noting the fact of the filing of the claim against the landlord, the Deputy Collector without stating any word further passed the following order:

The landlord on receipt of the notice appeared and applied for time for filing objection and on the next date, thereafter, filed a rejoinder for rejection of the application. The hearing took place on 12.6.1979 and both the parties participated in the said hearing. From the order-sheet it does not appear that the petitioners had taken any exception to the procedure followed by the Deputy Collector; as stated above. In the writ application, however, it has been said that they participated in the hearing under protest. Be that as it may, the argument of Mr. Verma, on, the basis of the Full Bench decision is that two enquiries-one preliminary and the other final, could not beheld and this case. I do not dispute this proposition as such and it finds full support from this case.

4. In the 8th paragraph of the judgment of the Full Bench, it has been observed that "the Collector is not bound to initiate a proceeding, no sooner an application is filed on behalf the under-tenant, he has to apply his judicial mind and in appropriate cases he may reject the prayer of the under-tenant". In the 9th

paragraph, it was further observed that "it cannot be held that the reference to the Board is an authentic action, without any application of mind. It is well settled that where a particular statute vests power in a particular authority to initiate or not to initiate a proceeding on its own opinion, still it can be shown that those circumstances do not exist or that they are such that it is impossible for anyone to form an opinion therefrom, suggestive of the aforesaid things. In other words, the opinion can be challenged on the ground of non-application of mind or perversity, or on the ground that it was formed on collateral grounds and was beyond the scope of the statute."

5. From the above observations, in my view, follow two conclusions, namely, (i) the order initiating the proceeding must show on the face of it that there has been an application of mind of the Collector, and (ii) it is open to a contestant to challenge the order if he could show that it was a case of non-application of mind or the order initiating the proceeding was perverse. By the first, condition I mean to say that the satisfaction of the Collector must not be only subjective but it must be objective; otherwise there cannot be any possibility of challenging it on the grounds mentioned in the second item. Obviously this situation will arise only when the other side appears the Collector because the initial order may be passed ex parte. It may well be that after appearing a fresh examination of the question cannot be claimed as a matter of course if from the order initiating the proceeding, the infirmity as indicated above cannot be established. A second enquiry in this sense has been ruled out by the Full Bench decision, but the initial order on the ground of the non-application of the mind of the authority which is a sine qua non for invoking the jurisdiction or it being perverse can very well might still be challenged. Having thus understood the legal position let us test the order dated 3.5.1975, extracted above, and having examined it accordingly; it cannot be said that the Deputy Collector had applied his mind at all, much less his judicial mind in the sense that he satisfies himself that a prima facie case was made out for investigation when he directed the parties to nominate Panches. On reading the said order it is manifest that he passed it in a mechanical and casual way. The facts which have been noticed in the impugned order by the Deputy Collector clearly indicate that if the proceeding is allowed to continue it is bound to lead to a gross abuse of the process of law. From the facts noted in the order it is so clear that the petitioners are repeatedly making all possible endeavours to put their feet on the land in question and the same is wholly malafide. Rather, therefore, can be no better illustration of a more malafide claim by a so called under-raiyat.

6. Mr. Verma also passingly argued that the order passed on the previous occasion under the provisions of Section 48E was vitiated on account of some irregularities committed in the matter of constitution of the Board, and, therefore, there could not be estoppel against the petitioners to reagitate the matter under the Act, as it was a recurring cause of action.

7. It is not possible to accept this argument of Mr. Verma. The orders passed in

the previous proceeding rightly or wrongly made, unless upset by any higher authority, would be operative and binding on the parties. Therefore, the dispute having been once decided, the parties cannot be permitted to reagitate the same over and again. For all the above reasons, I do not find any merit in this application and it is, accordingly, dismissed, but since there is no appearance on behalf of the contesting respondents. I shall make no order as to costs.