
(1969) 03 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jur. Case No. 359 of 1968

Bishwanath Kedia and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-1969

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4, 4A

Citation : AIR 1971 Patna 281 : (1969) 17 BLJR 962

Hon'ble Judges : N.L. Untwalia, J;B.N. Jha, J

Bench : Division Bench

Advocate : Balbhadra Pd. Singh, B.P. Rajgarihia and S.K. Sharan, for the Appellant; Tara Kant Jha, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners in this writ application claim that their father had taken settlement of about 200 acres of land in the district of Champaran from the Ramnagar Raj in the year 1944 in respect of which a registered deed of lease was executed on the 18th of May, 1947, proceedings were started against the petitioners' father u/s 4(h) of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950 hereinafter called "the Act"). The proceedings were dropped by the Deputy Collector in-charge Land Reforms by his order dated 22-10-1963, a copy of which is Annexure 3 to the writ application. He did not annul the settlement. An appeal was taken to the Collector. According to the petitioner's case, it was filed much beyond the prescribed time. The Collector allowed the appeal by his order dated 14-6-1967, copy of which is annexure 6 to the writ application. He annulled the settlement u/s 4(h) of the Act. His order eventually was confirmed by the State Government under the Second Proviso to Clause (h) of Section 4 of the Act on the 23rd of January, 1968, a copy of which order is annexure 7 to the writ application. The petitioners, in the meantime, however, had moved the Commissioner asking him to exercise his power u/s 4-A of the Act in July, 1967.

A copy of the order-sheet of the revision case before the Commissioner is

annexure 8 to the writ application. It shows that the revision was admitted on 22-12-1967 and further proceedings in furtherance of the order of the Collector were stayed. While admitting the case, the Commissioner had fixed 22-3-1908 as the date in it. On this date when the case was taken up, a letter from the Deputy Secretary to the Government in the revenue department, which was placed before the Commissioner, showed that the Government had already passed orders confirming the order of the Collector u/s 4 (h) of the Act annulling the settlement of the land. Upon this the Commissioner took the view:--

"After the order of the State Government it is not open to the Commissioner to review the orders of the State Government. Section 4-A applies to those cases which have not been referred to State Government but which have been decided by the Collector, cases which are pending in proceedings and not approved by the State Government. The remedy for the petitioner now lies before the High Court."

The petitioners have accordingly moved the High Court under Articles 226 and 227 of the Constitution and have attacked the order of the Collector annulling, the settlement on several grounds stated in the petition. We, however, did not examine on merits any of the grounds or the propriety or the legality of the Collector's order. We think that the learned Commissioner has failed to exercise his power u/s 4-A of the Act on an erroneous view of the law. His revisional power undoubtedly is discretionary. He may refuse to exercise the power on one ground or the other, but to say that it is not open to him to exercise his revisional power u/s 4-A after the order of the State Government is not correct.

2. Section 4 (h) of the Act provides as follows:

"The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector, may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable.

Provided that an appeal against an order of the Collector under this clause If preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure:

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

The order annulling a transfer can be made by the Collector but it shall not take effect nor shall possession be taken in pursuance of it, unless such an order has been confirmed by the State Government. The power of revision conferred upon the Commissioner u/s 4A is not limited to those cases where the matter has been decided by the Collector but order of confirmation has not been made by the State Government. The power as conferred u/s 4-A is wide enough to take within its ambit both kinds of cases, one where the order of confirmation has been made by the State Government and obviously the other where such an order has not been made. No time limit has been fixed for exercise of power u/s 4-A, or for initiation of proceeding under the said provision of law either under the Act or under the Rules framed thereunder. If it were to be held that the Commissioner cannot make his report under Clause (b) of Section 4-A of the Act in a case where the order of confirmation has been made by the State Government, the provision contained in the said clause will be redundant and meaningless.

On a true interpretation of the two provisions, the one contained in the Second Proviso to Section 4 (h) and the other in Clause (b) of Section 4-A, the only reasonable conclusion is this. The Commissioner in a proceeding under Clause (h) may report the matter for orders of Government, and in a case where the Government has not passed any previous order of confirmation or was not required to pass one, may pass an order annulling the settlement on the report of the Commissioner, and in a case where such an order has already been passed, it may review or revise its own order, if it thinks fit to do so, on a consideration of the report made by the Commissioner under Clause (b) of Section 4-A of the Act. Supposing an order of confirmation is made by the State Government in a day or two, of the passing of the order of the Collector annulling a settlement, it is difficult to hold that the Commissioner cannot have any say in the matter u/s 4-A of the Act. On the other hand, he may differ from the view of the Collector, make his own report to the State. Government may feel persuaded to revise or review its previous order of confirmation and refuse to confirm the order of annulment made by the Collector. This seems to be the purport of Section 4-A introduced by the Bihar Act XVI of 1959.

3. As we have said above, we do not think it necessary or advisable to say a word about the merit of the petitioners' case one way or the other, as we think that the Commissioner by taking an erroneous view has refused to apply his own mind to the matter and has thereby refused to exercise his jurisdiction u/s 4-A of the Act. The matter must, therefore, go back to him for passing such order as he thinks proper to pass in the light of our decision or for making such report to the State Government as he thinks fit and proper to make.

4. In the result, the application is allowed and in exercise of the authority of this Court under Article 227 of the Constitution, the order of the Commissioner dated 22-3-1968 is set aside. The case is remitted back to him for a fresh disposal in the light of the observations made above. There will be no order as to costs.