

(1999) 08 PAT CK 0055
In the Patna High Court
Case No : C.W.J.C. No. 8512 of 1991

Chandra Shekhar Bhattacharya and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 27

Citation : (1999) 3 BLJR 2137 : (1999) 3 PLJR 341

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Judgement

N. Pandey, J.—This writ petition has been filed for appropriate writ/ order to quash the order of the Deputy Commissioner, Dumka, dated 30-8-1991 in Revenue Misc. Appeal No. 21 of 1991-92 whereby and whereunder, the further proceeding in Settlement Case No. 26 of 1985-86 was stayed.

2. It appears a ceiling case was initiated against Annapurna Devi and ultimately at the stage of final publication certain lands were declared surplus. Petitioners having learnt about the final publication and since no opportunity was given to them by the authority, filed C.W.J.C. No. 1316 of 1984, which was disposed of on 9-3-1984 directing the authorities to consider the objection of the petitioners filed u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, in short "Ceiling Act". The authorities were directed to decide whether petitioners were the real land-holders as claimed? Since by the time, the petitioners could file objection u/s 10(2) of the Ceiling Act, the ceiling case was finally disposed of, Appeal No. 26 of 1984-85 was preferred before the Deputy Commissioner but the same was dismissed on 2-4-1985. Faced with such situation, petitioners filed another writ application bearing C.W.J.C. No. 2922 of 1986, which was disposed of on 31-7-1986, reiterating the previous decision with a direction to the authorities that the objection filed by the petitioners u/s 10(2) must be entertained and decided in their presence after hearing. The authorities were also required to decide whether the petitioners were the real land-holders

or there are some other persons. It was further directed that so long objection of the petitioners is not dealt with on merit in accordance with law, lands in question shall not be distributed, if not already distributed.

3. It would appear that in view of the above direction, the matter was ultimately taken up by the Sub-Divisional Officer, Jamtara and after hearing the petitioners and other relevant parties including the previous settlees (respondents No. 4 to 23) the objection of the petitioners was allowed holding them the real land-holders. It was also held that since the land-holders were entitled for six units of 30 acres each, therefore, they would require 180 Acres as a whole. But the total area of the land involved in the ceiling case was only 69.16 Acres, therefore, there was no surplus land. Accordingly, he ordered for cancellation of Purcha and restoration of possession over such lands to the land-holders.

4. The above-mentioned order was not challenged on behalf of the State Government either in appeal or revision. But an appeal was preferred by the respondent/settlees before the Deputy Commissioner, Dumka. It further appears that on 30-8-1991 the Deputy Commissioner stayed the further proceedings.

5. The main grievance of the petitioners is since no appeal or revision was ever filed by the State Government against the final order u/s 10(3) of the Ceiling Act, whether the appeal filed on behalf of the respondents/settlees will be maintainable and whether in absence of any statutory provision under the Act or Rules framed thereunder, against the order of cancellation of settlement of the land, the Collector will have jurisdiction to entertain appeal against such an order ?

6. Undisputedly by an order dated 22-3-1991, the petitioners u/s 10(2) of the Act and having found that the land-holders had no surplus land, set aside the settlement made earlier in favour of the respondents/settlees. This also appears not in dispute that the aforementioned order u/s 10(3) was not challenged on behalf of the State Government nor there appears any dispute that respondents No. 4 to 23) were settled some of the lands u/s 27 of the Act by the Collector. But, when on the direction of the High Court the objection of the petitioners u/s 10(2) was considered, it was ultimately found that the land-holders had no surplus land. Therefore, the order of the Sub-Divisional Officer to that extent became final so far against the settlees are concerned, since they had no right to question the validity of that part of the order. It was only the State Government entitled to file appeal u/s 30 of the Act.

7. The next question is whether the appeal filed on behalf of the respondents/settlees would be maintainable against that part of the order of the Sub-Divisional Officer, whereby, their settlements were cancelled. It is well known that after due observance of the necessary formalities of acquisition and payment of compensation, etc. of the surplus land, steps for disposal, of such lands are taken by the Collector under Chapter IX in terms of the provisions of Section 27 of the Act. As per Sub-rule (I)(ii) of Rule 44 of the Bihar Land Ceiling

Rules, 1963 an appeal against the order of settlement of the land passed by the Collector shall lie to the Additional Collector or the Collector of the District and a revision to the Commissioner of Division, whose order thereon shall be final. Therefore, the person aggrieved against the order of settlement shall have a remedy of filing appeal before the Additional Collector or the Collector of the District, as the case may be. But there is no such express provision either under the Act or the Rules authorising the Additional Collector or the Collector of the District to entertain appeals against the order of cancellation of settlement.

8. As per Section 30 of the Act, an appeal shall lie against any final order passed by any officer vested with the power of the Collector under this Act other than the Collector of the District to the Collector of the District or any other officer specially authorised in this behalf by the State Government, As per the first proviso of Section 30, no appeal shall lie against the orders passed under Sub-section 5 and Section 29 before the final publication of the draft statement under Sub-section (1) of Section 11 of the Act. As noticed above, Section 27 enables the Collector under the Act to dispose of surplus land, subject to other provisions of the Act. Therefore, in my view, in absence of any provisions under Rule 44, against an order of cancellation of settlement, an appeal would certainly be maintainable u/s 30 of the Act.

9. That apart, even applying the interpretation of the provisions of the General Clauses Act, power conferred on an authority to hear appeal under Rule 44 against the order of settlement may include the power to hear appeals against an order of cancellation of the settlement.

10. I, therefore, hold that the appeal filed by the respondents against the order of cancellation of Purcha is maintainable before the Collector of the District to that extent only. But as held above, these respondents will have no right to question the validity of the order of the Sub-Divisional Officer passed u/s 10(3) of the Act, since it is the State Government only which is entitled to maintain such appeal.

11. As a result of such finding, the writ application partly succeeds. The Deputy Commissioner, therefore, shall confine the hearing only to the extent whereby, Purcha was cancelled by the Sub-Divisional Officer. With the aforesaid directions/ observations this writ application is, thus, disposed of.