

---

**(1984) 08 PAT CK 0018**

**In the Patna High Court**

**Case No :** Civil Writ Jurn. Case No. 3821 of 1983

Harendra Prasad Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

---

**Date of Decision :** 06-08-1984

**Acts Referred:**

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

**Citation :** AIR 1985 Patna 38 : (1984) 32 BLJR 588 : (1984) PLJR 908

**Hon'ble Judges :** S.S. Sandha Walia, C.J.; Uday Sinha, J.; Nagendra Prasad Singh, J

**Bench :** Full Bench

**Advocate :** Bhupendra Narain Sinha, for the Appellant; Jagannath Jha, Standing Counsel and Anand Sahay, Jr. Counsel to Standing Counsel, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

S.S. Sandhawalia, C.J.—The meaningful questions formulated and referred for an authoritative decision by the Full Bench are in the terms following :

"(i) Whether a revenue authority is obliged to proceed afresh after coming into force of Section 32-B of the Ceiling Act?

(ii) If the revenue authority proceeds to publish a notification under the provisions of old Section 11(1) of the Act, would it not amount to ignoring Section 32-B and nullifying the object in the introduction of Section 32-B of the Ceiling Act?

(iii) Whether the failure to initiate a fresh proceeding and to publish the notification u/s 11(1) (old) of the Ceiling Act would be non est?"

Equally at issue is the correctness of the two Division Bench judgments in Smt. Sudha Devi v. State of Bihar. (CWJC No. 1679 of 1982 decided on the 25th of January. 1983) and Uma Shankar Prasad Sah v. State of Bihar (CWJC No. 2170 of 1983 decided on the 17th of May, 1983). "which, indeed, have necessitated

this reference.

2. The facts giving rise to the questions aforesaid are undisputed and lie in a narrow compass. Harendra Prasad Singh, writ petitioner, is a land holder of village Manglapur, district East Champaran. A proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the "Ceiling Act") was initiated against him sometime in the year 1976 (vide Ceiling Case No. 285 of 1975-76). The proceeding, as is not unusual, dragged on for some years. Whilst it was pending and before the petitioner's objection u/s 10(3) of the Ceiling Act could be disposed of, the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act (Bihar Act 55 of 1982) (hereinafter to be referred to as the Amending Act) was enacted and enforced by publication in the Bihar Gazette on the 30th of April, 1982 in substitution of its predecessor Ordinances. This Amending Act, like the earlier Ordinances, was to come into force retrospectively with effect from the 9th of April, 1981 and, apart from many significant changes in the existing Statute, it, inter alia, inserted sections 32A and 32B in the parent Act. The latter provision provided that every pending proceeding, which is not the subject matter of appeal, revision or review, and in which final publication under Sub-section (1) of Section 11 of the Ceiling Act, as stood before the amendment had not been made, shall be disposed of afresh in accordance with the provisions of Section 10 of the Ceiling Act. Despite this provision, the Land Reforms Deputy Collector, completely ignoring the same, and without any fresh determination, proceeded to issue a notification in terms of old Section 11(1), which was admittedly done on the 31st of May, 1982. However, the Additional Collector, u/s 32B of the Ceiling Act, initiated fresh proceeding against the petitioner and issued a draft statement u/s 10(2) of the said Act and further called upon the petitioner to file objection, if any, in terms of Section 10(3) of the Ceiling Act (vide annexure 1 dated the 17th of June, 1983). Aggrieved thereby, the present writ petition has been filed seeking the quashing of the same.

3. "This writ petition originally came up for hearing before a Division Bench presided over by my learned Brother, Uday Sinha, J. Before that Bench particular reliance was placed on the cases of Smt. Sudha Devi and Umashankar Prasad Sah (supra) for the proposition that the final publication under the unamended Sub-section (1) of Section 11 of the Ceiling Act having been made even though after the enforcement of Section 32B, the Additional Collector had no jurisdiction to initiate fresh proceeding and decide the matter afresh in accordance with the amended law. Entertaining some doubts about the correctness of the ratio in the aforesaid case, the matter was referred to a Full Bench for an authoritative decision on the questions formulated and that is how it is before us now.

4. Inevitably one has to turn to the legislative backdrop for the purposes of true construction of the provisions of the Ceiling Act. Yet, the details of its chequered history and the numerous amendments thereto are not necessary to be adverted

to. The parent Act -- Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was enforced in 1962. It underwent substantial amendments by Bihar Act 1 of 1973 and was further amended by Bihar Act 9 of 1973. Bihar Act 22 of 1976 then introduced changes introducing the concept of the "appointed day" of the 9th of September, 1970 and further enacted sections 4A and 4B for purposes of redetermination of the surplus area. This was followed by Bihar Act 7 of 1978.

5. It seems unnecessary and equally not quite possible to keep track of all the numerous Ordinances issued at various times which had introduced amendments and changes in the law. It suffices to mention that Bihar Ordinance No. 66 of 1981 was published in the Bihar Gazette on the 9th of April, 1981 and was quickly followed by Bihar Ordinance No. 202 of 1981 and Bihar Ordinance No. 22 of 1982 and ultimately culminated in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, which now falls for construction. By the aforementioned Ordinances and the last Amending Act substantial amendments were made in the defining Section 2 and also in Section 4. What, however, deserves a pointed notice is that the computing Section 5 was altogether substituted and similarly Section 9, which gave an option to the family to select a ceiling area, was also substituted. In the material Section 10 Sub-clauses (c1), (c2) and (c3) were inserted in Clause (c) of Sub-section (1) thereof. Changes were brought in the succeeding Section 11 as well. Apart from material amendments in the other provisions, Sections 32A and 32B, which pointedly call for construction here, were inserted in the Statute. These obviously call for notice in extenso :

"32A. Abatement of appeal, revision, review or reference.-- An appeal, revision, review or reference other than those arising out of orders passed u/s 8 or Sub-section (3) of Section 16 pending before any authority on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, shall abate :

Provided that on such abatement, the Collector shall proceed with the case afresh in accordance with the provisions of section 10 :

Provided further that such appeal, revision, review or reference arising out of orders passed u/s 8 or subsection (3) of Section 16 as has abated u/s 13 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, shall stand automatically restored before the proper authority on the commencement of this Act.

32B. Initiation of fresh proceeding.--All those proceedings, other than appeal, revision, review or reference referred to in Section 32-A pending on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, and in which final publication under Sub-section (1) of Section 11 of the Act as it stood before the amendment by aforesaid Act, had not been made, shall be disposed of afresh in

accordance with the provisions of Section 10 of the Act."

6. It is in the light of the aforesaid backdrop of legislative changes that sections 32A and 32B are now to be construed. It is manifest that by virtue of amendments in sections 2, 4, 10 and 11 and the actual substitution of sections 5 and 9 (apart from amendments in other sections) wide ranging substantive and structural changes were brought about in the Ceiling Law. To give effect and content to these changes, it was therefore, laid down in unmistakable terms by virtue of sections 32A and 32B that the surplus area would be determined in accordance therewith, from the date of the enforcement of the Amending Act. These two sections, therefore, were the effectuating or the executing provisions to give practical shape to the intent of the Legislature in making the statutory changes. It deserves recalling that the Ceiling Act was enforced nearly 20 years earlier in 1962 and surplus area had been determined in accord therewith for nearly 2 decades. Therefore, if the Legislature had not directed a re-determination of the surplus area in accordance with the new law, the same would have merely remained on paper. It is with this end in view that Section 32A provided even with regard to all appeals, revisions, reviews or references, which were pending before any authority on the 9th of April, 1981 that they would abate and the Collector shall proceed with the case afresh in accordance with amended provisions of Section 10. Similarly, with regard to all proceedings pending on the 9th of April, 1981, barring those which had achieved finality already by the publication under the unamended subsection (1) of Section 11, it was directed in categorical terms that the same shall be disposed of afresh in accordance with the amended law. In the larger prospect, therefore, it is plain that the 9th of April, 1981 is in a way a clear watershed herein. It was on that day that Ordinance No. 66 of 1981 was enforced and retrospectivity has now been given to the Amending Act with effect from this very date. All proceedings, whether by way of appeal, revision, review or reference or pending proceedings by way of publication u/s 11(1) of the Ceiling Act prior to the 9th of April, 1981 were left untouched. However, all such proceedings subsequent to the said date were thereafter to be decided in accordance with the changed law and consequently it was mandated that these shall be disposed of afresh in accordance therewith. In sum, substantive changes in the law, which had been enacted, were sought to be procedurally enforced by directing a re-determination of the surplus area in accordance therewith with effect from the date of the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, i.e., on the 9th of April, 1981 aforesaid. That, plainly, is the larger legislative intent behind sections 32A and 32B against which their particular language has to be interpreted.

7. Having noticed as above, one may now advert to the three distinct questions formulated by the referring Bench. A plain look at them would, however, show that the answer thereto would turn upon a single core question. This is, whether the publication of a notification even a long time after the 9th of April, 1981, under the unamended Section 11(1) would be non est because of the Bihar Land

Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act. 1982 with retrospective effect from the 9th of April, 1981.

8. Learned counsel for the writ petitioner facing an uphill task had tenuously attempted to contend that Section 32B unlike Section 32A does not, in terms, provide that the pending proceeding would altogether abate. From this it was sought to be projected that even though the publication of the draft statement under the unamended Section 11 of the Ceiling Act may be in patent contravention" of the Statute and in violation of the mandate of redetermination ye t the said publication would not be wholly void or non est.

9. The submission aforesaid, instead of aiding the stand of the writ petitioner, appears to me. in fact, as heavily boomeranging on it. By the settled canons of construction, a Statute has to be construed as a whole and its provisions have to be read harmoniously. When sections 32A and 32B are read together, they seem to run patently counter to the writ petitioner's stand. Both of them, with effect from the 9th of April. 1981. cry a halt to all the earlier proceedings and to begin on a clean slate and to have them disposed of afresh. These again have to be re-determined or decided afresh in accordance with the provisions of Section 10 of the Ceiling Act. i.e.. in accord with the changes brought about in the law. As has already been noticed, the whole thrust of the Amending Act was to bring about changes in the substantive law and to effectuate them by directing a re-determination in accordance therewith. The legal pun that is sought to be made out on behalf of the writ petitioner on the ground that Section 32B does not employ the word "abatement" is of no consequence. Indeed it is well settled in legal terminology that the term "abatement" is usually employed with regard to appeals, "revisions, reviews, etc. To say that the original proceeding pending before an authority would abate appears to be inapt legal phraseology. Therefore, the Legislature has employed the\* term of abatement with regard to appeals, revisions, reviews or references and thereafter directed that the Collector shall proceed with the case afresh in accordance with provisions of Section 10 by Section 32B. However, when it came to pending proceedings (other than those covered, earlier by Section 32A), section" 32B provided that (except those which had achieved finality already before the 9th of April. 1981 by express publication under the unamended Section 11(1) of the Ceiling Act) these pending proceedings must be disposed of afresh in accordance with the amended law. Far from the fact that nothing would have turned on the non-employment of the word "abatement" in Section 32B. in fact, the reading of both the sections would indicate that the Legislature had in mind the identical results to follow. namely, a re-determination or disposal afresh in accordance with the amended law in either case. Indeed, it was plausibly argued before us on behalf of the respondents that the categoric mandate to decide afresh is even something stronger and larger than mere abatement. The word "abatement" connotes only a ceasing or putting an end to the proceeding. The direction to decide afresh not only wipes away the earlier decision or finding but directs a fresh application of mind and a decision the reafter and in a way would even be on a larger and

stronger footing. The specious argument resting on the non-employment of the word "abatement" in Section 32B must fail,

10. What I have opined above is in accord with what has been authoritatively laid down in *Chandrajot Kuer and Others Vs. The State of Bihar and Others*, . Therein, while construing this very Section 32B. it was held as under :

"The above provision shows that all proceedings pending on the date of commencement of the Ordinance of 1981 and in which final publication u/s 11(1) has not been made shall be disposed of afresh in accordance with the provisions of Section 10 of the Act. The combined effect of sections 32A and 32B therefore, is that the entire procedure from beginning to end must be carried out afresh. Since the proceedings have got to be decided afresh, all findings arrived at earlier stages of the proceedings must be considered to have been wiped off whether the findings of fact were in favour of the land-holder or were in favour of the Revenue. Findings in favour or against a landholder or Revenue must be considered afresh."

11. Yet again even on behalf of the writ petitioner it was not disputed that after the 9th of April, 1981 any publication under the old unamended Section 11(1) would be under a non-existing provision and equally contrary to the mandate of Section 32B, which requires the pending proceedings to be decided afresh in accordance with the amended law. Consequently, it is patent and, indeed, was conceded that such a publication under the unamended Act would be clearly contrary to the Statute and would have to be set aside or quashed if challenged by way of appeal or writ petition on the ground of the violation of the Act. Yet the sole argument was that the publication having been made, it must nevertheless be allowed to hold the field till it is expressly set aside by a competent authority by way of appeal, revision, review or reference. It is not easy to subscribe to this somewhat hypertechnical submission. Patently, a publication under the unamended Section 11(1) of the Ceiling Act long after the 9th of April, 1981 would suffer from a triple grievous infirmity. It would purport to be under a provision which is non-existing having been, in terms, superseded or amended by the Statute. Apparently, it would be published per incuriam without noticing that the unamended Section had ceased to have legal force with effect from the 9th of April, 1981. Then such a publication would be in headlong conflict with the unmistakable mandate of Section 32B that such a pending proceeding must be disposed of afresh. Again, the command of the law is that the re-determination must be in accordance with the amended provisions of Section 10 of the Ceiling Act. Yet, concededly, the impugned publication would be in accord with the provision which had been obliterated by the State. Therefore, it must follow that after the 9th of April, 1981 any final publication purporting to be under the unamended Section 11(1) and without any re-determination in accordance with the amended law, would be wholly without jurisdiction and thus, non est.

12. It is well settled that if any action is blatantly in violation of the mandate of law and purports to be taken under a non-existing provision then the same would

be non est and must wholly give way before the majesty of the law. One is aware of the somewhat thin line of distinction betwixt action which may be voidable or void but would hold the field till it is set aside and those which are wholly non est. I am clearly of the opinion that an action, which purports to be under a non-existing Statute and frontally contrary to the express mandate of an existing Statute and suffering from the infirmities noticed above, would come well within the category of an action which has to be classified as non est.

13. Lastly, what appears to me as an argument of desperation was also raised to the effect that Section 32B was directory in nature and its infraction would not render the impugned action void. Reliance was sought to be placed on observations in *L. Hazari Lal Kuthialii v. Income Tax Officer, Special Circle, Ambala Cantt* AIR 1951 SC 2.

14. In considering this somewhat tenuous stand, what first meets the eye is the fact that Section 32B is couched in terms mandatory, which directs that the proceedings shall be disposed of afresh and not merely that these may be so disposed of. Learned counsel for the writ petitioner could not point out any rationale why herein the word "shall" may be construed as "may" though it is undeniable that as a matter of construction in a specific situation it may be possible. What then calls for notice is the fact that this Section casts a mandatory duty on the authority to decide the matter afresh. The whole purport and content of the section herein is to place this obligation or duty on the concerned office in the wake of the change brought about in the substantive law.

Where a provision casts a statutory duty, it must ordinarily be construed as mandatory because if an enforceable right arises in someone, he can even seek a writ of mandamus for its performance. As has been noticed earlier, the Ceiling Act was passed way back in 1962 with considerable amendments thereafter and surplus area in accord with the unamended provision stood already determined in most, if not in all cases. The whole object and purpose of the Amending Act of 1982 would thus be frustrated and the changes in law would merely remain on paper unless a re-determination was done afresh in accordance therewith. Therefore, a construction that Section 32B is directory would, in essence, defeat the very purpose of the substantive changes and on sound canons of construction such an anomalous result is to be avoided. Lastly, the whole of the section is directed solely to the mandate of re-determination of the proceedings afresh. If it were to be construed as directory in the sense that the competent authority may or may not determine the question afresh then, indeed, nothing virtually survives of this provision. It is, therefore, difficult to construe a provision as directory if the result is that the same would be virtually effaced from the Statute and frustrate the very underlying purpose of this enactment. It must, therefore, be held that Section 32B is plainly mandatory in nature.

15. Once that is so, learned counsel for the respondents was right in urging that not only was Section 32B mandatory but, in essence, it obliterates and wipes off

what had been done earlier and inevitably things could not be left in a vacuum but have to be re-determined. The earlier proceedings, even though in accordance with the old law (barring those which were protected) were rendered nugatory and a fresh decision obligated on the basis of the changes designedly made in the law. Therefore, a true construction of the words "be disposed of afresh" is itself a mandate that the earlier disposal of the cases is virtually nullified. To put it in a metaphor, it wipes off the writing on the state leaving it clean to be written afresh. Viewed from another angle, Section 32B is itself a statutory setting aside of the previous determination. The submission that even though the final publication of draft statement under the unamended Section 11(1) after the 9th of April, 1981 would be contrary to the Statute, it should be allowed to hold the field till it is set aside by way of appeal, revision or quashing, appears to me as contrary to the very gist of this law. It would be sanctifying a multiplicity of proceedings by way of individual challenge and setting aside of a determination wholly without jurisdiction when the section itself says that the earlier proceedings are obliterated and the matter is to be decided afresh. In a way Section 32B, in order to avoid multiplicity of proceedings, has, by the fiat of the law itself, wiped out the proceedings under the old law and directed their re-determination in accordance with the new law. The submission that orders or actions passed or taken illegally under the old law should be individually got set aside by the tortuous process of appeal, revision or review does not at all commend itself to me.

16. Again an obvious and inevitable corollary of the admitted premise that the pending proceedings under the old law would be wiped off is that after the enforcement of the new law on the 9th of April, 1981 anything purported to be done under the old and non-existing law would be plainly non est. If that, which was in accord with the existing law at the time, has been statutorily set aside, it would be anomalous to suggest that any action purporting to be under a non-existing and repealed provision would still hold the field. Even in determined matters, if an appeal, revision, review or reference were to abate and be decided afresh in accordance with the new law, then to suggest that subsequent to the date of the commencement of the Act, the action under the old law would have any legality, is plainly untenable.

17. It remains to advert to the two decisions of this Court on which primary reliance was placed, which, indeed, necessitated this reference to the larger Bench. The earlier one in point of time *Smt. Sudha Devi v. State of Bihar*, (supra) was rendered at the motion stage itself.

The brief nature of the observations would indicate that inevitably at that stage the issue was not adequately canvassed by either side. Neither principle nor precedent seems to be either cited or noticed in the judgment. The issue was taken as one of first impression and decided on the language of the section as introduced by Ordinance No. 22 of 1982. It was not pointedly noticed that the Ordinance had come into force with effect from the 9th of April, 1981 whilst in

the said case the final publication had been made more than a year thereafter on the 27th of April, 1982. What was protected u/s 32B itself was the final publication u/s 11(1) of the Ceiling Act as it stood before the amendment by the Ordinance. The Bench noticed the language with regard to the publication u/s 11(1) of the Ceiling Act but seems to have missed the crucial phrase "as it stood before the amendment by the aforesaid Ordinance". Obviously, what stood untouched were matters prior to the enforcement of the Ordinance and also that, in which final publication had already taken place, before the 9th of April, 1981 and clearly in accord with the unamended law, as it then stood. There could possibly have been no intendment to protect and leave out of the ambit of Section 32B any publication u/s 11(1) not only after the enforcement on the 9th of April, 1981 but also illegal because of having been made in accordance with the unamended law which would no longer be in existence. Inadvertently, this basic fallacy seems to have crept in by the inevitable fact of a matter of considerable import being decided at the motion stage itself without adequate assistance at the Bar. With the greatest deference, the said judgment does not lay down the law correctly and is hereby overruled. The later view in Umashankar Prasad San v. State of Bihar (supra) primarily followed Smt. Sudha Devi's case. Herein again the matter was decided at the motion stage itself without being adequately canvassed. An added reason was" sought to be given by the Bench that Section 32B does not use the word "abate" as Section 32A does. This aspect has been already considered in detail and the distinction, far from any way aiding the case of the writ petitioner, has been found to boomerang on the same. For the earlier reasons recorded and equally with greater deference, this judgment also must be overruled as not laying down the law correctly.

18. In the light of the aforesaid discussion, it must be held that the final publication under the unamended Section 11(1) of the Ceiling Act long after the 9th of April, 1981 would be non est because of the enforcement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982.

19. Once that is held, the clue or, indeed, the answer to the three distinct questions automatically falls into its place. It is accordingly held as under :

(i) Under the mandatory provision of Section 32B the Revenue authorities are obliged to dispose of afresh all pending proceedings except those in which final publication under Sub-section (3) of Section 11 of the Ceiling Act had already been made prior to the 9th of April, 1981, being the date of the commencement of the Amending Act.

(ii) After the enforcement of the Amending Act on the 9th of April, 1981, if the Revenue authority proceeds to publish a notification under the provisions of the old unamended Section 11(1) of the Ceiling Act, it would plainly be ignoring and contravening Section 32B and nullifying the object and purposes thereof.

(iii) The failure to dispose of the pending proceedings afresh and the final publication by way of notification u/s 11(1) of the old unamended Act after the 9th of April, 1981 would be wholly without jurisdiction and, therefore, non est.

20. Now, in the light of the aforesaid answers to the questions before the Full Bench, it is plain that the writ petition is without merit. Herein it is common ground that the final publication under subsection (1) of Section 11 was made on May 31, 1982, thus, more than one year after the enforcement of the Amending Act.

Equally, it is common ground that this final publication was under- the old unamended Section 11(1). The same having been amended by the Statute, the notification being in accordance with a non-existing law, would be non est and it has to be held that the said proceeding was devoid of all jurisdiction and non est. Consequently, the Additional Collector was within his rights to initiate the fresh proceedings u/s 32B, The challenge to the same is untenable and, consequently, the writ petition is hereby rejected without any order as to cost.

Nagendra Prasad Singh, J.

I agree.

Uday Sinha, J.

I agree.