
(2002) 03 PAT CK 0075
In the Patna High Court
Case No : C.W.J.C. No. 8873 of 2001

Darveshwar Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(1), 33, 35, 45B
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226

Citation : (2002) 2 PLJR 224

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Sidheshwari Pd. Singh, Krishna Kishore Sinha and Abhay Kumar, for the Appellant; V.K. Bhagat, S.S. Nayer Hussain, Amalesh Kr. Varma for State and Sunil Kr. Sharma, for the Respondent

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. In view of nature of controversy arising in this application under Article 226 of the Constitution of India and In view of the order proposed, it is not necessary to go into the facts of the case in detail. It is sufficient to note that a ceiling proceeding was initiated against Ram Swarup Singh, the original landholder in the year 1973-74. After his death, his wife, Respondent No. 3 and other heirs, Respondent Nos. 4 to 11, appear to have been substituted in his place. The landholders challenged the orders of the authorities under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the Act") in the writ application bearing CWJC No. 2612/90. This Court remanded the matter by order dated 7.4.1999 to the Board of Revenue and the Board in turn, by order dated 29.4.2000 remanded the matter to the appellate authority to look into the limited question as to whether Kaushalya Devi had any minor children on 9.9.1970 and whether she is entitled to any further land for such minor children. During the pendency of the appeal

after remand the present nine Petitioners filed an application dated 12.2.2001 (Annexure-4). Through that application a claim was made that some of the lands shown to be that of the landholder was that of the Petitioners and hence, they should be added as parties in the appeal and final orders be passed after enquiry and after hearing the Petitioners. The said application for impleadment and hearing has been rejected by the impugned order contained in Annexure-5 on the ground that in view of limited nature of remand ordered by the higher authorities the appellate court was bound to confine itself to the issues remanded for decision and secondly, it was held that under the Act there is no provision for addition of parties in a ceiling proceeding because Order 1 Rule 10 of the CPC has not been made applicable to ceiling proceedings.

3. It has been submitted on behalf of the Petitioners that the appellate authority acted against law in refusing to enquire into the claims of the Petitioners on merits and it also erred in law in holding that Petitioners cannot be made parties in appeal because provision of Order 1 Rule 10 of the CPC is not applicable to ceiling proceedings. Some arguments were also advanced on the merit of the Petitioners' claim but as indicated earlier, this Court does not propose to go into the merits of Petitioners claims because the same has not been decided as yet by authorities under the Act. It is not found proper and convenient to look into such claims on merits at the first instance directly in writ proceeding. This Court finds that the claims of the Petitioners, whatever be its worth, be decided first by the authorities under the Act within the ambit and scope of provisions under the Act.

4. So far as dispute regarding applicability of Order 1 Rule 10 of the CPC to proceeding under the Act is concerned, a perusal of Section 33 which vests the authorities under the Act with certain powers of civil court clearly shows that such powers are only with regard to four matters and those do not include the power given to civil court under Order 1 Rule 10. However, certain principles of fairness, equity and justice have been developed by the courts through judicial pronouncements and one such principle recognizes the right of any affected person to challenge even a decree or judgment of a civil court through appeal if he is adversely affected by such judgment and decree even though he may not be a party in the suit. Such principle of fairness and justice, in appropriate case, may be applied even in a ceiling proceeding because there is no good reason why such principle should be excluded from proceedings under the Act which are quasi judicial in nature and recognized to be judicial proceeding for the purpose of certain provisions of the Indian Penal Code. The power of the Collector to ask for information etc. for giving effect to the provisions of the Act as provided by Section 35 of the Act, covers not only Landholder but also "other person". This also indicates that proceedings under the Act which have a social purpose to achieve, are not bound by strict principles of pleadings or parties as understood in the context of formal proceedings before the civil court. Hence, at the appropriate stage which can include even the stage of appeal, a party may be noticed by the Collector or the appellate authority to examine his claims or objections and even an appeal against the original order of Collector under the

Act filed at the instance of a person other than landholder may be entertained if such person can show and satisfy upon materials that he is adversely affected by the impugned order in violation of provisions of the Act.

5. So far as the facts of the present case are concerned, it appears from the impugned order itself that against the original order of the Collector under the Act appeal was preferred only by the widow and other legal heirs of the landholder in the year 1984-85. This itself was after notification u/s 15(1) of the Act published on 27.10.1981. The Petitioners did not prefer any appeal to raise their claims when the appellate authority had full powers of appellate court nor they filed any revision before the revisional court nor they intervened in CWJC No. 2612/90 which was disposed of on 7.4.1999. Now, when the appellate authority has received the matter after remand for hearing of a limited issue then it has rightly decided not to entertain the claims raised by the Petitioners. At the present stage, the appellate authority had only limited power of action as per the order of remand. In such circumstances, this Court finds no good ground to interfere with the impugned order.

6. In the facts of the case, this Court finds that Petitioners wrongly approached the appellate authority. They should have, instead approached the State Government invoking its power u/s 45B of the Act which is empowered to examine the record of any proceeding disposed of by a Collector under the Act and if it thinks fit it may direct for reopening of the case and its disposal afresh in accordance with provisions of the Act. There is no dispute that the proceeding in question has already been disposed of by a Collector under the Act.

7. In view of aforesaid discussions and findings this application is disposed of with liberty to the Petitioners that if so advised, they may move the appropriate authority u/s 45B of the Act. It is made clear that this Court has not examined the contentions relating to merits of claims of the Petitioners and if any application u/s 45B is filed then it will be entirely for the appropriate authority to examine their claims in accordance with law.