

(2008) 01 PAT CK 0079

In the Patna High Court

Case No : Letters Patent Appeal Nos. 1336 of 1998 and 925 of 2000

Haricharan Chamar and Others

APPELLANT

Vs

Kapilmuni Ojha and Others

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 01 PAT CK 0079

Judgement

S.K. Katriar and Kishore K. Mandal, JJ.—Letters Patent Appeal No. 1336 of 1998 in terms of Clause 10 of the Letters Patent of the Patna High Court has been preferred by 23 persons, who were respondent Nos. 4 to 23 in CWJC. No. 2208 of 1989. They are aggrieved by the judgment dated 12.11.1998, whereby the writ petition was allowed, the appellate and the revisional orders passed under the provisions of the Bihar Land Reform (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the Act") have been set aside, and the writ petitioners (land holders) have been allowed three units instead of two units leaving no surplus land.

2. The appellants are the settlees of the lands which had been, during the earlier stage of the proceedings, declared surplus by the authorities under the Act and are now faced with the prospect of being displaced in view of the judgment. The learned Single Judge disposed of the writ petition with the observation that the Collector of the district may try to accommodate the Red Card Holders (the appellants herein) by settling them over some other lands. Consequently, the Collector of the district has passed the order dated 16.8.1999, in Miscellaneous (Land Ceiling) Case No. 57 of 1998-99, whereby he has cancelled the Red Cards issued in favour of the appellants herein and has observed that, in view of the grant of three units to the land-holders, no surplus land has been left and their case for settlement shall be considered after disposal of the aforesaid LPA. No. 1336 of 1998. The said order dated 16.8.1999 was challenged in CWJC. No. 8793 of 1999, which has been dismissed by judgment dated 5.5.2000, giving rise to the analogous LPA. No. 925 of 2000.

3. We shall first take up LPA. No. 1336 of 1998. Ramayan Ojha was the land-holder and the proceedings under the Act was started to determine his ceiling area. Certain units were given to him which need not be dilated because, after the final orders had been passed, the State government took steps to re-start the proceedings in terms of Section 32A & 32B of the Act. After reopening, the learned Land Reforms Deputy Collector (LRDC) granted one unit to Ramayan Ojha and his minor children, and one unit each to his two major sons, namely, Harihar Ojha and Suryavansh Ojha. Aggrieved by this order, the State government preferred appeal which was allowed by order dated 15.7.1988 (Annexure -2), whereby the unit granted to Suryavansh Ojha was recalled on the ground that he was minor on the appointed day. The land-holders preferred revision application before the Board of Revenue which was rejected on the ground of delay, by order dated 10.1.1989 (Annexure -3), leading to the present CWJC. No. 2208 of 1989. On a consideration of the entire materials, the writ petition was allowed, wherein it has been held that Suryavansh Ojha was a major on the appointed date and was, therefore, entitled to one unit leaving no surplus land. In other words, the family has been allowed three units.

4. It is relevant to state that Ramayan Ojha died during the pendency of the writ proceedings and was substituted by his heirs.

5. While the proceedings under the Act were still making head-way, and before the notification u/s 15(1) of the Act was issued, the respondent authorities distributed the surplus land in favour of the present appellants and issued Red Cards to them. While allowing the writ petition (CWJC. No. 2208/1989), the learned writ court made the following observation in paragraph -11 of the judgment:

Accordingly, I set aside the appellate order dated 15th July, 1988 and the revisional order dated 10th January, 1989, as contained in Annexures - 2 & 3.

The case is remitted to the Collector of the district to take a decision relating to Red Card holders who, in the meantime, have been provided with Red Cards. If, on the facts and in the circumstances, a denotification of land is required to be issued in view of individual unit allowed in favour of the son of the original land holder i.e. Surya Bansh Ojha, he will issue such notification and after cancellation of Red Cards, the Collector will try to accommodate the Red Cards holders by settling them over some other lands.

6. In obedience to the order of this Court, the learned Collector has dealt with the issue by his order dated 16.8.1999 (Annexure-11), wherein he has stated that in view of the judgment in CWJC. No. 2208 of 1989, no surplus land is available, and has further stated that the question of accommodating them will be considered if the settlees succeed in their present LPA.No. 1336 of 1998. The order of the learned Collector gave rise to CWJC. No. 8793 of 1999, which has been dismissed by judgment dated 5.5.2000, which, in its turn, has given rise to the aforesaid LPA.No. 925 of 2000.

7. It is thus manifest that the case of the settlees depends on the disposal of LPA.No. 1336 of 1998 and, therefore, it is expedient to deal with the same first. While assailing the validity of the order in CWJC. No. 2208 of 1989, learned Counsel for the appellants (settlees) submits that the judgment of this Court is based on verification report of 1978, which was prior to insertion of Section 32B of the Act and, therefore, could not have been taken into account for grant of the third unit. He relies on the judgment reported in 1984 PLJR 908 (Harendra Prasad Singh v. The State of Bihar and Ors.).

7.1 He next submits that after abatement of the proceedings in terms of Section 32A of the Act, there was fresh proceedings, but there was no fresh report in terms of Section 10(1) of the Act read with Rule 8 and, therefore, the subsequent proceedings is illegal. Reliance on the earlier report is per se bad in law.

7.2 He also submits that once the earlier report is taken out of consideration, there is no basis to grant the third unit to the land holders.

7.3 He lastly submits that in view of the death of Ramayan Ojha, the provisions of Section 18 should have been applied.

8. In so far as the first contention is concerned, the issue has been considered by the learned writ court and we entirely agree with the conclusions and the reasons assigned therein. In the facts and circumstances of the case, we respectfully agree with the view taken by the learned writ court that this was of the own making of the respondent authorities who failed to place on record a fresh verification report, leaving no option with the learned writ court except to rely on the earlier report, the authenticity of which has never been in doubt. Law is well settled that in case of doubt or difficulty in enforcing the provisions of the Act, the Court shall lean in favour of land holders because they are being deprived of their property to which they have had valid title. The contention is rejected.

9. In so far as the remaining submissions are concerned, the issues have been considered by the learned Single Judge in CWJC. No. 8793 of 1999, and for the reasons assigned therein, we agree with the conclusion that the provisions of Section 18(1) are inapplicable to the facts and circumstances of the case. We also cannot help in observing that since the State of Bihar has not preferred appeal against the judgment of the writ court, whether or not the appellants have the locus standi to maintain this appeal and raise these issues which have a direct bearing on the title of the land-holders.

10. Learned Counsel for the land-holders rightly submits that the respondent authorities had shown absolutely unjustifiable haste in distributing the land while the proceedings were mid-stream. It appears on a perusal of the original records produced by the learned State Counsel that the lands were distributed in favour of the present appellants on 15.10.1983, and the notification in terms of Section 15(1) was issued later on 11.1.1984. In other words, the State government distributed lands before it acquired title to the lands. The entire land proceedings

abated in terms of Section 32A of the Act and a fresh proceeding in terms of Section 32B of the Act, were later commenced. The matter had travelled to the Board of Revenue which had set aside the earlier order and remitted the matter back to the Land Reforms Deputy Collector who concluded the second round of litigation. We are at present dealing with the third round of litigation. Law is well settled that once the land has been declared surplus and the requisite notification in terms of Section 15(1) of the Act has been issued, the lands shall vest in the State government and remains Custodia Legis. The respondent authorities cannot distribute the lands until all prospects of litigation upto the Supreme Court come to an end. Reference may be made to the following reported judgments:

1) 1975 BCCJ 667 (paras 11 & 14); (Mahanth Daya Ram Das and Ors. v. The State of Bihar and Ors.)

2) Dewan Chand Bhalla Vs. Dr Ashok Kumar Bhoil,

3) Upendra Paswan Vs. The State of Bihar and Others

The unseemly haste shown by the respondent authorities in distributing the lands so prematurely has given rise to absolutely unwanted, and clearly avoidable litigations.

11. Learned Counsel for the appellants has really based his claim on the observations made in paragraph -11 of the judgment set out hereinabove. Section 27 provides a detailed procedure for settlement of surplus lands. We are, therefore, of the view that the observation made in paragraph -11 of the judgment was rather misplaced. We are in this connection reminded of the judgment reported in 2007 (3) BBCJ 363 which is equal to Ram Dhani Singh Vs. The State of Bihar and Others , wherein various judgments of the Supreme Court, and one of the Court of Appeal in England, have been referred, and it has been observed that the courts should not be moved by sentiments. Paras 18 & 19 of the judgment is reproduced hereinafter:

18. Reference may also be made to the Constitution Bench judgment of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , which dealt with the question of regularization of back-door entrants in Government service. Their Lordships quoted with approval the observations of Farewell, L.J., in Latham v. Ricahard Kohnson & Nephew Ltd. (discussed in paragraph 19 hereinbelow). The same was also quoted with approval by the Supreme Court in its judgment in the case of A. Umarani Vs. Registrar, Cooperative Societies and Others, . Paragraph -36 of the judgment in Uma Devi (supra) is set out hereinbelow for the facility of quick reference:

36. This court also quoted with approval the observations of this Court in Teri Oat Estates (P) Ltd. v. U.T., Chandigarh, to the effect

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail

to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

This decision kept in mind the distinction between "regularization" and "permanency", and laid down that regularization is not and cannot be the mod of recruitment by any State. It also held that regularization cannot give permanence to an employee whose services are ad hoc in nature

19. Reference may also be made to the judgment of the Court of Appeal in England in the case of Latham v. Johnson & Nephew reported in 1911 ALL E.R. 117. The defendants were the owners of a piece of unfenced waste ground, on which to their knowledge and with their permission children had been in the habit of playing. Early one morning a heap of stones was deposited on the land by the defendants' servants, and soon after, while on the land alone, the plaintiff, a child under three years of age, was injured by one of the stones falling on her hand. In an action brought on behalf of the plaintiff for damages for his injury, it was held that the defendants were not liable. It was further held that "...we must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will of the wisp to take as a guide in the search for legal principles....

Therefore, we are of the view that the observations made in paragraph - 11 of the impugned judgment are misplaced and unwarranted sympathy and therefore cannot form basis of any right legal or otherwise.

12. In the result, we do not find any merit in this appeal. L.P.A.No. 1336 of 1998 accordingly stands dismissed.

In view of dismissal of LPA. No. 1336 of 1998, we do not find any merit in L.P.A.No. 925 of 2000, and does not survive for consideration. The same is also dismissed.

In the circumstances of the case, there shall be no order as to costs in the two appeals.