
(1971) 04 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 2019, 2026 and 2027 of 1970

Bipin Bihari Das and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 27-04-1971

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 38, 6, 6(1), 8

Citation : AIR 1972 Patna 56 : (1971) 4 PLJR 343

Hon'ble Judges : S. Sarwar Ali, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : J.C. Sinha, Amala Kant Choudhary and Anish Chandra Sinha, in C.W.J.C. No. 2019 of 1970 and Amla Kant Choudhary, in C.W.J.C. Nos. 2026 and 2027 of 1970, for the Appellant; Lal Narayan Sinha, Advocate-General and K.P. Verma, Government Advocate, for the Respondent

Judgement

Untwalia, J.—In all these three cases are involved important questions of law as to the interpretation of certain provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962) hereinafter called the Act. The facts of the three cases are also identical. They have been heard together and are being disposed of by this common judgment.

2. I shall state the necessary facts from the file of C. W. J. C. 2019 of 1970. The petitioner's case is that a public notice as contemplated u/s 6 of the Act seems to have been published calling upon land-holders in the district of Monghyr to submit returns. But the petitioner was not aware of any such publication of the notice u/s 6. On the 22nd of November 1970 he received a notice signed by the Sub-divisional Officer, Begusarai, acting as Collector under the Act, calling upon him to show cause why the excess land in his possession should not be acquired u/s 38 of the Act. A copy of this notice is annexure 1 to the writ application. The petitioner filed a petition on 27-11-1970 before respondent No. 2 challenging the validity of certain provisions of the Act and the proposed action to be taken u/s 38 of the Act. A copy of this petition is annexure 2. Respondent No 2 rejected

this petition by his order dt. 30-11-1970 (annexure 3). The petitioner challenges the legality and validity of the notice (annexure 1) and the order (annexure 3) on several grounds to be discussed hereinafter.

3. After admission of this application, the petitioner filed a petition before respondent No. 2 on 7-1-1971 for extension of time for filing return u/s 6 of the Act. A copy of this petition is annexure 5 and the order refusing to extend time made by respondent No. 2 is dated 7-1-1971 (annexure 4). Later on, the petitioner has filed a supplementary affidavit on 22-3-1971 attaching with it an order of the Collector as also of respondent No. 2 acting as the Collector under the Act made on 28-10-1970 (annexure 7) on the basis of the Government letter dated the 1st/3rd August, 1970 (annexure 8), and the stand on the basis of these two documents is that impugned action and the order was taken and made by respondent No. 2 not in exercise of his own judicial discretion but under coercion of the Government direction contained in annexure 8.

4. Respondent No, 1 is the State of Bihar. A show cause petition was filed on behalf of the respondents on 24-3-1971 and they refute the attack made in the writ application on the steps taken by respondent No. 2 under the Act.

5. The facts of the other two cases are identical in all respects except that the date of annexure 1 in the other two cases is probably not 22-11-70 but is 11-11-1970. It is not necessary to repeat those facts.

6. In none of the 3 cases issuance and publication of the notice u/s 6 of the Act seem to be in any serious dispute. What is alleged, however, is that the petitioners had no knowledge of this notice. I may dispose of this point at the outset. If the notice was published u/s 6 in the manner provided therein then in the eye of law the petitioner will be deemed to have knowledge of this notice, for such general notice is contemplated u/s 6 of the Act.

7. I may also dispose of one more point before I come to deal with the main points in the cases and that is this. The filing of the petition by the petitioners on 7-1-1971 for extension of time u/s 6 of the Act was of no avail to them. In these writ applications it cannot be held that the order dated 7-1-1971 refusing to extend time was illegal or fit to be quashed. The application for extension of time was filed by the petitioners after the expiry of the period mentioned in the notice u/s 6. Firstly, I am of the opinion that such an extension can be asked for before the expiry of the time. Secondly, even assuming that an application can be filed after the expiry of time, surely in all these cases the application was filed after undue delay -- only when some observations are said to have been made by the Bench at the time of the admission.

8. All these cases, therefore, proceed on the assumption and on the footing that notice u/s 6 of the Act had been validly issued and published; all the petitioners must be deemed to have knowledge of that notice. All the petitioners undisputedly did not submit any return in response to that notice.

9. The question which falls for our consideration is; what is to happen on the failure of a land-holder to submit a return u/s 6 ? Is it open to the Collector to proceed u/s 8 of the Act in some cases and not to proceed in some under the said provision. Does this matter depend upon the sweetwill of the Collector, as seems to be the advice tendered to the Government as evidenced by their letter (annexure 8) ? Is it correct to say, as stated in that letter, that where action u/s 8 has been taken, the provisions of Section 38 are not attracted, and where action u/s 8 has not been taken, straightway the summary procedure of acquisition of excess area, as provided u/s 38, can be adopted ? These are the questions which have got to be answered in these cases.

10. The term "landholder" is defined in Clause (g) of Section 2 of the Act to mean "a person who holds land as a raiyat or as an under-raiyat and includes a mortgagee of land with possession." There are some explanations attached to this definition, but it is not necessary to refer to them. What I want to emphasise with reference to the definition of the term "land-holder" is that "land-holder" means all persons who hold land and not necessarily one who holds land in excess of the area fixed in Section 4 of the Act. The notice directed to be issued u/s 6 does not cast any obligation upon a land-holder who does not hold land in excess of the ceiling area, but the notice merely calls upon all the land-holders of the district--in these cases the district of Monghyr--who hold land in excess of the ceiling area anywhere in the State, to submit to the Collector within 90 days of the date specified in the notice a return containing the particulars enumerated in the various clauses of Sub-section (1) of Section 6. The proviso to Sub-section (1) empowers the Collector, on an application made by the land-holder, to extend the period specified in such notice for submission of the return. The land-holder may feel difficulty in complying with the direction and furnishing of all the details "within a period of 90 days. He, therefore, as I have said above _ in passing, may apply for extension of time before the expiry of the period of. 90 days. Sub-section (4) of Section 6 provides :

"Where the land-holder or the guardian mentioned in Sub-section (2), as the case may be, fails to submit the return required under Sub-section (2) without sufficient cause, the Collector may, after giving him a reasonable opportunity of being heard and adducing evidence, impose a fine which may extend to one hundred rupees."

It would thus be seen that for mere failure of a landlord of the kind who has been noticed to submit a return, a penalty has been directed to be imposed under Sub-section (4) of Section 6 and that will be in the shape of fine which may extend to Rs. 100/- only.

11. Section 7 of the Act empowers the Collector to obtain the necessary information through the Executive Committee of the Gram Panchayat of the area concerned or through such agency as he thinks proper, if any person holding land in excess of the ceiling area fails to submit return u/s 6. Either upon information so received or gathered or information of any other kind, whenever it comes to

the notice of the Collector that any land-holder holds land in excess of the ceiling area or has not submitted the return within the period specified in the notice or the extended period, u/s 6, or has submitted a return containing incorrect particulars, the Collector shall cause a notice to be served on the land-holder or his guardian, if he is minor or person of unsound mind, directing him to submit within sixty days of the service of such notice the return with necessary or correct particulars [vide Sub-section (1) of Section 8 of the Act]. If any person fails without sufficient cause to submit the return in compliance with the notice served under Sub-section (1) within the period specified in the notice or within such extended period, as may be allowed by the Collector in this behalf, the Collector, under Sub-section (2), has been empowered to impose fine which may extended to Rs. 20/- for every day after the expiry of the said period or the extended period until the return is submitted. Certain restriction in the exercise of that power has been provided in Sub-section (2). On a reasonable interpretation of Section 8 of the Act, it would be noticed that whenever it comes to the notice of the Collector that any land-holder holds land in excess of the ceiling area and (the first "or" has got to be read as "and") has not submitted the return or submitted a return containing incorrect particulars then an obligatory duty is enjoined on him to cause a personal notice to be served under Sub-section (1) of Section 8. If a land-holder did not hold land in excess of the ceiling area, he was not under an obligation to submit a return in compliance with the notice u/s 6. The Collector is also not called upon to issue a notice under Sub-section (1) of Section 8 unless it comes to his notice that any land-holder holds land in excess of the ceiling area and has not submitted the return. That is the reason that I have said that the First "or" occurring in Sub-section (1) has got to be interpreted to mean "and", but then the subsequent use of the word "or" means "or", because in cases where a land-holder holding land in excess of the ceiling area has not submitted a return within the specified period or has submitted a return containing incorrect particulars, the Collector is under an obligation to cause a notice to be served on such land-holder. In compliance with this notice, a return has to be filed either for the first time, if no return was previously filed, or a revised return, if the previous return contained incorrect particulars. It would thus be seen that no distinction has been made for the purpose of Section 8 (1) between land-holders who, according to the information of the Collector, hold land in excess of the ceiling area and could be subjected to personal notice u/s 8 (1). In all such cases, the procedure prescribed therein has got to be followed by the Collector. It does not depend upon his sweetwill to make a distinction between the similar and identical cases. He cannot say "in one case I shall proceed u/s 8 (1) and in another I will take action u/s 38." That is not the meaning and the purport of the Act.

12. Once a personal notice is given u/s 8, it follows that if the return or the revised return is filed in compliance with that notice, the procedure prescribed under Sections 9, 10 and 11 of the Act has got to be followed. Section 9 talks about option of land-holder to select his ceiling area, Section 10 deals with the

preparation of draft statement and the final publication of the draft statement is made by the following the procedure prescribed in Section 11. Thereafter the ordinary and usual mode of acquisition of surplus land is to be found in the 15th Section which is the only section in Chapter IV. The procedure for determination of the compensation for the land acquired by the State Government u/s 15 is provided in Section 23.

13. Apart from the power of imposing penalty in Sub-section (4) of Section 6, and Sub-section (2) of Section 8, it would be pertinent to refer to Section 36 of the Act providing for punishment for wilful contravention of any provision of the Act or of the rules made thereunder or for failure to comply with any lawful order made thereunder. Over and above the penal provisions already alluded to, it would be found, a further penal provision has been made in Sub-section (2) of Section 38 of the Act. Section 38 (1) provides for summary acquisition of the land and whenever any such land is acquired u/s 38, the compensation is to be paid at half the rate admissible under Sub-section (1) of Section 23 for such land. It would thus be seen that this provision is highly penal, and illusory or inadequate compensation provided in Section 23 (this Act is one of the Acts mentioned in Schedule 9 of the Constitution of India) has been further cut down by half if the land is summarily acquired u/s 38 (1). It is, therefore, necessary to find out as to what is the content and scope of Section 38 (1) which reads as follows:--

"(i) If any person is found by the Collector, at any time after the expiry of the period prescribed u/s 6 or Section 18, to be in possession of any area of land in excess of the area he may hold u/s 5, the Collector shall give the person concerned a reasonable opportunity to show cause and adduce evidence, if any, why the said excess area should not be acquired by the State Government.

(ii) If the Collector holds that there is any excess area which should be acquired, he shall give the person concerned a reasonable time to select any land of his equivalent to such excess area.

(iii) If no selection is made by the said person within the time allowed by the Collector or if the selection made is not accepted by the Collector on the ground that the land is encumbered, the Collector shall determine which particular land should be declared as the excess land for the purpose of this section.

(iv) The Collector shall then make an order declaring that the excess land is acquired by the State Government and on such declaration being made, the said land shall be deemed to have vested in the State with effect from the date of such declaration."

We are not concerned with Section 18 in any of these cases, but in passing I may just say that that is a restriction on a future acquisition by inheritance, bequest, gift or on alluvial action and enjoins upon the land-holder to submit a return in respect of such future acquisition. But the main provision of Sub-section (1) is that if the Collector finds that any person at any time after the expiry of the

period prescribed in Section 6 is in possession of any land in excess of the area he may hold u/s 5 then after giving such person a reasonable opportunity of hearing he has to hold whether there is any excess area which should be acquired. If he comes to such a finding then he has to give the person concerned a reasonable time to select any land of his equivalent to such excess area. If no selection is made within the time allowed by the Collector or if the selection is not acceptable to him on the ground that the land is encumbered, the Collector shall determine which particular land should be declared as the excess land for the purpose of this section. Then he declares under Clause (iv) of Sub-section (1) that the excess land is acquired by the State Government and on such declaration the said land shall be deemed to have vested in the State with effect from the date of such declaration.

14. It may be mentioned here that the interpretation which I have given to Section 8 of the Act was also the argument of the learned Advocate-General appearing for the State. Finding that argument sound and correct, I have accepted it by giving the reasons earlier in my judgment. If that interpretation of Section 8 be correct, as in, my opinion, undoubtedly it is, it would follow that merely after the expiry of the period prescribed u/s 6 of the Act the Collector finding that any person is in possession of any area of land in excess of the ceiling area cannot straightway proceed under Section, 38 of the Act; he has got to exhaust the procedure prescribed in Section 8. And, only in circumstances, where even after availing of that procedure he finds that he could not catch a person who was in possession of any area of land in excess of the ceiling area, he can proceed u/s 38 of the Act against such a dishonest person. I shall illustrate my point of view by giving two examples. Suppose in a case where a person filed a return u/s 6 of the Act but with incorrect particulars, stuck to those particulars even after service of notice u/s 8 of the Act and the Collector comes to find that the particulars given by him were incorrect and he was in possession of an area in excess of the ceiling area, undoubtedly against such a person he would be entitled to follow the procedure of summary acquisition engrafted in the 38th Section of the Act. Take another instance. A person failing to file return u/s 6 and in spite of imposition of fine under Sub-section (2) of Section 8 or even without the imposition of fine fails to file a return in response to the notice under Sub-section (1) of Section 8 and if in such a case also the Collector finds that the person was in possession of land in excess of the ceiling area, he may proceed against such a person u/s 38. In both these examples, it would be noticed that dishonest intention of the person would be apparent, and only in such cases the legislature seems to have provided this future penalty under Sub-section (2) of Section 38 to give him half the rate of compensation admissible under Sub-section (1) of Section 23 in respect of the land acquired by the process of summary acquisition. I am not prepared to accept the argument put forward by the learned Advocate-General that for mere failure of a person to file return u/s 6 and if the person is found to possess any area of land in excess of the ceiling area, the Collector has the power to proceed under Sub-section (1) of Section 38

of the Act. He conceded and, in my opinion, rightly that if action is taken u/s 8 (1) and thereafter there is an honest compliance or compliance bona fide by the land-holder with the requirement of Sub-section (1) of Section 8 then the Collector has no power to take recourse to Section 38. And, if in all cases where a land-holder has not submitted return u/s 6 the Collector has to cause a notice to be served on him under Sub-section (1) of Section 8; he cannot straightway take action u/s 38 without following that procedure. That being so, the power of the Collector to take action u/s 38 must be circumscribed within the limits stated by me earlier in this judgment. The opinion tendered to the State Government as evidenced by their letter (annexure 8) making a distinction between a land-holder against whom action has been taken u/s 8 and one against whom no such action has been taken is not correct and must be overruled. It would bear repetition to say that for mere failure to file a return u/s 8 a severe penalty over and above the penalties provided in Section 6 (4) and Section 36 was not intended to be imposed under Sub-section (2) of Section 38 of the Act.

15. For the reasons stated above, I hold that annexure 1 in all the three cases is ultra vires and illegal and must be quashed. The order of the Collector contained in annexure 3 taking the view that Section 38 empowers him under the Act to take action after the expiry of the period prescribed in Section 6 in all and sundry cases is not correct. The said order also must be quashed.

16. In the view I have taken above, I do not propose to decide in this case that the action taken by the Collector as evidenced by annexure 7 being based merely upon the Government letter (annexure 8) is fit to be quashed because it was not an independent action taken by the authority but was under coercion of the Government. In passing, however, I may observe that the Government letter had merely drawn the attention of the Collector to the position of law on the basis of the advice tendered to them. Only on that account, the action of the Collector could not be held to be illegal. Be that as it may, for the cogent reasons which have been given earlier in this judgment, annexures 1 and 3 have got to be quashed.

17. All these three cases, are, therefore, allowed. The notice issued by the Collector (annexure 1) in all the cases and his order dated 30-11-1970 contained in annexure 3 are quashed as being ultra vires and void. It would be open to the Collector to proceed against the petitioners u/s 8 of the Act and thereafter if necessary and if he can take action u/s 38 of the Act as interpreted in this judgment, he may proceed to do so. I shall make no order as to cost in any of the cases.

Sarwar Ali, J.

18. I agree.