

(1981) 05 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2992 of 1978

Bibi Eda Khatoon

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-1981

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 30(1), 32A
Constitution of India, 1950 — Article 226

Citation : AIR 1981 Patna 362b : AIR 1981 Patna 362 : (1982) PLJR 40

Hon'ble Judges : M.P. Varma, J;Birendra Prasad Sinha, J

Bench : Division Bench

Advocate : Ram Chandra Sinha and Ajit Kant Sharma, for the Appellant; K.P. Verma, General, C.K. Sinha, Govt Pleader No. 4, Nishat Haidar, Jr. Counsel to Govt. Pleader No. 4, Sidheshwari Prasad Singh and Bhupendra Narayan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—This is an application under Articles 226 and 227 of the Constitution for issuance of a writ of certiorari quashing Annexures 1 and 2. Annexure 1 contains the order passed by the Additional Collector, Aurangabad, in Ceiling Appeal No. 166 of 1975-76, on 22nd Aug., 1977, whereby he set aside an order dated 28th November, 1975, passed by the Land Reforms Deputy Collector, Aurangabad, rejecting the application of respondent No. 2 for pre-emption u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (hereinafter called the Act), Annexure 2 contains the order of the Board of Revenue in Case No. 263 of 1977, passed on 19th June, 1978, dismissing the application of the petitioner against the order of the Additional Collector mentioned above.

2. The petitioner purchased 1 bigha 2 kathas of land appertaining to Khata No. 220, plot No. 3097, situate in village Karap, Tola Fira Bigha, Police Station Rafiganj, district Aurangabad, from one Moulvi Hafizur Rahman of the same

village on 25th September, 1974. Plot No. 3097 measuring 3.41 acres belonged to Moulvi Hafizur Rahman. According to the petitioner, there were a number of houses including power-loom factory owned by respondent No. 2 over the land. Respondents Nos. 2 and 3 also purchased a portion of the said plot measuring 7 1/2 kathas on the same date through a registered sale deed from Moulvi Hafizur Rahman. Respondent No. 2 Md. Ramzan was a witness in the sale deed executed in favour of the petitioner. Respondents Nos. 2 and 3 filed an application u/s 16 (3) of the Act before the Sub-divisional Officer, Aurangabad, on 6th June, 1975. The application was sent to the Deputy Collector, Land Reforms, Aurangabad, and was registered as Ceiling Case No. 36 of 1975-76. In receipt of a notice, the petitioner appeared and filed a show cause stating, inter alia, that the application for pre-emption was not maintainable because the land in question was Basgit and that the petitioner also held land on the boundary of the land purchased. The Deputy Collector Land Reforms, after hearing the parties, dismissed the application for pre-emption. Respondents Nos. 2 and 3 thereupon filed an appeal before the Additional Collector, Aurangabad, who reversed the decision of the Deputy Collector Land Reforms and allowed pre-emption. The petitioner took the matter to the Board of Revenue in revision, and lost. The Additional Collector as also the Member, Board of Revenue found that the land in question was not a homestead land and that the petitioner had no land adjacent to the land in question, whereas respondents Nos. 2 and 3 were adjoining tenants.

3. In their show cause filed in this Court, respondents Nos. 2 and 3 have stated that the land in question is described in the Khatian as Dhanahar land and in the sale deed as Kasht Nagdi Kaimi. It is further stated that respondents Nos. 2 and 3 were using it as a homestead of an agriculturist and just in a portion of the said house there was a powerloom Kargha. It has been also asserted that the petitioner is not a boundary tenant of the land in question. The land of the petitioner in plots Nos. 3100 and 289 and the land in question are intervened by a Rasta which are plots Nos. 3676 and 3090.

4. This application was first heard by a learned single Judge of this Court who referred the matter to a Division Bench on 13-2-1980, in view of an important question of law raised in the case. Shri Ram Chandra Sinha, learned counsel appearing on behalf of the petitioner, submitted that in view of the insertion of Section 32A by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976, which came into force on 1-11-1976, the Additional Collector before whom the appeal was pending then had no jurisdiction to hear and decide the same. His submission is that the appeal pending before the Additional Collector abated with the introduction of Section 32A of the Act.

5. An appeal against any final order made by the Collector under the Act, except an order u/s 8 or subsection (5) of Section 28, was provided to the prescribed authority u/s 30 of the original Act. Section 32 provided that the Board of Revenue may at any time for the purpose of satisfying itself as to the legality or

propriety of any order of any authority or officer under this Act or the Rules made thereunder, call for and examine the records of any case pending before or disposed of any such authority or officer and make such order as it thinks fit, after giving the parties concerned a reasonable opportunity of being heard. The Act was amended by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 (Bihar Act 22 of 1976), which was published in the Bihar Gazette (Extraordinary) on 1-11-1976. By the Amending Act, the following sub-sections were substituted for Sub-section (1) of Section 30:--

"(1), An appeal from any final order passed by any officer below the rank of the Collector of the district while discharging the functions of a Collector under this Act shall be, 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.

(2) An appeal from any final order passed by the Collector of the district shall lie to the Board of Revenue within thirty days of such order."

(The existing Sub-section (2) was renumbered as Sub-section (3)). For Section 32 of the Act, the following section was substituted:--

"32. Revision to the Board of Revenue -- (1) A revision shall lie to the Board of Revenue from any appellate order passed by a Collector.

(2) When a reference is made to the Board of Revenue u/s 38 or a revision is filed under Sub-section (1) of this Section, the Board may, after hearing the parties, confirm, modify, or set aside the order.

(3) The Board of Revenue may of its own motion or on an application made to it, call from the Collector any document or record in connection with any enquiry conducted by the Collector or may direct the Collector to institute, for the purposes of this section, an enquiry and to submit his findings to the Board."

A new section was also inserted and numbered as Section 32A, which reads as under:--

"32A. Abatement of pending appeals and revisions. -- Any appeal or revision pending before any authority other than the Board or Collector of the district on the date of the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 shall abate save and except those appeals and revisions which are maintainable u/s 30 or Sec. 32, as the case may be, against an order passed under Sub-section (3) of Section 10 or Section 38."

6. The original Section 30 of the Act provided that an appeal from any final order made by the Collector under this Act shall lie to the prescribed authority. The Additional Collector was also one of the prescribed authorities before whom an appeal could be filed. According to the amended Section 30, an appeal from any

final order passed by any officer below the rank of the Collector of the district, while discharging the functions of the Collector under this Act, can be filed before 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. According to Section 2 (b) of the Act, a "Collector" includes an Additional Collector or another officer not below the rank of a Sub-Deputy Collector appointed by the State Government to discharge all or any of the functions of the Collector under this Act. The effect of the amendment is that the jurisdiction to hear an appeal has been vested in the Collector of the district or any other officer who may hereinafter be authorised by the State Government in this behalf, which may include an Additional Collector also. But until the time the Additional Collectors are authorised in this behalf under the amended provision, they ceased to have any jurisdiction to hear any appeal including those appeals which were pending before them. u/s 32 of the original Act, the Board of Revenue could call for and examine the records of any case pending before, or disposed of by, any authority for the purpose of satisfying itself as to the legality or propriety of any order. The amended Section 32 provides that a revision shall lie to the Board of Revenue from any appellate order passed by the Collector.

7. On 1-11-1976, when the amendment came into force, many appeals including the appeal in the present case were pending before the Additional Collectors who were appointed by the State Government to discharge the functions of the Collector under the Act. Such appeals stood abated on the date of commencement of the Amending Act of 1976 by virtue of Section 32A of the Amended Act. Section 32A provides that any appeal pending before any authority other than "the Collector of the district" on the date of commencement of the Amending Act 1976 shall abate. Those appeals which were maintainable u/s 30 against an order passed under Sub-section (3) of Section 10 or Section 38 were, however, saved. Prima facie, therefore, there seems to be logic in the argument of learned counsel for the petitioner that the appeal in the present case pending before the Additional Collector had abated on 1-11-1976 and there was nothing before the Additional Collector after that date to hear and decide. But there is a fallacy in this argument.

8. According to Wharton's Law Lexicon, the word "abate" means -- to prostrate, break down, to remove, or destroy. By abatement, the title of a real action is abolished or quashed. An almost similar provision was made in the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Consolidation Act). Section 4 (c) of the said Act provided that every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area for declaration and adjudication of any other right in regard to which proceedings can or ought to be taken under that Act, pending before any Court or authority, whether of the first instance or appeal, reference or revision, shall on an order being passed in that behalf by the Court or the authority before whom such suit or proceeding was pending, stand abated. That was, however, without any

prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suit or proceedings before the appropriate Consolidation Authority under and in accordance with the provisions of the Act and the rules framed thereunder. The vires of Section 4 (c) of the Consolidation Act was challenged in the case of Ramkrit Singh and Others Vs. The State of Bihar and Others, , mainly, on the ground that it was discriminatory. It was found by a Special Bench of this Court, to which I was also a party, that there was no abatement of suits for all time to come. The suits or proceedings abated only so long as the consolidation operation does not come to a close. The opening words of Section 4 stated clearly that the consequence as mentioned therein shall ensue from the date specified in the notification till the close of the consolidation operation. The consolidation operation closes by issue of a notification u/s 26 (1) (a) of the said Act. Thus, it was found that on the close of the consolidation operation the abated suits would revive and will have to be decided in conformity with the decisions arrived at in the consolidation proceedings. This removed any possibility of hardship or injustice. Section 4 (c) of the Consolidation Act was held to be constitutionally valid.

9. So far as the present case is concerned, the effect of abatement according to Section 32A of the Act is that the appeals other than those passed against orders under Sub-section (3) of Section 10 or Section 38 are killed or destroyed. There is no similar provision made in this Act that they shall ever revive or come to life as a consequence of anything happening in future. There is also no provision in the Act that the subject matter of the abated appeal can be agitated before any other forum. The effect of abatement u/s 32A of the Act is, therefore, distinguishable from the effect of abatement provided u/s 4 (c) of the Consolidation Act. The right of appeal is a very valuable right and is related to the right to property guaranteed under the Constitution. It is possible that many appeals might be pending before the Collector of the district on the date of commencement of the Amendment Act 1976; but that did not abate on account of the insertion of Section 32A of the Act. The appeals which were pending before the Additional Collectors only abated. The new Section 30 also provided that appeals could be filed before the Collector of the district or any authority specially authorised in that behalf which may include an Additional Collector. This means that the right to appeal against a final order passed by any officer below the rank of the Collector of the district was maintained under the Act. In other words, only those appeals which were pending before the Additional Collectors as on 1-11-1976 were killed and destroyed. This, in my opinion, is clearly discriminatory. Section 32A of the Act is, in my opinion, violative of the right to property as guaranteed under the Constitution and as such is ultra vires.

10. The question is as to whether the jurisdiction of the Additional Collectors to hear the appeals pending before them on 1-11-1976 or thereafter was ousted by insertion of Section 32A of the Act. It is plain to say that an invalid law cannot oust the jurisdiction of a Court to hear a suit or an appeal. The decision given by the Additional Collector contained in Annexure 1 cannot, therefore, be assailed

on this ground. Learned Advocate-General, however, submitted that after the insertion of Section 32A of the Amending Act there was a great confusion regarding the appeals pending before the Additional Collectors. The Government of Bihar in exercise of the powers conferred under Sub-section (1) of Section 30 of the amended Act, therefore, authorised certain Additional Collectors "to dispose of the appeals of the case finally disposed of by the officers below their rank within the limits of their district". This was done by a notification dated the 17th December, 1976. Shri Jai Krishna Ram, Additional Collector, was authorised to dispose of the appeals within the limits of Aurangabad district Section 30 (1) as amended provides that an appeal from any final order passed by any officer below the rank of the Collector of the District while discharging the function of Collector under this Act, shall be to the Collector of the district or any other officer specially authorised in this behalf by the State Government. This provision is prospective in nature. The State Government can authorise any officer other than the Collector of the district to entertain and hear the appeals which may be filed before them after such authorisation. There can be no retrospective authorisation to hear the appeals which may be pending before the Additional Collectors before the Amending Act, 1976, came into force. In my opinion, therefore, no power could be vested in the Additional Collectors to hear the appeals which were pending on the date the Amending Act came into force.

11. Learned Advocate-General also relied upon Section 45A of the Act and submitted that the State Government may from time to time give to the Collector of the district general or special directions as the State Government may think fit to carry into effect the provisions of this Act. Section 45A contemplates administrative directions by the State Government to the Collectors of the Districts for the purpose of carrying into effect the provisions of this Act. In any case, no general or special direction issued u/s 45A of the Act was brought to our notice. Learned counsel for the petitioner further submitted that the land in question had changed its character and had become a homestead land although it was described in the Khatian as dhanahar land. In this connection, he drew our attention to the show cause petition filed by respondents Nos. 2 and 3 in which it has been stated that in a portion of the house occupied by respondents Nos. 2 and 3 there was a powerloom Kargha. Learned Additional Collector and the Member, Board of Revenue have considered this question and have rejected this plea, on the ground that even in the sale deed this land has been described as Kasht Nagdi Kaemi and not as basgit (homestead) land. In view of this finding, it is not possible for me to interfere with the decision of the learned Additional Collector and the Member, Board of Revenue.

12. The application, therefore, fails and is dismissed, but without cost.

M.P. Varma, J.

13. I have read the judgment of my brother. I fully agree with the reasons and also the final order.

However, I may add some additional reasons in support of the order.

14. Before an amendment of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act in 1961, appeal u/s 30 was entertained by a "prescribed authority". Under Sub-section (1) of Section 30 of the Act. a prescribed authority u/s 2 (j) of the Act means prescribed by rules made under the Act. Rule 48 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 prescribes categories of appellate authorities. Rule 48 reads as follows:--

"(1) Subject to Sub-section (1) of Section 30, an appeal against an order passed under the Act by a Collector of the rank mentioned below in the first column shall lie to a Collector of the area concerned of the rank mentioned in the corresponding entry in the second column -

(i)

Sub Deputy Collector or Deputy Collector other than Land Reforms Deputy Collector or Sub-divisional Officer.

Land Reforms Deputy Collector or Subdivisional Officer.

(ii)

Land Reforms Deputy Collector or Subdivisional Officer.

Additional Collector or Collector of the district.

(iii)

Land Reforms Deputy Collector of the district.

Divisional Commissioner, or such authority as may be appointed from time to time by the State Government by notification published in the Bihar Gazette."

15. Under Sub-rule (II) of Rule 48 Additional Collector or Collector of the District is the appellate authority if the final order is passed by the Land Reforms Deputy Collector or the Sub-divisional Officer.

16. After amendment of the Act in 1976 an appeal from final order passed by any officer below the rank of the Collector of the district shall be to the Collector of the District or any officer specially authorised in this behalf by the State Government,

17. In view of Section 32A of the Act as inserted under the amending Act, if an appeal, save and except against the order u/s 10 (3) and u/s 38 of the Act, is pending before an authority other than the Collector of the District, it shall abate, but by amending the Act provision of filing an appeal to the Collector of the District has been made. This makes a difference on general principle in law on the subject. There is a material difference when an Act while dealing with rights already vested in a party and in dealing with mere procedure to recover those

rights. In the latter case it may be quite reasonable to regulate and alter such rights. Above principles are well established and I do not wish to refer to authorities on such a well-known principles.

18. In the present case, the vested right of appeal pending before the Additional Collector has been taken away by the Amending Act, taut at the same time, a right of appeal to the Collector of the District has also been provided under the same amending Act without making it retrospective.

19. One more aspect in this regard is that if a right of appeal vested in a party is there under the statute, the same cannot be taken away by any such amendment. Position would have been quite different if there was no such right of appeal in the original Act, then it may be a case of procedural right and not a vested right, and that can be regularised by any subsequent amendment. In the present case, right of appeal was provided in the original Act, which is definitely a vested right to property, and this right cannot be taken away by such amendment. However, I do not consider it necessary to decide the question of vires of this amending Act, in view of the distinction drawn by me as above.

20. The Government, it seems, realised this hardship and the difficulties of the parties in respect of the pending appeals before the Additional Collector, and as such by notification dated 17th December, 1976 authorised the Additional Collector to deal with all such pending appeals, This aspect has been already discussed by my brother. True it is that the said notification cannot be retrospective, but it shows the intention of the State Government to protect the vested right of appeal of the parties of the pending appeal, which appears to be very reasonable.

21. I have indicated that under Rule 48 of the Rules, there are appellate authorities, other than the Additional Collector or Collector of the District. Section 30, Clause (1) has provided an appeal to the Collector of the District or any other officer specially authorised in this behalf by the State Government. In this case by the aforesaid notification, the Additional Collector, who has decided the appeal can be deemed to be an officer specially authorised by the State Government. Under Rule 48 Clause (ii) appeals against the order of the Land Reforms Deputy Collector or Sub-divisional Officer were to be filed before the Additional Collector or the Collector of the District. In the instant case, it was filed before the Additional Collector (memo of appeal Annexure 4), and as such it has been rightly held that such appeals have been rightly decided, writ application before us must fail.