

(2006) 04 JH CK 0090

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 2161 of 1997 (R)

Bhikhari Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(1), 45B, 8(1)

Citation : (2006) 3 JCR 214

Hon'ble Judges : R.K. Merathiha, J

Bench : Single Bench

Advocate : Devi Prasad and Amar Kumar Sinha, for the Appellant; JC to G.P. II, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathiha, J.—Petitioners have challenged the final Notification dated 2.3.1993 (Annexure-6), issued u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) whereby 27.84 acres of their land have been acquired. Petitioners have further challenged the reopening of the L.C. Case No. 11/1973-74, u/s 45B of the Act and all the orders passed subsequent thereto.

2. The only contention raised by Shri Devi Prasad, learned senior counsel appearing for the petitioners, is that before re-opening the proceedings u/s 45B of the Act, no notice was given to the petitioners and therefore the order of re-opening and all subsequent orders are illegal.

3. The relevant facts, in short, are as follows:

Pursuant to notice u/s 8(1) of the Act the landholder (father of petitioner No. 1) filed return. The Circle Officer inter alia reported that petitioner No. 3 (grandson of the landholder) was minor; the landholder was entitled to two units and that the landholder had land beyond the ceiling limit. Accordingly, a draft statement

was prepared. Landholder objected to it claiming third unit on the ground that petitioner No. 3 was major. This time the Circle Officer reported that petitioner No. 3 was major; that the landholder was entitled to three units; that he had no surplus land. Accepting this second report, the Land Reforms Deputy Collector (LRDC) dropped the proceeding on 27.12.1975, holding that the landholder had no surplus land.

4. The Deputy Commissioner thought it fit to reopen the said case. By his Memo No. 1405 dated 23.3.1978. he ordered an enquiry into the matter. On enquiry, it was found that petitioner No. 3, who was minor on the appointed day (9.9.1970) was wrongly allotted one unit; that the landholder had purchased 18.37 acres of land in village Kandri; and that he had also sold certain lands but he did not disclose about the said purchase/sale; that the purchasers also did not file any objection. Thus it was found that the landholder had surplus land. Accordingly, a fresh draft statement was published. Land holder filed his objection to it. After hearing the parties, the said objection was rejected on 9.10.1991, and consequently the notification u/s 15(1) was published. The son of the landholder again filed an objection before the Deputy Commissioner, which was also rejected after hearing the objector. Thereafter, an appeal was filed by the landholder. The appellate court confirmed the findings of fact recorded by the Original Authority.

Then revision was filed before the Board of Revenue. The Board rejected the landholder's objection to the reopening and confirmed the said findings.

5. Shri Devi Prasad relied on the judgments reported in Nawal Kishore Singh and Another Vs. The State of Bihar and Others, and Yamuna Rai and Others Vs. State of Bihar and Others, and submitted that as no notice was served, the order of reopening and the subsequent order are bad. He also relied on the judgment reported in 1994 (2) PLJR 455 Sk. Taslim v. State and submitted that the case cannot be reopened for roving and fishing enquiry.

6. These cases are of no help to the petitioners in view of the judgment reported in 2000 (1) PLJR 1068 Kumar Krishna Rastogi v. State of Bihar in which, it was held in paragraphs 13 and 22 that reopening and the subsequent orders cannot be challenged, if the party appeared and submitted to the jurisdiction of the Court and participated in the proceedings. In the present case, though no notice was issued before reopening but petitioners took part in the proceedings and raised all their objections. Thus, it cannot be held that the order of reopening and all subsequent orders thereto are bad on account of non service of notice before reopening. Moreover, from the order dated 27.2.1975, by which the proceeding was dropped by LRDC, it appears that the proceeding was wrongly dropped. There were two reports before the LRDC. In the earlier report, it was found that the landholder was not entitled to the third unit for his grandson-petitioner No. 3, as he was minor. Then there was a report that petitioner No. 3 was major. In these circumstances, without holding enquiry, the LRDC was not justified in dropping the proceeding. There is no reason for accepting the subsequent report and ignoring the earlier report. By setting aside the impugned

orders, the said illegal order of LRDC cannot be allowed to stand.

7. I am satisfied that there were good grounds for re-opening the matter. It was found that petitioners did not disclose about the purchase of additional lands; that the documents produced by them about the age of petitioner No. 3 were doubtful; and that the purported sale of the lands were for the purpose of defeating the provisions of the Act. In the circumstances, I find no reason to interfere with the impugned orders. Accordingly, this writ petition is dismissed. However, no costs.