

(1980) 03 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 724 of 1977

Bidyut Kumar Ganguly

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1981) 29 BLJR 54

Hon'ble Judges : K.B.N. Singh, C.J; Prem Shankar Sahay, J

Bench : Division Bench

Judgement

Prem Shankar Sahay, J.—This application, under Articles 226 and 227 of the Constitution of India, is for quashing Annexure 7 notice issued by the Land Reforms Deputy Collector, Bhagalpur (Respondent No. 3) directing the petitioner to appear in connection with a proceeding u/s 4(h) of the Bihar Land Reforms Act (hereinafter referred to as the Act), as the matter has been pending adjudication. By the same notice dated 2-3-1977 the petitioner had been directed not to sell the land in question and show cause for the same by 25-4-1977.

2. In order to appreciate the points raised in this application, it will be necessary to state some facts. The ancestors of the petitioner were landlords of of colghng in the district of Bhagalpur. His great-grandfather Sri Radha Charan Ganguly had purchased the "Hill House", now commonly known as "Pahar Bungalow", hearing Khasra Nos. 1450, 1451, 1466 and 1075 along with other properties for a sum of Rs. 1,00,000/- in the year 1869. The above bungalow was surrounded by a compound wall with three gates and, besides there being a big resident al building, there were out-houses for servants, stables and orchard and the entire property was recorded in the same survey record as "Gairmajrua Milikdar" in possession of the "Milikdar". After the format ion of the colgong Municipality the said bungalow was recorded in the Municipality, when the assessment list was prepared u/s 105 of the Bihar and Orissa Municipal Act. Thereafter, there was an

assessment u/s 98 of the said Act. After the vesting of the estate in the year 1955, the aforesaid properties being, "homestead" remained in the Khas possession of the family of the petitioner.

3. A temporary Cinema House was being run by the ancestor of the petitioner on a portion of Khasra No. 1450. An application for renewal of the Cinema licence was made in 1964, and the Circle Officer, Colgong objected on the ground that the land on which the Cinema was being run had already vested in the State. The then Additional Collector of Bhagalpur, after considering the report of the circle officer and all the relevant materials, in a well-reasoned order dated 25-1-1965 held that the aforesaid land was homestead and, therefore, was saved u/s 5 of the Act. A copy of the said order has been filed and marked Annexure 1. Then again, the Revenue Officer, Colgong, sent a note to the Government that the petitioner's ancestor was selling Gairmajarua Malik land out of Plot Nos. 1450, 1456 and 1075, and the matter was referred to the Government, under whose direction a fresh proceeding u/s 4(h) was started. Show cause was filed in the aforesaid proceeding, and the learned Additional Collector, Bhagalpur, by order dated 1-7-1968 dropped the proceeding in view of the fact that Section 4(h) of the Act was not attracted. A copy of the order has been filed and marked Annexure 2.

4. Then again, the Anchal Adhikari, Colgong, re-opened the matter, and at his instance a fresh proceeding u/s 4(h) of the Act was started, which was numbered as Case No. 4/66-67, and the Deputy Collector, Land Reforms and Development, by his order dated 27-12-1968 again dropped the proceeding, holding that the matter had already been decided by the Additional Collector, Bhagalpur. A copy of the said order has been filed and marked Annexure 3, in which a reference to the report dated 25-9-1965 of the previous Deputy Collector, Land Reforms, was also made (vide Annexure 4) in which it was stated that the land in question being homestead does not come within the mischief of the Act. Again, in the year 1972, on a reference by the Anchal Adhikari, Colgong, the Sub-Divisional Officer, Bhagalpur, had issued a notice u/s 4(h) of the Act to the petitioner as to why whole house should not be taken over by the Government. The petitioner entered appearance and filed his show cause stating all the facts and also drawing the attention of the authority to the fact that the matter had previously been enquired into and decided in his favour. The Sub-Divisional Officer, Bhagalpur, by his order dated 28-5-1973, read as follows:

Since this matter has been dealt with in greater length by the then Additional Collector, I would not do better than to rely on his findings which he has arrived after thorough discussion of the previous documents in this behalf. I would only like to keep an order of the Additional Collector in this regard. Let a copy of the same be sent to the Collector along with a copy of the documents to the Collector for favour of information and order.

A copy of the order has been filed and marked Annexure 5.

5. On 7-11-1975 the Anchal Adhikari, Colgong, again submitted a report to the Collector for starting a fresh proceeding u/s 4(h), on the basis of - which Case No. 89/69-70 was registered; and the petitioner filed his show cause, placing all documents in support of his case. The Deputy Collector, Land Reforms, Sadar, Bhagalpur, to whom the matter was sent, by his order dated 24-11-1976, held that the proceeding had no legs to stand because the superior Revenue Officers, after considering full facts and documents and circumstances of the case, had already dropped the proceeding u/s 4(h) of the Act in this very case. A copy of his order is Annexure 6. Even after all these orders a notice had been issued to the petitioner by respondent No. 3 on 2-9-1977 to appear in the proceeding u/s 4(h) of the Act which was still pending against him which is Annexure 7 in this case. The petitioner has moved this Court against the aforesaid notice.

6. Counter-affidavit has been filed on behalf of the respondent-State that the notice and the proceeding was fully justified, because the properties are not saved under the provisions of the Act. Reply to the said counter-affidavit has also been filed on behalf of the petitioner.

7. Mr. K.D. Chatterji, on behalf of the petitioner has contended that the proceeding u/s 4(h) of the Act had been started earlier on a number of occasions and all those proceedings were decided in favour of the petitioner. Respondent No. 3 had absolutely no jurisdiction to re-open the matter which, according to him, is wholly illegal and unjustified. The learned Government pleader appearing on behalf of the State has submitted that the matter had never become final and the State was competent to issue notice to the petitioner u/s 4(h) and has tried to justify the acting of respondent No. 3 in issuing Annexure 7 to the petitioner.

8. After hearing the learned Counsel for the petitioner and the learned Government Pleader, I think that the contention raised on behalf of the petitioner is well-founded and must be accepted. From the facts mentioned above and on a perusal of the various orders passed by the authorities from time to time, it is absolutely clear that all the proceedings u/s 4(h) of the Act had terminated in favour of the petitioner. Those orders passed u/s 4(h) are appealable u/s 8 of the Act, but no appeal was preferred by the State and, therefore, the order became final, which applies equally to a private individual and the State is not competent to re-open the matter when various authorities have decided the question more than once after fully applying their mind to the facts of the case and without any fresh material whatsoever. The aforesaid orders bind also the State that they can re-open the matter whenever they like. Respondent No. 3, who is a public servant, may have acted in a bona fide manner in the interest of the State, but at the same time, it is the duty of a public servant to see that persons are not unnecessarily harassed and dragged in the Court of law. The matter was being investigated by the authorities since 1965, and even after it had become final, again a fresh notice (Annexure 7) has been issued to the petitioner, wrongly stating therein that the proceeding u/s 4(h) was still pending and had not been decided, which is an error apparent on the face of the record. Before issuing such

notice, it was the duty of respondent No. 3 to acquaint himself with the previous orders passed by his superior officers from time to time which were all in the favour of the petitioner; and I am constrained to hold that respondent No. 3 has not acted in a diligent manner. The authorities under the Act have been discharging quasi-judicial functions, and therefore, it is their utmost duty to see that citizens are not unnecessarily harassed and dragged into litigation. Instead of moving against the orders passed u/s 4(h), the matter is raked up again and again, which, in my opinion, amounts to mala fide exercise of power and causing harassment not only to the petitioner but also to others and also waste of time and public money. The proceeding is sought to be re-opened against a citizen who has always been co-operating in the proceedings and placing all materials before the authorities whenever asked for.

9. In the result, the application is allowed. Let a writ in the nature of certiorari issue quashing the notice issued by respondent No. 3 as contained in Annexure 7 and also a writ of mandamus directing respondent No. 1, State of Bihar, and its officers to forbear from proceeding against the petitioner and also from interfering with his possession over the properties in dispute. Since the petitioner has been unnecessarily dragged in the litigation in spite of the previous orders in his favour, I further direct that he will be entitled to costs of Rs. 100/- payable by respondent No. 1.

K.B.N. Singh, C.J.

10. I agree.