

(2000) 01 PAT CK 0105
In the Patna High Court
Case No : LPA No. 43 of 1999

Faguni Ram and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(3), 11(1), 15A, 15A(2), 32

Citation : (2000) 2 PLJR 507

Hon'ble Judges : P.K. Sinha, J;N. Pandey, J

Bench : Division Bench

Advocate : Madan Mohan Prasad and Manindra Kumar, for the Appellant; V.R.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal under Clause 10 of the Letters Patent of the Patna High Court has been directed against the order dated 11.11.1998 in CWJC No. 2512 of 1998 whereby and whereunder the writ application was dismissed.

2. By means of the writ petition, the Appellants had questioned the validity of the order of the Member, Board of Revenue, dated 10.9.1997 whereby and whereunder, the notification of the State Government u/s 15A(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the Act") was declared illegal.

3. It would appear from the materials on record that Land Ceiling Case No. 10 of 1975 was started against the Respondents-landholders with respect to total land of 40.11 acres of class IV lands. From the records, it further appears that no notice in Form L.C. 1A, as prescribed under the Act was ever issued to the landholder by the Respondent Collector to surrender certain lands. But a notice was issued asking the landholders to appear before the Collector to take part in the 20 Point Economic Programme which was undertaken during the period of, emergency. It is alleged that the Collector forcibly asked the landholder to

surrender 6.8 acres of land and obtained his signature in L.C. Form 2A, which would be evident from a copy of the said form, as contained in Annexure-A to the counter affidavit, filed in the writ petition. From a bare reference to the said form, it would further appear neither area of the land nor plot number, Khata number etc. were mentioned.

4. The landholder thereafter filed objection u/s 10(3) of the Act claiming one more unit in favour of Ram Sonari Devi and ultimately the Collector, by order dated 25.1.1984 held that after allotting two units of the land to the landholders, there was no surplus land in his possession and accordingly land ceiling case was dropped. But since even before the disposal of the final proceeding 6.8 acres of land purported to have been voluntarily surrendered by the landholder were acquired and distributed to the Appellants by the State Government, the landholder filed an application before the Collector for cancellation of such surrender and distribution of lands. But his petition was rejected on 7.5.1985. The dispute was taken up before the Member, Board of Revenue and ultimately acquisition of 6.8 acres of land including that of the notification u/s 15A(2) of the Act regarding distribution etc. was declared illegal and without jurisdiction.

5. Learned Counsel contended that Respondent-landholders in fact has 60 acres of land but the learned Collector as well as Member, Board of Revenue has wrongly mentioned that he had only 40.11 acres of land of class IV category. He further contended that the order passed by the Member, Board of Revenue was also without jurisdiction because against the order of the Collector under the Act, there was a provision for appeal before the Commissioner of the Division. That apart, the Gazette notification for acquisition of 6.8 acres of land was made as back as in the year 1976 and the land was distributed in the year 1980, therefore, after such a long delay, it was not proper for the Additional Member, Board of Revenue to quash the notification.

6. From the materials noticed above. and the order of the Collector dated 25.1.1984 in Case No. 10 of 1975, it is evident that the landholders had no surplus land in their possession. It would further appear that the landholder was granted two units of class IV lands, therefore, he was entitled to have 60 acres of lands. As such, the learned Collector having noticed that the landholder had only 40.11 acres of class IV lands in his possession, dropped the proceeding. No material has been produced before us either on behalf of the Appellants or the State to show that the landholder had any surplus land.

7. The question, therefore, arises whether acquisition of 6.8 acres of land without publication of any notice under Form LC-1A to the landholder for surrender of the land voluntarily in excess of the ceiling area, if any, can be held justified?

8. On behalf of the landholders, specific statement was made that no notice as required under Form LC-1A was ever issued. Therefore, acquisition and consequent thereto distribution of 6.8 acres of land becomes illegal and without jurisdiction. A reference was also made to support such contention to a decision

of this Court in the case of Jitin Jha and Ors. v. The State of Bihar and Ors. 1984 PLJR 148.

9. It would further appear from the order sheet of this case that on different occasions, hearing was adjourned to enable the learned Counsel for the State to produce materials including records of the case to show that there was any publication of notice in Form LC-1A. But no material was produced either on behalf of the State or the Appellants.

10. Therefore, in our view, so called acquisition of the land and the Gazette notification etc. if any, for distribution etc. have to be declared illegal and without jurisdiction. Because from a bare reference to the instant provision, it would appear that the State Government may, pending final publication of the statement under Sub-section (1) of Section 11 of the Act, issue notice to any landholder or landholders calling upon him or them to surrender to the State such area which according to him or them is owned or held in excess of the ceiling area prescribed u/s 4 of the Act.

11. That apart, the other question is equally important whether in absence of any surplus land owned or held in excess of the ceiling area, the landholder can be asked to surrender any such land. In this case, as noticed above, the Collector had himself dropped the proceeding holding that the landholder had no surplus land. Therefore, in our view, the Member, Board of Revenue appears quite justified while declaring the notification u/s 15A of the Act as well as distribution etc. of the land illegal.

12. The other submission of the counsel regarding maintainability of the revision before the Member, Board of Revenue has also no substance. Because as per the provisions of Section 32 of the Act, the Board of Revenue is not a Court merely to correct the error or other material irregularity. In fact it is a forum vested with full jurisdiction to correct illegality or propriety of the order passed by the Courts below. That apart, the Board of Revenue is also a final Court of fact. The irregularities which were committed by the Collector in acquiring the land of the landholder was inherent and thus goes to the root of the matter. Therefore, the Board of Revenue had full authority to remove such a irregularity and illegality of the proceeding.

13. In the result, for the reasons stated above, we find no merit in this appeal. The same is hereby dismissed but without any order as to costs.