
(1996) 01 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 11268 of 1995

Bijendra Prasad Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(3), 37

Citation : (1996) 1 BLJR 415 : (1996) 1 PLJR 256

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Homchaudhuri, J.—This petition is directed against the order dated 10.11.1995 passed by the Collector, Purnea, on an application of the petitioner u/s 37 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter mentioned as "the Act") registered as Misc. Ceiling Case No. 38 of 1993 holding that in view of deletion of Section 37 of the Act by Section 3 of the Bihar Ordinance 20 of 1995, the authority of the Collector to consider the application u/s 37 has come to an end.

2. Being aggrieved by the inclusion of the plots of land he purchased from different persons, in the area of land declared surplus in the hands of Sita Devi under the provisions of the Act for the purpose of acquisition as per notification dated 20.5.1992 published in Purnea District Gazette dated 25.5.1992, the petitioner approached this Court in C.W.J.C. No. 320 of 1993 for necessary relief. This Court, by order dated 21.1.1993, disposed of the petition with the observation that the petitioner might file an application u/s 37 of the Act within three weeks from the date of receipt of copy of the order and the Collector would dispose of the said application within four weeks thereafter. The petitioner accordingly filed an application u/s 37 of the Act on 15.2.1993 which was registered as Misc. Ceiling Case No. 38 of 1993. The Collector did not dispose of

the said application and the application remained pending disposal for a long time. In the meantime by Section 3 of the Bihar ordinance 20 of 1995, provision of Section 37 of the Act was deleted.

3. From a perusal of provision of Section 3 of the Bihar Ordinance 20 of 1995, it is apparent that Section 37 of the Act was deleted prospectively and not retrospectively. The question arises whether the petitioner's right of necessary relief in the application u/s 37 of the Act filed prior to coming into force of Ordinance No. 20 of 1995 has disappeared or not.

4. I have heard learned Counsel for the petitioner and Mr. J. Rahman, learned Government pleader No. 7.

5. Learned Counsel for the petitioner submits that Section 37 of the Act having been deleted by the Ordinance No. 20 of 1995 prospectively Collector's jurisdiction to consider and dispose of the application u/s 37 of the Act filed before the Ordinance No. 20 of 1995 came into force has not been obliterated. In support of his contention the learned Counsel for the petitioner has drawn my attention to a decision of a Division Bench of this Court in the case of Sumangali Kumari v. The State of Bihar, reported in 1978 Bihar Law Judgment, Page-746. In para-3 of the decision in the said case this Court held:

the short and important question that falls for consideration in the instant case is whether after deletion of the original Sub-section (3) of Section 15 of the Act by Bihar Ordinance No. 219 of 1976, the petitioner's right to file an appeal against an order u/s 15(3) of the Act also disappeared or not. Section 30 of the Act which deals with appeals, reads as follows, after the amendment made by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 (Bihar Act 22 of 1976).

(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 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" and

(3) An appeal under this Section shall be heard and disposed of in the prescribed manner.

This amending Bihar Act 22 of 1976 was published in the Bihar Gazette a day earlier than Bihar Ordinance No. 219 of 1976 i.e. on the 1st November, 1976. From the above provisions it is apparent that there is a right of appeal from any final order passed by any officer below the rank of the Collector of this district while discharging the functions as a Collector under this Act to the Collector of the district or to any other officer specially authorised in this behalf by the State Government. There cannot be any manner of doubt that the order (Annexure-1) passed u/s 15(3) of the Act, which Sub-section was subsequently deleted by

Ordinance No. 219 of 1976, against the petitioner was a final order passed by the Additional Collector discharging the functions of the Collector under the Act. The right of appeal from such an order has not been taken away either by the amending Bihar Act 22 of 1976 or by Ordinance No. 219 of 1976. Deletion of Sub-section (3) of Section 15 from the present Act is not with retrospective effect, but it is prospective, that is to say, from the date Ordinance No. 219 of 1976 Was published in the Bihar Gazette. The view we have taken gains support from the following observations made by a Bench of this Court in Krishna Kumar Rai and Ors. v. The State of Bihar and Ors. (C.W.J.C 121 of 1977 decided on the 17th March, 1977):

It was contended on behalf of the State that Section 15(3) of the Act has now been deleted and that the Collector has no jurisdiction now to entertain and hear objection u/s 15(3) of the Act. This may be true so far as cases arising after 2.11.1976 are concerned. But in the instant case, the claim application was filed before Section 15(3) of the Act was deleted. Section 15(3) of the Act has not been deleted with retrospective effect. The right to file claim petition is a vested right and it does not get obliterated merely because of subsequent deletion of Section 15(3) of the Act.

6. Mr. Rahman, learned government Pleader No. 7 fairly concedes that in view of the decision of this Court in the case of Sumangali Kumari (Supra) the petitioner's right to the application u/s 37 of the Act filed prior to coming into force of the Bihar Ordinance No. 20 of 1995, has not been obliterated and the Collector has jurisdiction to consider and dispose of the application in accordance with law.

7. I find that the ratio decidendi in the case of Sumangali Kumari (Supra) squarely applies to the facts of the instant case and as such the Collector has committed error of law apparent on the fact of the records in holding that in view of deletion of Section 37 of the Act by Section 3 of the Bihar Ordinance 20 of 1995, the Collector has no authority to dispose of the application u/s 37 of the Act filed long before coming into force of Ordinance No. 20 of 1995.

8. For the reasons stated above the petition is allowed and the impugned order dated 10.11.1995 (Annexure 7) is set aside. Misc. Ceiling case No. 38 of 1993 is restored to the file of the Collector, Purnea, with the direction to dispose of the same in accordance with law after hearing the petitioner.