
(1996) 09 PAT CK 0048
In the Patna High Court
Case No : C.W.J.C. No. 5109 of 1996

Choudhary Azizul Hassan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Citation : (1996) 09 PAT CK 0048

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has challenged the order dated 6th February, 1996 passed by the respondent No. 1 State of Bihar through the Minister In-charge, Revenue and Land Reforms, Patna whereby in purported exercise of power conferred u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the "said Act"), the State Government reopened the land ceiling proceeding being L.C. Case No. 579 of 1992-93 and remitted the proceeding to the respondent No. 2, Collector, Katihar for proceeding further in the matter.

2. Earlier to this writ application, the petitioner had challenged the order dated 18th February 1993 passed by the Collector, who after setting aside the order passed by the Additional Collector, Ceiling, Katihar noticed the petitioner directing him to appear and show cause as to why a proceeding u/s 18 of the said Act be not initiated.

3. This case has been heard at length at the admission stage and with the consent of the parties, the same is being disposed of by this order.

4. The facts of the case lie in a very narrow compass. A ceiling proceeding being Ceiling Case No. 99 of 1973-74 was initiated against Chaudhary Abid Hussain, father of the petitioner and a draft statement u/s 10(2) of the said Act was issued showing that he had held 264.61 acres of Class-II, III and IV and equivalent to 262.68 acres of Class-IV land against which father of the petitioner had filed objection which was finally disposed of vide order dated 10th April 1976

whereby the Additional Sub-divisional Officer, Katihar held that the land-holder held 106.09 acres of Class-III land and declared surplus land by publication of final draft statement u/s 11 (1) of the said Act. According to the petitioner, in fact no final draft statement u/s 11 (1) of the said Act was published prior to 9.4.1981 when Section 32B of the said Act was introduced by Bihar Act No. 55 of 1982. However, since the land-holder voluntarily surrendered 104.32 acres of land, the same were acquired by Notification issued in the District Gazette. It appears further that a separate proceeding being ceiling case No. 97 of 1973-74 was initiated against the petitioner and a draft statement u/s 10(2) of the said Act showing that the petitioner held 47.64 acres of land against which he filed objection u/s 19 (3) of the said Act which was finally disposed of vide order dated 26th February, 1976 passed by the Additional Sub-divisional Officer, Katihar who did not find surplus land and accordingly the proceeding was closed. After coming into force of Section 32B of the said Act, a fresh draft statement u/s 10(2) of the said Act was issued under the signature of the Additional Collector on 16th March, 1989 showing that the land-holder held 691.65 1/2 acres of land and after allowing one unit, 673.45 acres were shown as surplus. Before a copy of the draft statement u/s 10(2) of the said Act could be served upon Chodhary Abid Hussain, he died on 7th October, 1989 and thereafter a copy of the draft statement was sent to the petitioner. Later on, on the prayer made by the petitioner, his two sisters were also made party to the proceeding and notices were issued to them. It was stated that the petitioner along with his two sisters was heard by the Additional Collector who vide order dated 25.7.1991 held that the petitioner inherited 44.7 1/2 acres of land from his father and mother and thus after clubbing the said 44.7 1/2 acres along with his 12.73 acres of land declared 56.80 1/2 acres of land as surplus and accordingly, direction was given to prepare a final draft statement. Similarly some lands of the two sisters were declared surplus by the Additional Collector. Pursuant to that direction, a final draft statement u/s 11 (1) of the said Act was published in the District Gazette on 5th October, 1991 in the name of the petitioner and his two sisters and subsequently a Notification u/s 15(1) of the said Act acquiring 38.53 acres of surplus land was also published in the District Gazette. Petitioner's further case was that the proceeding before the Additional Collector was vehemently contested by the State of Bihar and no appeal, revision or any other application was filed challenging the order dated 25th July, 1991. It was further stated that the Additional Collector excluded some land belonging to Bibi Kaniz Fatima, land held the Wakf Estate and the land surrendered by the petitioner and also the land held by the third party measuring 106.39 acres. According to the petitioner although the proceeding was concluded by the Additional Collector but the petitioner received a notice dated 22.2.1993 asking him to show cause as to why a proceeding u/s 18 of the said Act be not initiated. The said notice was allegedly issued on the basis of order dated 18.2.1993. The petitioner challenged the aforesaid notice by filing a writ petition in this Court being C.W.J.C. No. 2453/93, for declaring that the said notice issued to the petitioner was a nullity as the same was passed without any notice to the petitioner. In the said writ

application, a counter affidavit was filed on behalf of respondent State stating therein that an order dated 20th March, 1993 was passed order dated 20th March, 1993 passed in terms whereof the order dated 18th February, 1993 was amended to the effect that the said notice will be deemed to have been issued u/s 45B of the said Act. In the said counter affidavit it was further contended that the respondent Collector took bold step in unearthing a racket with respect to the land of petitioner as a large number of land has wrongly been exempted from the ceiling proceeding by the Additional Collector in collusion with the land-holder petitioner. The respondent State further contended in the counter affidavit that the then Additional Collector committed fraud in granting exemption and about 106 bighas of land situated in MAUZA Narkatiakothi of Purnea district and 58.11 acres of land of Purnea East Circle belonging to the petitioner had deliberately not been included in the ceiling proceeding. The authority of the Additional Collector to initiate a proceeding and to pass order was also challenged by the respondent State as nullity inasmuch as he was not authorised to initiate the proceeding. The earlier writ application was heard at length by a Division Bench of this Court and this Court by judgment and order dated 29th September, 1993 allowed the writ application in part holding that before the impugned order was issued by the Collector for reopening of the proceeding u/s 45B of the said Act no notice was given to the petitioner and also the petitioner was not heard. this Court further held that instead of Collector, the State Government should examine the matter afresh for the purpose of consideration as to whether the proceeding shall be directed to be reopened in exercise of its powers Section 45B of the said Act or not. The State Government accordingly considered the matter and after giving full opportunity to the petitioner and after hearing the parties passed the impugned order dated 6.2.1996 holding that it was a fit case to be reopened u/s 45B of the said Act and, therefore, the matter was remitted to the Collector, Katihar to proceed under that provision. This impugned order dated 6th February, 1996 is the subject matter of this writ application.

5. Mr. Faruque Ahmad Khan learned Counsel appearing on behalf of petitioner made very aggressive argument challenging the impugned order passed by the Minister In-charge, Revenue and Land Reforms as being illegal and without jurisdiction. The learned Counsel submitted that the State Government has no jurisdiction to sit in appeal against the order dated 25th July, 1991 passed by the Additional Collector who was vested with the power of Collector under the said Act, particularly on the failure of the State Government to file an appeal or revision against the said order. The learned Counsel further submitted that the proceeding could not have been- reopened u/s 32B of the Act, as the order for publication of the final draft statement u/s 11 (1) of the said Act was passed by the Additional Sub-divisional Officer, Katihar vide his order dated 10th April, 1976. It was submitted that the State Government failed to consider the specific case of the petitioner that in pursuance of the order dated 10th April, 1976 the final draft statement u/s 11 (1) of the said Act was published and, as such, the proceeding stood abated and was rightly started afresh from the stage of Section

10 of the said Act. The learned Counsel put heavy reliance on a decision of this Court in Harendra Prasad Singh Vs. State of Bihar and Another, .

6. On the other hand Mr. B.P. Verma, S.C. (Ceiling) submitted that by the impugned order the State Government merely directed the Collector to reopen the proceeding u/s 45-B of the said Act on being satisfied by the prima facie evidence that the petitioner obtained the order in his favour in collusion with the Additional Collector. The learned Counsel submitted that the power u/s 45-B of the said Act is much wider and the proceeding can be re-opened if there is a prima facie evidence available on the record. The learned Counsel referred to various documents available on the record and submitted that after the objection filed by the petitioner u/s 10(3) of the said Act was finally disposed of by the Additional Sub-divisional Officer, Ceiling, Katihar on 27th February, 1976 some complains Were made before the District Collector, Katihar that the land-holder was having more than thousand acres of land but same was not included in the ceiling proceeding, in stead the record of ceiling proceeding was missing and instead of reconstructing the record of the ceiling case, the then Additional Collector proceeded further in the matter and issued a fresh draft statement showing 698.65 1/2 acres of total land of the land holder out of which the land holder was found entitled for one unit. The learned Counsel submitted that the Additional Collector illegally proceeded in the matter and excluded more than 400 acres of land from the ceiling proceeding. It was further submitted that in view of the apparent illegality and fraud, committed by the petitioner, the District Collector passed an order on 18th February, 1993 asking the land holder to show cause as to why a proceeding u/s 18/45B of the Act should not be initiated. The learned Counsel lastly submitted that the impugned order was passed by the respondent No. 1 only after being satisfied that the petitioner succeeded in excluding more than 200 acres of land from the ceiling proceeding. The learned Counsel placed reliance on two decides i.e. in the case of Thakur Shaligram Singh Vs. The State of Bihar and Others and Mrityunjay Narain Mishra v. The State of Bihar and Ors. 1994 (1) BLJ 559.

7. As stated above in the earlier writ application, the same question was involved as to whether the Collector has power to re-open the proceeding u/s 45B of the Act, as the petitioner had challenged the authority of the Collector who issued the notice calling upon the petitioner to show cause as to why a proceeding u/s 45B of the said Act should not be initiated. this Court in the said judgment held as under.

Para-13: In this situation, the Collector of the District could, in his wisdom direct that a proceeding would be reopened. This aspect of the matter has recently been considered by a Division Bench of this Court in Mrityunjay Narain Mishra v. The State of Bihar, C.W.J.C. No. 8843 of 1991 wherein it has been held that although the jurisdiction u/s 45B of the Act should be exercised upon receipt of new material or new information but the said power can also be exercised if it is found that a fraud has been practised upon the Court or mandatory provisions of

law have been violated in passing the order.

Para-14: In this case, according to respondent No. 2, the Addl. Collector (Ceiling) had no jurisdiction which he had usurped and passed orders in favour of the land-holder in collusion and in conspiracy with each other. If this be the factual position, in our opinion, there cannot be any doubt that the Collector of the district could exercise his jurisdiction u/s 45B of the Act.

Para 17: In this case, the Collector has, inter alia, come to a prima facie finding that the Additional Collector Ceiling, passed orders in favour of the land-holder with a view to favour the petitioner.

Section 45 B of the said Act reads as under:

Section 45-B: State Government to call for and examine records- The State Government or the Collector of the district, who may be authorised in this behalf may at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be re-opened and disposed of afresh in accordance with the provisions of the Act.

The scope and power of the Collector or the Government u/s 45B of the said Act has been questioned in several cases which came for decision by this Court. The main thrust of the argument of Mr. Ahmad was that when the whole matter was gone into in detail earlier by the Additional Collector and the matter was finally concluded, then the same cannot be re-examined and reviewed and, therefore, the order of the State Government in re-opening of the ceiling case was wholly illegal and without jurisdiction. I find no substance in the submission of Mr. Ahmad. Section 45B of the said Act is the special provision conferring special power upon the State Government and the Collector. It is enacted specially to do away with any challenge on the ground of res judicata. Once the statute empowers a matter to be examined afresh, it is patent that the principle of res judicata can have no application. This view was taken by a Division Bench of this Court in Harishchandra Singh and etc. Vs. State of Bihar and Others, wherein the Division Bench held as under:

Para-7: The submission that the State is estopped from re-opening the matter afresh, I regret, has only to be charm in any particular expression. Section 45B of the Act completely nullifies any plea of Res Judicata, estoppel or review by permitting reopening of any disposed of case and dispose of the same case afresh.

8. In Harihar Singh Vs. State of Bihar and Others, , a Division Bench of this Court, while considering the scope of Collector's power has gone to the extent by holding that the power can be exercised if on the basis of reports of the case it appears that the proceeding had not been conducted or concluded in accordance with the provisions of the Act. Their Lordships observed as under:

Para-8: Neither of the decisions supports the petitioner's case that there must be a new material before the authorities for re-opening a disposed of proceeding.

Possession of a new material may be relevant ground for reopening a proceeding but it cannot be the sole ground. On the other hand, in the case of Surendra Nath Ghosh and Anr. v. The State of Bihar and Anr. 1983 PLJ 18 it was held that this power could be exercised, if on the basis of the reports of the case it appears that the proceedings had not been concluded in accordance with the provisions of the Act.

Para-9: The power conferred on the Collector under this provision appears to be very much similar to that conferred u/s 397 of the Code of Criminal Procedure, upon the High Court and the Sessions Judge to call for and examine the records of any proceeding of the inferior criminal court under their jurisdiction in order to correct the miscarriage of justice arising from misconception of law, irregularity of procedure and the like. It is true that in exercise of such a power, the court cannot make a fishing enquiry or look in to see under a fair record there lie some traces of possible error. But at the same time the purpose of conferring such power is to secure setting right of patent error or defect, no doubt.

9. In Mahanth Siyaram Das and Another Vs. State of Bihar and Others, a Full Bench of this Court was deciding the scope and power u/s 45B of the said Act. Their Lordship held that the power u/s 45B of the said Act has been given in very widely couched term to the State Government or the Collector of the district authorised in this behalf of direct re-opening and disposal afresh of any proceeding disposed of by the Collector under the said Act, if it thinks fit. The discretion has thus been conferred in wide ranging term and no express or statutory limitations are prescribed. It is plain that though the power here is quasi judicial one, it has been conferred with the widest amplitude.

10. A Full Bench of this Court in the above case (supra) observed as under:

Para-9: Now it appears to me that the real clue to the somewhat obscure provision of Section 45B is provided by the meaningful use of words "direct" and "be reopened and disposed of afresh". Though perhaps the implement of any one of these may not have been conclusion but when both are viewed collectively, it would leave little manner of doubt that the disposal afresh is not necessarily to be by the State Government or the authorised Collector. To my mind, the use of the word "direct" here is both crucial and in a way very conclusive. As was argued plausibly on behalf of the respondents, the word "direct" by the very nature of things implies at least two persons, namely the one who directs and the other who has been directed. To coin some phraseology, it necessarily implies a "director" and what may be called a "direct". Plainly enough one cannot and does not direct one's own self. Consequently, when the statute designedly employs these words and says that the State Government and the authorised Collector may direct, it is plain that such a direction is to issue inevitably to an authority subservient to it. To repeat, such direction is not to be issued to itself. It is a sound canon of construction that in a statute every word must be given a meaning and that the Legislature does not waste "direct" in Section 45B cannot be ignored as mere surplusage. So construed, Section 45B implies a twin

direction by the State Government or the authorised Collector to a subservient authority to first re-open the case and thereafter to dispose it of afresh in accordance with the provision of the Act.

In *Thakur Shaligram Singh Vs. The State of Bihar and Others* , while considering the scope and power of the authority u/s 45B of the said Act, this Court held as under:

Para-12: If the finding of the Collector is correct to the effect that classification of the land has been done by suppressing material facts and ignoring mandatory provisions of law, in my opinion, he cannot be said to have committed an illegality in directing reopening of the proceeding.

Para-13: If the Collector of the District arrives at a finding that an order has been obtained either by reason of suppression of fact or by applying wrong procedure of law, he is entitled to re-open the proceeding.

Para-16: It is true that a proceeding shall be reopened sparingly and inter alia on the basis of new information received or new materials brought on records. But it is also well known that if any fraud has been practised and/or if it is found that in determining the ceiling area the mandatory procedures laid down in the law had not been followed, in our opinion, the Collector of the District, would be entitled to reopen the proceeding.

In *Mrityunjay Narain Mishra (supra)* again the same question with regard to power of the authorities u/s 45B of the said Act came for consideration before a Division Bench of this Court and this Court observed as under:

Para-23: From the conspectus of the decisions referred to hereinbefore, it is evident that Section 45-B does not confer upon any arbitrary power upon the Collector of the District to reopen a proceeding on his own sweet will. All such orders must be informed by reasons. A land ceiling proceeding can be reopened only on the availability of the new material or if it is found that the Collector under the said Act had passed such orders in violation of the provisions of law both substantive and procedural which has resulted in real prejudice to the State, land-holder or any third party. However, I may mention that in a given case, it may also be permissible for the Collector of the District or the State of Bihar to direct reopening of the proceeding when a fraud has been practised upon the Collector or any other party when it is found that the order has been passed on extraneous considerations.

Para-24: The power u/s 45-B of the said Act, has to be exercised sparingly and the same cannot be exercised for the purpose of making a roving or fishing enquiry. While however passing such order, the object and purport of the Act should be the upper most consideration in the mind of the Collector of District or the State.

Para-25: Although the principles of *res judicata* are not attracted when the Collector passes an order u/s 45B of the said Act as has been held by this Court

in Harischandra Case (supra). But once a proceeding has been directed to be reopened and the same upon enquiry has been dropped, in my opinion, such a proceeding cannot be directed to be reopened again except in very exceptional cases like practising fraud upon a Court. A matter which has been duly enquired into by the Collector of the District cannot ordinarily be directed to be reopened, by his successor in interest on the self-same ground.

11. Now let us examine the impugned order passed by the State Government directing for reopening of the proceeding u/s 45-B of the said Act. From the impugned order it appears that the State Government considered all the facts and the evidence produced before it. It prima facie found that when the Ceiling Case No. 99 of 1973-74 was finally concluded in 1976, then the Additional Collector had no jurisdiction to proceed further in the said ceiling case without permission of the Collector. The State Government further came to a prima facie finding that although the petitioner was holding 845.10 acres land in Narkatiakothi in the district of Purnea, 116 bighas 3 kathas dhurs of land in Bhatta Bazar, 1 bigha 4 kathas 17 dhurs of land in Purnea district and 55.11 acres more land in the said district but in the Ceiling Case No. 99 of 1973-74, in the draft statement only 698.65 1/2 acres of land were shown. In this way, without any reason, 200 acres of land was not included in the draft Notification published u/s 10(2) of the said Act. The State Government in the impugned order further came to a finding that the order of the Additional Collector itself was self contradictory and it appeared that the Additional Collector in order to favour the petitioner has passed the said order. On these grounds, the respondents No. 1, State of Bihar directed the Collector to proceed u/s 45-B of the said Act.

12. From the perusal of the impugned order, it appears to me that the State Government has assigned sufficient reason for reopening of the proceeding. It further appears to me that the then Additional Collector had passed the order in violation of the provisions of law, both substantive and procedural. No doubt, power u/s 45-B of the said Act has to be exercised sparingly and not for the purpose of roving or fishing enquiry but when it appears to the State Government or the Collector or any other party or when the order has been passed on extraneous consideration, then the Collector or the State Government can pass an order for reopening of the proceeding. Merely because the ceiling proceeding was finally concluded and dropped, it cannot be reopened u/s 45-B of the said Act, if this submission of the petitioner's counsel is accepted, then the very purpose and the ambit of the provisions of Section 45-B of shall be frustrated. It is worth to mention here that pursuant to the impugned order, when the Collector will initiate a proceeding, the petitioner shall get all opportunities to place his case before the Collector and to satisfy him that he was not holding land in excess of the ceiling limit.

13. For the reasons aforesaid, I am of the opinion that there is no infirmity and illegality in the order passed by the State Government and this writ application

has, therefore, no merit and the same is accordingly dismissed However, there shall be no order as to costs.