

(1995) 02 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 3269 of 1994

Bihar Rajya Adhivakta Sangh and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 1, 10(1), 10(2), 15, 16
Bihar Consolidation of Holdings and Prevention of Fragmentation Rules, 1958 — Rule 3

Citation : (1995) 2 PLJR 880

Hon'ble Judges : S.K. Singh, J;N. Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Petitioners in this application have questioned the validity of a notification dated 2.11.1993 issued by the State Government u/s 4A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act), cancelling the notification of the Land Reforms Department, issued u/s 3 of the Act with respect of the areas specified in Schedule I annexed with the said notification.
2. Petitioner No. 1 is an Association of Advocates generally practising in the Directorate of Consolidation. Petitioner No. 2 is the President of the said Association.
3. We have heard the learned Advocates for all the parties, as also perused the writ application and the counter affidavit. Therefore, the writ application is being disposed of at the stage of admission itself.
4. Admittedly, in various parts of the State of Bihar, with a view to effect consolidation of holdings for the purpose of better classification of lands, the State Government issued a notification u/s 3 of the Act, showing its intention to make scheme for consolidation of holdings in such areas. Pursuant to such

notification, the consolidation operation started in different areas of this State. Several schemes were finally published, Khatians were distributed and even in certain areas, notification u/s 26A of the Act for close of the consolidation operation was also issued. Besides the aforesaid, a large number of cases in which final orders passed by the Consolidation authorities were challenged, either before the Appellate authority or before the revisional authority. There were certain areas in which after formation of Chaks, parties were handed over possession. In certain areas lands, for construction of roads, canal etc. were carved out as even in certain areas, roads were also constructed.

5. In the meantime, it appears, the Chief Minister of the State made a statement on the floor of the Legislative Assembly that the consolidation scheme shall not be given any further effect in the State. Consequent to such assurance, the Deputy Secretary of the Revenue and Land Reforms Department, issued a letter dated 16th July, 1992 to the Director, Consolidation, Bihar, Patna, to postpone the scheme of consolidation operation in the entire State of Bihar.

6. The Petitioners questioned the validity of the aforesaid decision of the authority before this Court in CWJC No. 7237 of 1992. A Bench of this Court, having examined all the facts and circumstances of the case, held that the State of Bihar in exercise of its executive power had no jurisdiction to suspend the operation of a legislative Act. The same could only be done in exercise of its legislative power. Admittedly, no notification was issued u/s 4A of the Act by the State Government. Accordingly, the letter dated 16.7.1992 was quashed on 21.5.1993.

7. Thereafter the impugned notification u/s 4A of the Act was issued by the State Government under the seal of the Governor. It would be useful to quote the English version of the notification hereunder:

In exercise of powers conferred by Section 4(A) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (Bihar Act XXIV of 1956), the Governor of Bihar is pleased to cancel Revenue and Land Reforms Department Notification issued u/s 3 of the said Act enclosed as Schedule to this notification in respect of the areas specified in the schedule-1 annexed hereto with effect from the publication of this notification.

State Government has been apprised to various shortcomings in the existing Act and its implementation. For rectification of those shortcomings Government desire to review the execution of the scheme afresh. The notification is, therefore, issued in that direction for the areas specified in the schedule II annexed with the notification.

State Government wishes to issue an amended Act/Ordinance in which there will be provisions for rectification of the present shortcomings at an appropriate time. Final orders already passed by different Courts constituted under the Consolidation of Holdings and Prevention of Fragmentation Act, 1956 will remain effective till the said amended Act/Ordinance comes into force and there will be

separate provision in respect of such orders in the amended Act.

8. A counter affidavit has been filed stating therein that it was brought to the notice of the State Government that certain provisions of the Act were not workable and practical and several defects were also noticed. Therefore, in order to have suitable amendment, the implementation of the scheme has been postponed. The notification relates to only such villages where schemes have not been confirmed, it provides that final order passed under different provisions of the Act shall remain operative. It further says that with respect to the areas where the notification has been cancelled, general rules of law has to prevail. The litigants in order to get their dispute adjudicated are free to avail other avenues available in different Courts.

9. Mr. Kamal Nayan Chaubey, learned Senior Counsel appearing on behalf of the Petitioners submitted that there are a large number of cases wherein final orders passed by the Consolidation Officers are being challenged before different authorities. There are certain cases for which certificate of transfer has also been issued, there was a large number of cases in which the order of the Consolidation Authorities have become final. In such a situation, the State Government had no justification to issue a notification u/s 4A of the Act, cancelling or suspending the notification u/s 3 of the Act. He further contended that in view of the suspension of the Consolidation Scheme, all the adjudication process with regard to the question of title, preparation of chaks and other matters have come to a complete stand resulting in a chaotic situation. He further submitted that in a case in which certificate of transfer has been issued, the holder of such certificate has become owners of the lands. Therefore, suspension of the operation of the scheme has created an anomalous situation and the litigants who are aggrieved by the orders of the Consolidation authorities have been rendered helpless for want of appropriate remedy.

10. Learned Advocate appearing for the State submitted that from bare reference to the impugned notification, it appears that the Consolidation scheme has only been suspended and not finally cancelled. It was further contended that this notification will not affect final orders passed by different Courts constituted under the Act. Such orders will remain effective till appropriate amended Act/ Ordinance comes into force.

11. It was further contended that in any view of the matter, litigations are not going to suffer. In an area where the Consolidation scheme has not been finalised, the litigants are free to avail other avenues. Section 3 and 4A of the Act are materials for the purpose of this case. They are reproduced hereinbelow:

3. Declaration by State Government of its intention to make scheme for consolidation of holdings.-(1) With the object of effecting consolidation of holdings for the purpose of better cultivation of lands in any area, the State Government may, after such enquiries as it may deem fit, by notification in the Official Gazette, declare its intention to make a scheme for consolidation of

holdings in that area.

(2) The substance of the notification shall be announced by beat of drum in the villages comprised in the notified area and copies of the notification shall be hung up at the offices of all the Gram Panchayats, if any, the police station, the offices of the Anchal Adhikaris and the village Cutcharies of the State Government for collection of rent in such area.

4A. Cancellation of notification u/s 3.-(1) It shall be lawful for State Government at any time to cancel the notification made u/s 3 in respect of the whole or part of the area specified therein.

(2) Where a notification has been cancelled in respect of any unit under Sub-section (1) such area shall, subject to the final orders relating to the correction of land record, if any, passed on or before the date of such cancellation, cease to be under consolidation operations with effect from the date of the cancellation.

12. The State of Bihar in exercise of its power conferred upon it u/s 40 of the Act, has framed rules known as Bihar Consolidation of Holdings and Prevention of Fragmentation Rules, 1958 (hereinafter called the Rules). Rule 3 defines different conditions for cancellation of notification u/s 1 of the Act. Rule 3 of the said Rules reads thus:

3. Cancellation of notification u/s 4 of the Act.-The notification made u/s 3 of the Act may among other reasons, be cancelled in respect of the whole or any part of the area on one or more of the following grounds, namely:

(a) the area is under a development scheme of such a nature as when completed would render the consolidation operations inequitable to a Section of the peasantry;

(b) the holdings of the village are already consolidated for one reason or the other and the raiyats are generally satisfied with the present position;

(c) the village is so torn up by party factions as to render proper consolidation proceedings in the village very difficult; and

(d) A Co-operative society has been formed for carrying out cultivation in the area after pooling all the land of the area for this purpose.

13. Before advertng to the questions raised in this application, it would be appropriate to have a birds" eye view of the entire scheme of the Act hereinbelow:

Section 2 of the Act contains interpretation of clauses defining various provisions and terms. Section 3 of the Act empowers the State Government to declare its intention to make a scheme for consolidation of holdings, in a particular area/ areas by a published notification in the official gazette with a view to effect the consolidation. Section 4 provides for the effect of a notification u/s 3(1) of the Act. Section 4A empowers the State to cancel notifications issued u/s 3(1). By

reason of Section 4C of the aforementioned Act, any suit or other legal proceedings pending before different Courts of law on the date of notification u/s 3(1) of the Act would abate. Section 5 of the said Act prohibits transfer of any land after the date of publication of preparation of register of lands and statement of principles under Sub-section (1) of Section 10 of the Act by way of sale, gift, exchange etc. u/s 7 of the Act constitution of Village Advisory Committee is to be notified. u/s 8 upto date records of right have to be prepared whereas u/s 9 of the Act, register of lands has to be prepared.

Section 10(2) of the Act enables a party to file objection disputing correctness and nature of entries in the records of right. Other Sub-sections of this Section provide manner in which objections have to be examined as also remedy for appeal against an order passed by the Assistant Consolidation Officer or Consolidation Officer. Section 15 empowers the Consolidation Officer to grant every raiyat certificate of transfer, to whom a holding has been allotted in pursuance of the consolidation scheme. In terms of Section 16, a confirmed scheme is required to be published. Section 17A of the Act authorises the Consolidation Officer to allow the raiyat to enter into possession of the new holding allotted to him. Section 18 of the Act provides for transfer of encumbrances.

It would also be relevant to notice Section 26A of the Act, which provides for close of the Consolidation scheme and commands the State Government to issue notification as soon as a fresh map and records have been prepared and certificate of transfer are issued to different raiyats. u/s 35 of the Act, the Director Consolidation has been empowered to call for and examine the records of any case of proceeding taken by any authority under him.

Section 37 of the Act expressly bars the jurisdiction of the Civil Court with respect to the orders passed by the Consolidation Authorities under different provisions of the Act in terms of Section 33B of the Act, the authorities have all the powers and privileges available with the Civil Courts in certain matters.

14. From different provisions of the Act and the Rules, as noticed above, it is apparent that the Act is self-contained code for the purposes of consolidation of lands within the State. Section 4C and Section 37 of the Act bar the jurisdiction of the Civil Court to entertain suits with respect to an area where notification u/s 3 of the Act was issued.

15. In the background of the facts stated above, there cannot be any doubt that the impugned decision of the State Government suspending the entire scheme and machineries would naturally create a chaotic situation. There are large number of cases in which orders passed by the Consolidation authorities were challenged before the Appellate or revisional authorities, but in view of the impugned notification, the aggrieved party will become remediless. There may be a large number of cases in which certificates of transfer have been issued or possession of someland has been recently given to certain persons. Therefore, in

such a situation, if the scheme is cancelled or suspended, the aggrieved party would have no remedy. If certain orders have achieved finality, In view of the provisions of Section 37 of the Act, the aggrieved party would not be able to question the validity of such orders even before the (civil) Courts.

16. There is no doubt that the authorities under the State Government have issued the impugned notification without understanding the implication thereof. It is also equally unfortunate that more than two years have passed, the so called better scheme of the State Government has not yet seen the light of the day.

17. Besides the aforesaid, a bare reference to the provisions of Sub-section (2) of Section 4A of the Act would indicate that a notification issued under Sub-section (1) of Section 4A of the Act shall be subject to the final orders, relating to correctness of land record, if any, passed on or before the date of such notification. In other words, it would have no effect over the final orders passed at different stages by the authorities.

18. Therefore, in our view, the remedy to prefer appeal or revision against such final orders provided by legislature under the Act cannot be made ineffective or inoperative until unamended Act/Ordinance, is notified. Such provisions cannot be cancelled or suspended by the State Government under the provisions of Section 4A of the Act.

19. As we have already noticed, Rule 3 of the rules provides different grounds on which the State Government can cancel whole or part of the notification, issued u/s 3 of the Act. There is no provision under these rules that the remedy of appeal or revision against the final orders, passed at different stages under the Act would also become inoperative, by a notification u/s 4A of the Act.

20. There cannot be any doubt that power of the State Government to cancel a notification u/s 3 of the Act is confined only to Section 4A thereof. Therefore, the legislative competency of the State to cancel notification u/s 3 of the Act cannot be questioned save and except if it is in excess of the power conferred under that provision.

21. We have already noticed that a bare reference to the impugned notification would indicate that final orders passed at different stages by the Consolidation authorities shall remain operative. In that view of the matter, if aggrieved persons against such final orders are rendered remediless by virtue of suspension/cancellation of different provisions of the Act, certainly it would create an anomalous situation.

22. We accordingly, hold that different provisions of appeal or revision against final orders passed under the Act would remain operative till any amended Act/ Ordinance comes into force or any other legal remedy is provided by the Legislature before an appropriate forum.

23. In that view of the matter, the Consolidation authorities are directed to hear

and dispose of all appeals or revisions against final orders, which were passed by the Consolidation authorities before issuance of the impugned notification.

24. In the result, the impugned notification is partly quashed, and the writ application is allowed to the extent indicated above.