

(1999) 01 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 5294 of 1988

Dadan Singh @ Girja Saran Singh and Others APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45, 45B

Citation : (1999) 1 PLJR 659

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Surendra Kumar Singh, for the Appellant; Raghib Ashan, for State, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this writ application the Petitioners have prayed for quashing of the notice dated 8.4.88 issued by the Additional Collector, Rohtas in purported exercise of power u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") for the purpose of reopening, the Ceiling Case No. 63/82-83. Copy of the notice is made Annexure-1 to this writ application.

2. Shortly stated the case of the Petitioners is that a proceeding in terms of the provisions of the Act was initiated earlier against the Petitioner land holder wherein it has been held that the Petitioners land holder do not possess the land more than the ceiling area and accordingly dropped the proceeding by order dated 23.10.78. A copy of the said order is made Annexure-4 to this writ petition. The ceiling case was again reviewed in view of the Amendment Act. 1982 by the Respondent Collector, Rohtas and transferred the case to the Sub-divisional Officer, for disposal. The learned Sub-divisional Officer, after having heard the parties and going through the materials on record, has held that the land holder does not possess the land more than the ceiling area. A copy of the

order dated 21.7.85 is Annexure-5 to this writ application. Again by the impugned order the Respondent Additional Collector sought to reopen the matter which has already been concluded twice by the Respondent authority. The learned Counsel has challenged the impugned notice firstly on the ground that the Respondent authorities have considered the case on merit twice and recorded a finding to the effect that the Petitioner does not possess the land beyond the ceiling area and ultimately dropped the proceeding. There is absolutely no fresh materials before the authority to reopen the case again on the same fact. Secondly the Respondent Additional Collector is not competent to issue such notice in purported exercise of power u/s 45B of the Act.

3. In this case a counter affidavit has been filed wherein, inter alia, it is stated that the notice dated 6.4.88 issued by the Respondent Additional Collector is only for the purpose of making enquiry and after submission of his report, the Respondent Collector will proceed further in the matter in accordance with law. It is submitted that instant writ application is premature one as the notice was issued to the Petitioner only for making enquiry before exercising power in terms of Section 45B of the Act. The learned Counsel for the State Respondent, however, does not dispute and/or contest the first submission of the learned Counsel for the Petitioner. The learned Counsel for the Petitioners has challenged the impugned notice on the aforesaid two grounds as mentioned above and submits that apart from the question of jurisdiction the Respondent authority has earlier considered the matter twice with reference to the materials on record and have come to the conclusion that the Petitioner did not possess land more than ceiling area and, accordingly, the proceeding was dropped. It is submitted that there is no fresh material before the authority concerned to reopen the matter in terms of Section 45B of the Act. In order to appreciate the argument of the learned Counsel Section 45B of the Act is to be noticed which reads, thus:

45B. State Government to call for and examine records.-The State Government or the Collector of the district, who may be authorized 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 reopened and disposed of afresh in accordance with the provisions of the Act.

4. Section 45B of the Act clearly envisages that proceeding can be reopened in terms thereof either by the State or Collector of the District. Admittedly the impugned notice purported to be issued in terms of Section 45 of the Act has neither been issued by the State Government nor Collector of the District and, as such, on this ground alone, the impinged notice has to be quashed. That apart, as stated above, twice Respondent authority has considered the case of the Petitioners with reference to the materials on record and has dropped the proceeding holding that the Petitioners do not possess land more than ceiling area. There is no fresh materials brought on record empowering the Collector to reopen the matter.

5. After having heard the learned Counsel for the parties and going through the

pleading filed on their behalf I am of the view that the impugned notice issued by the Respondent Additional Collector and the subsequent orders passed on 28.4.88 and 23.6.88 pursuant thereto are wholly illegal and without jurisdiction and accordingly quashed. In the result this writ application is allowed. No cost.