
(1990) 12 PAT CK 0026
In the Patna High Court
Case No : Civil Review No. 49 of 1986

Dharikshan Sah and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 1, 37, 45B

Citation : (1992) 1 PLJR 103

Hon'ble Judges : G.G. Sohani, C.J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Bishwanath Prasad, for the Appellant; Ramanand Yadav and Hridy Pd. Singh, for the Respondent

Judgement

G.C. Bharuka, J.—This Review application has been filed by Petitioners pursuant to the observations made by the Supreme Court in its order dated 3-3-1986 passed in SLP (Civil) No. 17519 of 1985.

2. Without dwelling much on the facts it will suffice to state that according to the Petitioners certain lands belonging to them had been erroneously declared as surplus pursuant to the proceeding being ceiling No. 776 of 1973-74/2 of 1975-76, relating to Anchal Adapur within the district of East Champaran, initiated against Respondent No. 5 (Ram Swaroop Sah) under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as "the Act"). According to the Petitioners they and the private Respondents are descendants of a common ancestor, Radhey Sah.

3. Aggrieved by the said action of the authorities under the Act, the Petitioners filed an application before the Collector u/s 45 B of the Act for a direction for reopening of the case and its disposal afresh in accordance with the provisions of the Act. It appears that either pursuant to some observations made by the Collector or because of some misconception of law entertained by the counsel appearing for the Petitioners, an application was filed for treating the said

petition as u/s 37 of the Act. On filing of J such a petition, the Collector by his order dated 3-10-1978 held that since according to him a petition u/s 37 of the Act should have been filed at the first instance only before "the Collector under the Act" and not before him, therefore, the petition was not maintainable. The Petitioner there after filed C.W.J.C. No. 195 of 1979, inter alia for quashing of the said order of the Collector" dated 3-10-1978 (Annexure-4 to the writ petition) on the ground that he had erred in not exercising his jurisdiction vested in him. The aforesaid writ petition was dismissed by the learned single Judge by Judgment dated 23.2.1985. Against the said Judgment, the Petitioner preferred an Appeal being L.P.A. No. 29 of 1985. The L.P.A. was dismissed in mine by a Bench of this Court on 3-10-1985. Then the Petitioners preferred aforementioned SLP in the Supreme Court but the same was flowed to be withdrawn with a leave to the Petitioners to apply to this Court for review of its Judgment. In this background the Petitioners have filed the present review application.

4. The learned single Judge while dismissing the writ application had observed in paragraph No. 5 of the impugned Judgment that in a large number of such cases where grievance was made by the land-holders that the land has been declared surplus in the [proceeding started against some other persons, those persons were directed to file application fender Section 45 B of the Act before the Collector under the Act. But similar relief was refused to the Petitioners on the ground that since after having chosen a remedy before the Collector they had given up the same and did loot even abide with the directions of the Collector as contained in Annexure-4 to the writ petition and, therefore, the Petitioners were Sot entitled to any relief from the Court.

5. In my opinion the order of the Collector as contained in Ancexure "4" to the writ Application is based on a complete misconception of law and it can not sustain. The expression "Collector" as defined u/s 1(b) of the Act is an inclusive definition and necessarily it takes within its ambit the Collector of the District as well. Section 37 of the Act authorises the Collector to decide the disputes for which no specific provision is made under the Act and Section 45 B of the Act authorises the State Government as well as the Collectors of the Districts authorised, in this behalf, to direct for re-opening of the case in case any material irregularity is found to have occurred. As such under both the sections, the Collector of the District had jurisdiction to grant proper relief to the Petitioners. Labelling of the petition by a person under a particular Section is wholly inconsequential for determining the jurisdiction of a statutory authority. In my view the Respondent-Collector has acted illegally in refusing to exercise his jurisdiction under the Act to grant proper relief to the Petitioners. There is nothing under the Act to show that an aggrieved person is to first approach the Additional Collector or any other statutory functionary under the Act before approaching the Collector of the District. The petition filed before the Collector ought to have been entertained and disposed of in accordance with law.

6. In the above view of the matter, I feel that the learned Single Judge had

wrongly dismissed the writ application. Since the relevant provisions of the Act were not looked into and/or not placed before the Bench at the time of admission of the L.P.A., therefore it has resulted in in-limine dismissal of the L.P.A. This has led to gross miscarriage of justice. Since there is a mistake apparent on the face of the record and on the facts and in the circumstances of the case, justice warrants a review of the order dated 3-10-85 passed in L.P.A. 29/85, therefore, it is held that the writ application as filed by the Petitioners be allowed to the extent that the order dated 3:10-78, (Annexure 4 to the writ petition) is quashed; and the Collector (Respondent No. 4) is directed to entertain the application filed by the Petitioners under the provisions of the Act and dispose of the same in accordance with law, However under the circumstances of the case, there will be no order as to costs.

G.G. Sohani, C.J.

7. I agree.