
(1996) 01 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 6316 of 1993

Dhrub Prasad Singh @ Dhrub Kumar Singh	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 15(3)

Citation : (1996) 2 BLJR 1607 : (1996) 2 PLJR 47

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed by the four petitioners for quashing the impugned order dated 24.4.1993 (Annexure-1) passed by the Collector, Madhepura (respondent No. 2).

2. Petitioner No. 1 is the land holder and the petitioners case is that petitioner Nos. 2 and 3 purchased some portions of the land in question from petitioner No. 1 and/or his mother in between the year 1963 and 1974 and petitioner No. 4 purchased some land from petitioner No. 2.

3. In respect of the land in question a ceiling case was started against one Late Bimala Sundar Devi, mother of petitioner No. 1, Dhrub Prasad Singh alias Dhrub Singh on 19.2.1973 which was numbered as Ceiling Case No. 541 of 1973-74. The case as made out in the writ petition is that the total land, as per the verification report, held by the land holder was 339 acres and 98 decimals and accordingly a draft publication u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act) was made for the acquisition of 301.52 acres of land by giving one unit to the landholder. On 19.12.1975 an objection u/s 10(3) of the said Act was filed by the petitioner No. 1 inter alia, claiming that he being the adopted son of the land-holder was major on 9.9.1970 and as such two units were

granted to the land-holder. It was also the case of the land-holder before the Additional Sub-divisional Officer (Ceiling), Madhepura that if the land, excluding the land held by the landholder and petitioner, No. 1 of draft publication is included in the final publication u/s 11(i) of the said Act, the land-holder will have no objection. Accordingly the Additional Sub-divisional Officer, Ceiling Madhepura passed an order on 31st May, 1976 by which he directed to make final publication of the lands by excluding the lands of petitioner No. 1 and the land-holder. The said order of the Additional Sub-divisional Officer, Ceiling, Madhepura dated 31st May, 1976 is annexure-2 to this writ petition. Thereafter a notification dated 29th June, 1976 being notification No. 1650 was published in Saharsa District Extra Ordinary Gazette (Annexure-9) whereby certain plots of lands were declared as surplus. Such notification was objected to u/s 15(3) of the said Act. The objection made u/s 15(3) of the said Act was upheld by annexures 3, 4 and 5 to this writ petition. The case of the petitioner is that accordingly the said gazette notification dated 30th June, 1976 which is at annexure-9, was modified by the subsequent gazette notification dated 19th August, 1990, as contained in annexure-8 to this writ petition. The further case of the petitioners is that the said gazette notification at Annexure-8 was never challenged by any authority and as such the said gazette notification dated 19th August, 1990 (Annexure-8) u/s 15(1) of the said Act has become final and the said gazette notification dated 19th August, 1990 has modified the previous notification No. 1650 dated 29th June, 1976.

4. When the said gazette notification dated 19th August, 1990 was holding the field and when the said gazette notification has become final, respondent No. 2- the Collector Madhepura suddenly on the basis of a visit to Mouza Bishapatti on 23rd April, 1993 annulled the said gazette notification dated 19th August, 1990 (Annexure-8) and the previous notification dated 29th June, 1976 (Annexure-9) was allegedly restored.

5. The grievance of the petitioners is that the impugned order which was passed by respondent No. 2 on 23rd April, 1993 was passed without initiating any proceeding for re-opening u/s 45-B of the said Act. From the impugned order dated 23rd April, 1993 (Annexure-1) also it does not appear that the said order was passed in exercise of the powers u/s 45-B of the said Act. Furthermore the procedure which is contemplated for re-opening of the proceeding under the said Act has also not been followed. No notice has been given to the petitioners.

6. The petitioners have taken two points for pressing this writ-petition, namely, that respondent No. 2 has no power and jurisdiction to annul Annexure 2, 3, 4, 5 and 8 which have attained the finally without re-opening the proceeding u/s 45-B of the said Act and in the instant case the impugned has not been passed u/s 45-B of the said Act. The other point which has been taken is that respondent No. 2 passed the impugned order at annexure-1 and ordered dispossession of the petitioners from the land in question without following any procedure contemplated under the said Act and without giving any opportunity of hearing to

place their case.

7. In this matter, despite repeated opportunities nobody appeared for the respondents nor any counter-affidavit has been filed by the respondents controverting the case made out in the writ petition. As such this Court has to accept the case as made out in the writ petition. This Court also on a perusal of annexure-1 is satisfied that the said order has been passed without following the procedure for re-opening of the proceeding u/s 45-B of the said Act.

8. In that view of the matter, the impugned order at Annexure-1 is set aside and quashed. The gazette notification dated 19th August, 1990 which is annexure-8 to this writ petition is revived and restored and the respondents are restrained from acting on the basis of the previous gazette notification dated 29th June, 1976 (Annexure-9).

9. Even large number of private parties have been made respondents to this writ-petition but nobody appeared on their behalf nor any counter-affidavit has been filed on their behalf.

10. In that view of the matter all the consequential steps taken upon issuance of the impugned order (Annexure-1) are hereby quashed and the Parches, if any issued, pursuant to annexure-1 are also hereby quashed. The respondents authorities are directed not to interfere with the possession of the petitioners over the lands covered under gazette Notification date 19th August, 1990 (Annexure-8).

11. Even though the petitioners have prayed for grant of compensation in this writ petition but this Court thinks that this is not a fit case in which any order for payment of compensation can be passed in the facts and circumstances of the case. The petitioners are at liberty to take appropriate proceedings, if they are so advised for releasing their compensation, if any, from the concerned parties.

12. This writ-petition is allowed accordingly to the extent indicated above. There will be no order as cost.