
(1989) 09 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 540 of 1983 (R)

Chintamani Sharan Nath Sahadeo

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 30, 31A
Constitution of India, 1950 — Article 226

Citation : AIR 1990 Patna 165

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Advocate : B.C. Ghosh, L.N. Deo and S. Prakash, for the Appellant; R.B. Mahto, General and S.B. Gadodia, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Satyeshwar Roy, J.—Petitioner has prayed for issuance of appropriate writ for quashing annexure 9 order dated 14-3-1983 by which respondent No. 2, Member Board of Revenue, directed that compensation case of the petitioner under the Bihar Land Reforms Act, 1950 (the Act for short) be re-opened and the petitioner be noticed to refund the excess compensation of Rupees twentyfive lakhs eightyseven thousand and three hundred paid to him. The petitioner has also prayed for quashing annexure 10, notice dated 23-3-1983 issued by respondent No. 3, Deputy Commissioner, asking the petitioner 10 refund the aforesaid sum. The petitioner filed an application on 4-10-1983 for amendment of the writ petition and in that he challenged the validity of the certificate case levied for recovery of the amount. That was allowed. The validity of the certificate case No. 6 M of 1983-84 is also under challenge.

2. The admitted facts are that the petitioner is a proprietor within the meaning of the Act. His interest in the estate including the subsisting tease of mines and minerals, under which he was the lessor, vested in the State of Bihar. A proceeding for payment of compensation to the petitioner was initiated under

Chapter-V of the Act. That was registered as Compensation Case No. I/R/8 of 1951-52. Assessment roll dated 12-6-1978 was finally published u/s 28 of the Act for a sum of Rupees four lakhs twentyfive thousand five hundred twentyseven and paise fifty as evidenced by annexure A to the counter affidavit filed on behalf of the respondents. Payment was made u/s 32 of the Act to the petitioner in the form of bond and he accepted it.

3. On an application filed by the petitioner (annexure 4) assessment roll was revised and a fresh roll was prepared on 3-11-1979, copy of which is annexure 5 to the writ petition and total compensation assessed was Rs. 46,66,014,76 calculated at three times net annual income. This included the amount of Rupees four lakhs and odd as shown in annexure A. This amount in the form of bond was also received by the petitioner.

4. The petitioner made a grievance to the Additional Secretary, Revenue, by annexure 7. By letter dated 12-7-1980, Revenue and Land Reforms Department, Patna, by annexure 6 enquired about it from respondent No. 4. Respondent No. 4 informed the petitioner that he should file affidavit if he, i.e. the petitioner, was ready and willing to accept the compensation for mines and minerals at the times of the net income. He did it. The case was again revised, compensation was assessed on that basis and paid to the petitioner. Respondent No. 2 suo motu re-opened the compensation case of the petitioner and by the order as contained in annexure 9 held that the compensation so computed was contrary to Section 25(4). He directed for issuance of notice to the petitioner for refund of the excess amount paid to him erroneously and in pursuance of that, as noticed above, annexure 10 was issued to the petitioner. This was followed by a certificate case.

5. Although in the writ petition, the petitioner stated that he accepted under protest the assessment of compensation both the first one as evidenced by annexure A and the second one as evidenced by annexure 5. the respondents in the counter-affidavit have seriously disputed this.

6. Before I proceed to examine the provisions of the Act and the contentions of the parties, I may notice that the validity of annexure 9 was also challenged on the ground that respondent No. 2 had no jurisdiction to pass the order.

7. It was urged on behalf of the petitioner by Mr. Ghosh, learned counsel that under the Act there is no provision which empowers respondent No. 2, Member Board of Revenue, to interfere with the order passed by the Compensation Officer under the Act and if the State was aggrieved by the order of the Compensation Officer, it should have sought remedy by filing an appeal. On behalf of the respondents, it was submitted that the Board of Revenue constituted under the Bihar and Orissa Board of Revenue Act, 1913, has power of superintendence in all matters where the revenue of the State is concerned.

8. In the facts and circumstances of this case, I am of the opinion that it is not necessary to decide the question whether the Board of Revenue, although nowhere mentioned in the Act, in exercise of his power of superintendence, may

interfere with the order passed under Chapter-V of the Act.

9. Petitioner has tried to make out a case that at all stages he had taken objection before the Compensation Officer that the corripension on account of mines" and minerals on the basis Of royalty as provided u/s 25(4) of the Act was hot correctly prepared. In original Sub-section (4) of Section 25 there were five clauses, namely, (a) to (e) and the two clauses on which the petitioner relied and are relevant were Clauses (a) and (b) which read as follows:

"(a) where the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement;

(b) where no such agreement is reached within the prescribed period, the Compensation Officer shall refer the question of the determination of the amount of compensation to a Mines Tribunal appointed u/s 12."

10. Admittedly, by Bihar Land Reforms (Amendment) Act, 1974, Sub-section (4) was amended. According to the petitioner by the amendment the original Clauses (a) and (e) were not deleted but retained and some new provision added. According to the respondents, the original Sub-section (4) was substituted by a new provision and original Clauses (a) and (e) were delated. The State Government itself is responsible for creating confusion with regard to the nature of amendment made in Sub-section (4) by the Amendment Act of 1974. In 1976 Edition of the Act published by the Government of Bihar, not only what was introduced by the Amendment Act of 1974 was printed, but the original Clauses (a) to (e) of Sub-section (4) were also printed. Since this was a Government publication, a citizen will bona fide believe that by the Amendment Act of 1974, original Clauses (a) to (e) of the Act were retained. Relying on 1976 Government publication of the Act, this was the stand taken by the petitioner. During the course of hearing. learned Advocate General produced for perusal a photo copy of the Bihai Gazette to show the amendments introduced in the Act by the Amendment Act of 1974. From perusal of copy of the gazette it appeared that subsection (4) of the Act was substituted as fo llows:

(4) After the net income from royalties has been computed under Sub-sections (2) and (3), the Compensation Officer shall proceed to determine the amount of compensation to be payable to the intermediary in accordance with the rates prescribed under Sub-section (1) of Section 24". The original Clauses (a) to (e) were thus deleted.

In 1978 when the first assessment roll as contained in annexure A was prepared, Clauses (a) and (b) to Sub-section (4) of Section 25 which have been quoted above and on which the petitioner relied were not on the statute book.

11. Some other provisions of Chapter V which are relevant in this case are also required to be noticed. Section 26 is preliminary publication of Compensation Assessment Roll. This provides for inviting objection. The Compensation Officer after considering the objection, if any, is required to pass such order considered

fit. Section 27 provides for appeal against that order. After disposal of all objections and appeals and after making alteration, if any, in view of the objection or order on appeal, the Compensation Officer, shall cause such roll to be finally published. Section 30 provides for correction by Compensation Officer of bona fide mistakes. Section 30A provides for fresh preparation of compensation assessment roll where new interests are discovered. Chapter VI deals with payment of compensation. Section 32 of it is "Manner of payment of compensation" which provides that payment will be made only after the expiry of the period of appeal and if any appeal had been preferred, after disposal of such appeal. During his submission, Mr. Ghosh relied on Sections 30 and 30A in support of his argument that the preparation of fresh assessment roll in this case could be done in terms of these Section. It is necessary to quote them:

"30. Correction by Compensation Officer of bona fide mistakes.-- (a) A Compensation Officer may, on application or of his own motion, at any time before payment of compensation in accordance with a Compensation Assessment roll u/s 32 correct any entry in the Compensation Assessment roll as finally published in respect of any intermediary to whom such Compensation Assessment roll relates or any entry in such Compensation Assessment roll which he is satisfied has been made owing to a bona fide mistake or is necessary as a result of succession to or transfer of the interest of an intermediary or any other person whose name appears in such roll as a person entitled to compensation:

Provided that no such correction shall be made if an appeal affecting such entry has been presented u/s 27.

(2) No correction of any entry in the Compensation Assessment roll as finally published in respect of any intermediary to whom such Compensation Assessment roll relates shall be made under Sub-section (1) unless the Compensation Officer has first published a draft of such correction and sent by registered post, with acknowledgment due, a copy of such draft to the intermediary to whom such correction relates and has finally published such correction after considering and disposing of any objections which may have been made to any such correction in the manner provided in the last four preceding sections."

"30A. Fresh preparation of Compensation Assessment roll where new interests are dis-covered.-- Where the Compensation Assessment roll of an intermediary in respect of his interests which have vested in the State has been prepared and finally published under the provisions of this Act, and where subsequent to the final publication of such Compensation Assessment-roll it is discovered that further interests of such intermediary have vested in the State, then, notwithstanding anything contained in this Act, the Compensation Officer shall prepare a fresh Compensation Assessment-roll u/s 19 or Section 25, after taking into consideration the total interests of such intermediary including the interests subsequently discovered in the manner provided in the last five preceding sections:

Provided that the amount of the compensation in the fresh Compensation Assessment-roll shall be reduced by the amount of any compensation which may have been paid to the intermediary before the preparation of such assessment roll:

Provided further that in case the amount of compensation which has been paid to the intermediary before the preparation of the fresh Compensation Assessment-roll exceeds the amount of compensation to which such intermediary would be entitled under the fresh Compensation Assessment-roll the excess amount shall be recoverable from the intermediary as a public demand."

12. According to the petitioner has accepted the assessment roll as evidenced by annexure A under protest; but that is not factually correct. In annexure A there is endorsement that copy of it was received on behalf of the petitioner by Akhouri Muneshwari Charan Lal on 5-7-1978 and this gentleman was authorised by annexure C by the petitioner to receive the compensation on his behalf. The assessment-roll was published in form "G" which included compensation for mines and minerals determined u/s 25 of the Act. The Deputy Commissioner signed annexure A on 12-6-1978 and on 16-12-1978 the petitioner filed affidavit in which, he, inter alia, stated that he had not received the final compensation. Photo copy of this affidavit is annexure B. Neither in annexure A nor in annexure B nor in annexure C, the petitioner stated that he accepted the compensation under protest. Once the petitioner had accepted the amount without any objection, he could not have claimed further compensation.

13. In paragraph 14 of the writ petition, it has been stated that the compensation in respect of "all (sic) were not included while preparing the Assessment Roll and they are Kanke, Lapung, Karra, Angara, Ormanjhi, Bishunpur and Thatartand Anchal". This is evidenced by annexure 4 dated 8-2-1979 in which it was stated that income from forest, Sairat in full etc. have not been added in the final compensation. Respondent No. 4 issued a letter dated 3-4-1979/5-7-1979 (annexure 3) to the petitioner to inform him the names of villages for which rent Sairat and income from Jungle had been committed. This annexure 4 appeared to have been filed by the petitioner u/s 30A of the Act, which as noticed above, provides for preparation of fresh compensation roll when, it is discovered that further, interest of such intermediary has vested in the State.

14. In paragraph 16 of the writ petition, he has stated that only a sum of Rs. 88,043/- was taken into account while preparing the assessment roll in respect of interest in mines and minerals leased out to different lessees and a case u/s 30A of the Act was filed by him. In annexure 4, there is absolutely no mention about his interest in mines and minerals. The statement in paragraph 16 with regard to mines and minerals, therefore, are not supported by annexure 4 or any other evidence. However, by annexure 5 compensation of Rupees fortysix lakhs and odd as noticed above was assessed on 3-11-1979. The petitioner filed two affidavits on 5-2-1979, copies of which are annexures B/1 and B / 2 to the supplementary counter-affidavit, in which, inter alia, he stated that any excess

amount paid to him would be recoverable when detected. He also wrote on 19-11-1979 by annexure B/3 to respondent No. 4 that "I have to say that I am not to file any objection against form "G" prepared in my name." It will thus be noticed that although there was no averment in annexure 4 with regard to nonpayment or less payment of compensation with regard to mines and minerals, the amount of compensation on this account of Rs. 203081.10 in annexure A was increased to Rs. 1108849.26 in annexure 5. Further, it will be noticed that although in the application as contained in annexure 4, there was reference of Section 30A which provides for preparation of fresh compensation assessment roll where it is discovered that further interest of intermediary have vested in the State, the definite case of the petitioner as appeared from annexure 4 and elsewhere that it was a case where there has been mistake in computation of assessment of intermediary interest which have already vested. The matter could not, therefore, have been re-opened by respondent No. 4. However, during the course of hearing learned Advocate General submitted that as at present advised the State has not questioned the validity of annexure 5,

15. The petitioner although received the amount as covered by annexure 5, after accepting its correctness he was not satisfied and made grievance to the State Government. By annexure 6 dated 15-7-1980 the Revenue Department noticed some discrepancies with regard to preparation of final assessment roll. Direction was given by the Revenue Department to respondent No. 4 to remove the discrepancies noticed therein after taking into consideration the different heads under which the petitioner was entitled to compensation and to resubmit the record to the State Government. When that was the situation, the petitioner wrote on 8th May, 1982, receipt of which has been seriously disputed by the respondents, stating inter alia, that as there was no agreement between him and the State he was entitled to compensation at the minimum rate of fifteen times of the net income. This the petitioner claimed on the basis of Section 25(4) as stood before amendment of 1974. He requested respondent No. 4 to act in terms of Section 30A of the Act. The petitioner thus wanted that assessment roll should be published for the 3rd time by the Compensation Officer in purported exercise of power u/s 30A of the Act.

16. I have already noticed that the petitioner accepted compensation messed for the first time as contained in annexure A. He accepted the fresh assessment roll as contained in annexure 5, again without any objection. Rather as noticed above, he categorically stated that he was not to file any objection, as evidenced by annexure B/3 dated 19-11-1979.

17. It will be noticed that the Compensation Officer may correct any entry in the final assessment roll u/s 30 before payment and if the entry has been made owing to bona fide mistake or as a result of succession to or transfer of the interest of an intermediary or any other person whose name appears in such roll as a person entitled to compensation. The last part of that section admittedly was not attracted to this case. Power u/s 30 can be exercised for correcting

clerical mistakes and for substituting the name of intermediary on the devolution of his interest. It does not authorise Compensation Officer to increase the compensation in the manner as has been done in this case. No correction of even bona fide mistake is permissible after payment

18. Section 30 A provides for preparation of fresh compensation assessment roll in case where it is discovered that further interest of intermediary has vested in the State. It is not the case of the petitioner that all his interest including his interest in mine's and minerals did not vest under the first notification dated 15-11-1951, i.e. the first vesting under the Act of the intermediary interests of the proprietor and tenure holders throughout Bihar. Since such interest of the petitioner vested in the State on 15-11-1951, the Compensation Officer had no jurisdiction to re-open the matter again and again on the pretext of exercise of power u/s 30A of the Act. If the petitioner was aggrieved by the draft assessment roll, he should have filed objection to it and if his objection was not entertained he should have filed an appeal u/s 27 of the Act. But once the assessment roll is finally published, the jurisdiction of the Compensation Officer is limited to correction of mistake of clerical nature or substitution of name of the intermediary and that also may be done before payment. Further, the provision of preparation of fresh compensation roll is confined only to cases where further interest of that intermediary vested in the State. In the facts and circumstances of this case, neither Section 30 nor 30A was attracted.

19. By order of respondent No. 3 annexure 8 was issued by respondent No. 4. Annexure 3 by which petitioner was informed that if he was ready and willing to accept the compensation for mines and minerals at ten times of net income, he should file affidavit to that effect, was without jurisdiction. The assessment and payment of compensation on the basis of that were also without jurisdiction.

20. It was submitted by Mr. Ghosh that as the intermediary interests of the petitioner vested in the State of Bihar on and from 15-11-1951, compensation assessment roll was required to be prepared in accordance with law as it stood on that day, i.e. on the basis of unamended Section 25(4). Reliance was placed by him on *Thakur Narain Singh Vs. State of Rajasthan*, . According to him the vested right of the petitioner could not have been taken away by the Amendment Act of 1974 as Amendment Act was not made retrospective.

21. In *Thakur Narain's* case (supra) the provision of Rajasthan Land Reforms and Resumption of Jagir Act, 1952 was the subject matter of consideration. There also the Jagirdar became entitled to compensation as his interest was resumed. The Supreme Court observed that the case of Jagirdar was required to be considered on the basis of the Act as it stood on the date of resumption. It held that:

".....The right of compensation vested in the Jagirdar on the date of resumption and he could not be deprived of his right by a subsequent amendment unless the amendment in law specifically or by necessary implication provided for depriving

the Jagirdar of his vested right".

22. In this case also as amended Section 25(4) was not given retrospective effect, the law as stood before the amendment must be held to be applicable to the case of the petitioner. But the case of the petitioner does not improve because of this. I have held that the petitioner before publication of annexure A or annexure 5 not only did not raise any objection, but he accepted in writing by annexure B/3 with regard to annexure 5 that he had no objection to the assessment. He received the compensation both under annexure A and annexure 5. This being the position, the applications of the petitioner under Sections 30 and 30A were not maintainable and the remedy for him was to file appeal.

23. It can be viewed from another angle. Unamended Section 25(4) provided that where the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement. If no agreement is reached, the Compensation Officer shall refer the question of determination of compensation to Mines Tribunal appointed u/s 12. I have already held that the petitioner accepted compensation as contained in annexure 5. The compensation under different heads including mines and minerals was computed at three times of the net income, and the petitioner accepted it without objection. Thus the offer of the Compensation Officer to pay compensation at three times of the net income and acceptance of it by the petitioner formed the agreement. It must, therefore, be held that compensation was fixed by agreement as provided in unamended Section 25(4) of the Act.

24. It was submitted by Mr. Ghosh that even if the order of respondent No. 3 was without jurisdiction, the proper remedy for the State was to file an appeal u/s 27 of the Act and as that was not done, it became final. He also urged that respondent No. 2 has no jurisdiction under the Act to interfere with any order passed by the Compensation Officer. According to him, since the rights and liabilities of the parties were created under the Act, the parties were required to seek relief before the forum provided in the Act. Respondent No. 2 is not the forum provided in the Act and the order as contained in annexure 9 was without jurisdiction. The order contained in annexure 9 was also challenged on the ground that it was passed without notice to the petitioner. Learned Advocate General submitted that respondent No. 2 had jurisdiction to interfere with the order suo motu. He urged that even assuming that he had not that power, this Court in its writ jurisdiction should not issue any writ in the nature of certiorari for quashing annexure 9 as by that order, order of respondent No. 3 which was illegal will be restored.

25. I have already observed that it was not necessary to decide the question whether respondent No. 2 in exercise of its power of superintendence could interfere with the order passed by respondent No. 3. I will proceed to dispose of the matter on the assumption that it had no jurisdiction. I have held that in this case, the order of respondent No. 3 was without jurisdiction. I assume, that the order of respondent No. 2 setting aside the order of respondent No. 3 was

without jurisdiction. Both the orders were without jurisdiction.

26. In Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, , similar situation had arisen. An application u/s 43 of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 was filed before the Prescribed Authority by the landlord for eviction of the tenant. The tenant resisted that application on the ground that as the earlier suit filed on the basis of permission had been dismissed, this second application was not maintainable. The Prescribed Authority upheld the objection of the tenant and rejected the application of the landlord holding that it was not maintainable. Against the order of the Prescribed Authority, the landlord filed an appeal before the District Judge and the District Judge allowed the appeal by setting aside the order of the Prescribed Authority. The tenant moved the High Court. The High Court held that the landlord had right to file second application. The contention of the tenant that no appeal lay from the decision of the Prescribed Authority to the District Judge was accepted by the High Court. Yet the High Court declined to interfere with the order of the District Judge as the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. The Supreme Court held that the Prescribed Authority was clearly in error in up-holding the objection of the tenant. In these circumstances the Supreme Court observed as follows:

"Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

27. Even if the order of respondent No. 2 was without jurisdiction, since it has corrected the order which was also improper and invalid and as justice has been done and improper order of respondent No. 3 has been set aside, I decline to exercise my discretion in favour of the petitioner, because if I set aside the order as contained in annexure 9 that will revive the invalid and improper order passed by respondent No. 3.

28. In the facts and circumstances of the case, and for the reasons recorded above, the writ petition is dismissed but without costs.