
(2008) 08 PAT CK 0075
In the Patna High Court

Dwarika Singh and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(1), 10(3), 15

Citation : (2008) 08 PAT CK 0075

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioners and the State.

2. Petitioners are the land holders. They are aggrieved by the Draft Publication made under Sub-section (1) of Section 10 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") published in the Sasaram Extraordinary District Gazette dated 25.03.1989. They are also aggrieved by the orders passed by the Additional Collector under Sub-section (3) of Section 10 of the Act dated 19.10.1989, as contained in Annexure-8 to this writ application, which was also affirmed in appeal by the Collector of the District under order dated 7.10.1997, Annexure-10 as also in Revision by the Board of Revenue under order dated 24.03.2000, Annexure -11. They are further aggrieved by the acquisition of the surplus land made u/s 15 of the Act which was notified in District Gazette Extraordinary Edition dated 05.03.1993 as contained in Annexure - 12 to this application.

3. It is submitted on behalf of the petitioners that earlier a ceiling proceeding was initiated against the father of petitioner No. 1, Deoki Nandan Singh, in which the matter travelled up to this Court and a Division Bench of this Court under orders dated 25.08.1977, passed in C.W.J.C. No. 1040 of 1977, Annexure - 3 held that the land holder, namely, the two petitioners and Deoki Nandan Singh, the father of petitioner No. 1 were adult on the appointed date i.e. 09.09.1970 and were entitled to a separate unit for each of them as petitioner No. 2, Sheoji

Singh was found by the Collector 23 years old on 2.9.1976. On the basis of such finding, the proceeding was disposed of under order dated 21.09.1981 passed in Ceiling Case No. 712/1033/1973-74, Annexure-4 whereunder the three adult male members of the family, namely, Deoki Nandan Singh and the two petitioners were allowed units. The final publication under Sub-section(1) of Section 11 of the Act was not made and the earlier proceeding initiated against the petitioners stood abated in the light of the provisions contained in Section 32B of the Act. Accordingly under order dated 22.03.1984 as contained in Annexure-5 the State Government directed the Collector, Rohtas to reopen the proceedings. In compliance of the aforesaid direction of the State Government, the Additional Collector made an internal inquiry as is evident from his order dated 02.02.1989, Annexure - 6, behind the back of the petitioners and directed for issue of the draft statement under Sub-section (1) and (2) of Section 10 of the Act. In compliance of the said direction the draft statement was published in the District Gazette Extraordinary Edition dated 25.03.1989, Annexure - 7. Perusal whereof indicate that the name of the land holder was changed from Deoki Nandan Singh to Dwarika Singh as Deoki Nandan Singh, who was alive on the appointed date, died in the year 1972.

4. It is further submitted on behalf of the petitioners that perusal of the draft statement would indicate that it does not contain any finding of the Collector under the Act recorded in terms of Subsection (C-1,C-2) of Section 10(1) of the Act which inter alia provides that the area and description of the land transferred by the land holders in accordance with or in contravention of the provisions contained in Clause (ii) of Sub-section (1) of Section 5 of the Act together with the substance of the finding of the Collector under Sub-clause (iii) of Sub-section (1) of Section 5 be included in the draft statement. In this connection, learned Counsel for the petitioners with reference to the earlier orders of this Court dated 25.08.1977, Annexure-3, submitted that this Court had categorically observed in the said order that the land holders are entitled to three units as on the appointed date the family had three male adults, namely, Deoki Nandan Singh and the two petitioners. With reference to the said order as also subsequent order passed by the Additional Collector, Rohtas, dated 21.09.1981, Annexure - 4, it is submitted that the daughters of Dwarika Singh, namely, Jayanti, Usha and Nelam, were given lands through registered deed of gift dated 01.06.1962 the donees were duly mutated and Jamabandies created in their name and they came in possession as also the record of rights published in their name. According to the learned Counsel, the lands given under the gift deed dated 01.06.1962 is protected in terms of the provisions contained in Sub-section (5) of Section 5 of the Act as the gifts made during the period of one year from the date of commencement of the Act stood protected under Sub-section (5) of Section-5 of the Act.

5. It was further submitted that the lands which were the subject matter of the partition suit bearing No. 135/7/192/1965 is also protected as the same were given to the branch of late Parmanand Singh, who was the coparcener (full

brother) of the original land holder, Deoki Nandan Singh. In this connection, it is pointed out that besides the aforesaid lands there was also transfer made by Dwarika Singh in favour of Awadh Bihari Singh of an area measuring 3.65 acres through registered sale deed on the basis of which Awadh Bihari Singh came in possession and was also mutated and if the lands which is the subject matter of the transfer made to Awadh Bihari Singh as also donated to the daughters of Dwarika Singh and allotted to the branch of Parmanand singh in partition suit No. 135/7/192/1965 is taken out from the lands which belong to the petitioners then there would be no surplus at all.

6. In this connection, it is once again reiterated that in any case the lands which have been dealt with by the land holders is required to be included in the draft publication, but the draft publication is absolutely silent about the lands which has been dealt with by the land holders through the gift deed of the year 1962 or through the sale deed of the year 1965 or the lands which were the subject matter of the partition suit. In this connection it is pointed out that in terms of the provisions contained in Sub-section (iii) of Section 5(1) of the Act as it is presently couched the Collector is empowered to enquire the validity of any transfer made by the land holder either through registered deed of sale, gift or otherwise. Had the authorities examined the matter in the light of the provisions contained in Sub-section (iii)(ii) of Section 5(1) as also included the findings in the draft statement then their would not have been any occasion to pass the impugned orders as they would have come to a conclusion that the land holders had no surplus land.

7. Counsel for the State, on the other hand, has refuted the submissions made by the counsel for the petitioners as according to him, in view of the provisions contained in Section 32B of the Act, the draft statement was published after an internal inquiry made by the Collector under the Act, which is reflected from his order dated 02.02.1989, Annexure-6, and this Court should be slow in disturbing the findings arrived at in the impugned orders as also with the acquisition of surplus land made in the District Gazette. He further submitted that reliance placed by the counsel for the petitioner over the provisions contained in sub-Section (5) of Section 5 of the Act to protect the gift made in the year 1962 is wholly misplaced as the said provision stood deleted by Amendment Act 1 of 1973, as such, could not be relied upon to protect the transfers made through the deed of gift.

8. Counsel for the petitioner in rejoinder submitted that Sub-section (5) of Section 5 having served its purpose and protected the transfers made during the period of one year from the date of commencement of the Act had become redundant and was accordingly deleted by Amendment Act 1 of 1973, which deletion was not made with retrospective effect, as such, the lands donated under the gift shall remain protected and will be clubbed with the lands of the husband of the donees.

9. Having heard counsel for the parties and having perused the draft statement

published under Sub-section (1) of Section 10 of the Act as also the different orders passed by the authorities as contained in Annexures-8, 10 & 11, I am of the view that the authorities have proceeded to publish the draft statement as also have passed the different orders without following the provisions contained in Sub-section (1), (3) of Section 10 of the Act in the letter and spirit of the provisions as while publishing the draft statement as also while passing the different orders they failed to indicate and rely over the findings recorded in terms of Sub-clause (C-1, C-2) of Sub-section (1) of Section 10 of the Act as from the Draft Statement and the orders it does not appear that the authorities have recorded any substance of finding of the collector under Sub-clause (iii) of Section 5(1) as also the area and description of the lands transferred by the land holders in accordance with or in contravention of the provisions contained in Sub-clause (ii) of Section 5(1) of the Act in regard to the lands which were the subject matter of the gift deed dated 1.6.1962, sale deed executed in favour of Awadh Bihari singh as also lands which were allotted to the branch of Parmanand Singh. In this view of the matter, I set aside not only the draft statement published under Sub-section (1) of Section 10 dated 25.03.1989, Annexure-7 but also the subsequent orders dated 19.10.1989, 07.10.1997 and 24.03.2000, Annexures 8, 10 & 11, as also the Gazette Notification acquiring the lands u/s 15 of the Act dated 05.03.1993 Annexure-12 and remit back the matter to the collector under the Act to publish the draft statement in the light of the provisions contained in Sub-clause (C-1, C-2) of Sub-section (1) of Section 10 of the Act after recording a finding in the light of the provisions contained in Sub-clause (ii), (iii) of Sub-section(1) of Section 5 of the Act taking into account the fact that the family of the land holder had three living adult male members on the appointed date i.e. 09.09.1970. While disposing the objection of the petitioners the authorities under the Act will also record a finding as regards the deed of gift dated 01.06.1962 and the transfers made in the year 1965 in favour of Awadh Bihari Singh as also the lands allotted to the branch of Parmanand Singh in Partition Suit No. 135/7/192/1965. While recording the finding with regard to the lands which were the subject matter of the gift deed, the authorities would take into account the provisions contained in Sub-section (5) of the Act as was amended by Bihar Act 18 of 1962, providing for a grace period of one year during which the land holder could transfer his lands to his son, daughter, any children of his son or daughter or to any other person or persons who would have inherited such lands. In compliance of my orders, I direct the petitioners to appear before the Collector under the Act on or before 22.09.2008 whereafter the Collector under the Act shall fix a date for conducting the inquiry in terms of Sub-clause (iii) of Section 5(1) as also Rule 8 of the Bihar Land Ceiling Rules, 1963 and record a finding with regard to the transfers made under the gift deed dated 01.06.1962, sale deed executed in favour of Awadh Bihari Singh for lands measuring 3.65 acres as also the lands included in the decree passed in the Partition Suit, allocating lands in favour of the six daughters of Parmanand Singh, the full brother of Deoki Nandan Singh of course after notice to the donee, transferee and the decree holders. The lands of the donee, decree

holder must be clubbed with that of their husband. Having recorded the findings in terms of Sub-section (iii) of Section 5, the Collector under the Act shall prepare and publish a fresh draft statement in terms of Sub-section (1), (2) of Section 10 of the Act and invite objection which must be filed within one month of the publication of the draft statement by the Collector under the Act who shall dispose of the objection of the land holders within another two months of the filing of the objection by the land holders. It is made clear that if during the inquiry u/s 5, the Collector under the Act is satisfied that there is no surplus land then he will not proceed ahead with the publication of the draft statement under Sub-section (1), (2) of Section 10 of the Act.

10. In view of my observations and directions above the draft statement dated 25.03.1989, Annexure-7, as also the orders dated 19.10.1989, 07.10.1997 and 24.03.2000, Annexures - 8, 10 & 11 and the acquisition made u/s 15 of the Act as contained in Gazette Notification dated 05.03.1993 Annexure - 12 are quashed. This writ application is accordingly, disposed of.