

(1983) 09 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 611 of 1983

Harihar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-1983

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45B

Citation : AIR 1984 Patna 57 : (1984) 32 BLJR 151 : (1984) PLJR 60

Hon'ble Judges : Surendra Narain Jha, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Binod Kumar Roy, Ramesh Kumar Choudhary and Shemma Ali Khan, for the Appellant; K.P. Verma and R.P. Sinha "Rajesh", for the Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—The petitioner has filed the present writ application for quashing the order of the Collector, Rohtas, dated 18-12-1982, contained in Annexure 2, passed in exercise of the powers u/s 45B Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, for reopening the Land Ceiling Case No. 32A of 1976-77 which was closed by the order dated 28-2-1977 by the Subdivisional Officer, Bhabhua, vide the order contained in Annexure 1.

2. The order is challenged mainly on the ground that in the absence of any fresh material coming in possession of the Collector, after the disposal of the proceeding, he could not reopen the proceeding. In other words, the argument is that the proceeding which had finally concluded cannot be reopened by the Collector at his pleasure.

3. Section 45B was inserted by the Legislature by Act No. 22 of 1976 and reads as follows :

"The State Government or the Collector of the district, who may be authorised in

this behalf may, at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act."

4. The proceeding in question was started against the petitioner on the report of the Circle Officer, Bhabhua in the year 1976. In pursuance of a notice the petitioner submitted his returns. Verification reports were called for from the Circle Officers of Chainpur and Kudra regarding the possession of the lands by the petitioner. It may be mentioned that the "family" of the petitioner consisted of his spouse and four minor children.

From the facts stated in the counter-affidavit filed on behalf of the State it appears that on the 11th August, 1970 the family members of the petitioner had alienated large areas of land under various registered documents, such as (1) 8.15 acres by Usha Devi, petitioner's married daughter, (2) 18.45 acres by Smt. Kawalpati Devi, the petitioner's wife, and (3) 9.67 acres by Radhika Kumari, petitioner's minor daughter aged about 8 years. It has further been stated that the lands disposed of by Radhika Kumari were gifted to her by her grandmother Mt. Govindi Kuer some time in the year 1962. According to the return submitted by the petitioner, Radhika was aged about 14 years on 28-6-1976, If this be true, then she would have just born at the time of making of the gift.

The petitioner, however, asserted in reply to the counter-affidavit that all those transactions were genuine and the sale deeds were produced by the purchasers before the Subdivisional Officer who felt satisfied regarding their genuineness. It may be mentioned that all these transfers were effected by the petitioner or, for that matter, his family members, just a few days before the "appointed day", i.e., 9-9-1970. It may well be that at that time the permissible ceiling area was even larger but the landholders in the State of Bihar were very much apprehensive and had become panicky that the ceiling area might be further reduced and, therefore, in order to escape the consequences of any further reduction, agricultural lands were transferred for consideration to outsiders as well as benami to near and close relations to reduce the extent of their lands within the ceiling area. It was for this purpose that the Legislature imposed restrictions against transferring lands held by the landholders, except with the previous permission in writing of the Collector.

Clause (iii) of Sub-section (1) of Section 5 of the Act empowered the Collector to make enquiries in respect of any transfer of land by the landholder made after 22-12-1959, and if he became satisfied "that such transfer was made, with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi, land in excess of the ceiling area, the Collector may after giving..... noticeannul such transfer.....".

5. It has already been seen that the petitioner or, for that matter, his family members had transferred a large tract of land after 22-10-1959 and before

9-9-1970 and, therefore, the Collector under the Act was empowered to make enquiries in respect of those transfers.

Learned counsel for the petitioner, however, argued that the power to make enquiries by the Collector could be exercised only when he was satisfied that the transfer was made with the object of defeating the provisions of the Act and not otherwise. In support of his contention he also placed reliance upon paragraph 29 of the judgment of this Court in the case of Mahabir Prasad and Others Vs. The State of Bihar and Others, .

I have carefully examined the decision and am afraid, it does not support the contention as such. All that is laid down is that it was only the existence of the specified conditions that permitted annulment under the Act and that if the Collector was of the opinion that certain transfer should be annulled he has to issue notice to the transferee; but it is not an authority for the proposition that the inquiry can be held by the Collector only after he was satisfied regarding the mala fide nature of the transaction. In my view, this argument would be like putting the cart before the horse. How there can be any satisfaction regarding the object of transfer unless the enquiry is held in the matter except in some exceptional cases. The mere existence of the fact of a transfer by itself could not be indicative of the bona fides or mala fides of the transaction. This result could be achieved only after necessary enquiry is held in the mat-ter.

Let us see how the Sub-divisional Officer (acting as the Collector under the Act) has dealt with the matter, namely, the transfers made by the petitioner. All that he has done is that he has mentioned the details of the sale deeds and noticed the arguments of the purchasers, and thereafter he has concluded that all those transactions were made prior to the "appointed day", ie., 9-9-1970 and, therefore, those transactions were genuine, and accordingly ordered for reducing those areas from the holding of the petitioner.

Learned counsel for the State has also invited our attention to the -fact that land measuring 13.59 acres was recorded in the name of the petitioner in the recent survey, although that was purchased in the name of his eldest daughter Sushila Devi in the year 1961. All these factors were completely ignored by the Sub-divisional Officer on the sole ground that they were all prior to 9-9-1970. This is exactly the ground mentioned by respondent 2 in the impugned order u/s 45-B of the Act that the Sub-divisional Officer had excluded all those lands sold by the petitioner as aforesaid, without any enquiry simply on the ground that those were transactions made prior to 9-9-1970, meaning thereby that he did not understand the implications of the transactions.

6. In this regard learned counsel for the petitioner placed, reliance on the case of Shiv Shankar Prasad Singh and Others Vs. State of Bihar and Others, where an observation was, no doubt, made that the power u/s 45-B should be exercised sparingly and for adequate reasons and the proceeding conducted earlier cannot be reopened merely for verifying whether the orders were correctly passed and

that there should be some reason present before the authority in the shape of some material justifying the action.

I find myself in complete agreement with this judgment that the powers under this section should be exercised in appropriate cases only and there must be reasonable basis for that purpose. But it is not possible to accept the argument that the material justifying the action must be a new material not available to the authority at the original stage. In that case it was found that the Collector had no material for reopening of the proceeding which only concerned with the age of a particular person as to whether at the relevant time he was major or minor. The order of reopening was even so vague that it could not be made out as to whose age was the subject matter of the verification.

7. Reliance was also placed upon an unreported decision of this Court in the case of Jagdayal Rai v. State of Bihar, (C. W. J. C. No. 2585 of 1982 decided on 19-9-1982). In that case the order of reopening was passed on the ground of discrepancy between the report of the Anchal Adhikari and the medical certificate. That reason was held to be infirm in the absence of any finding that there were materials to show that on the earlier occasion the authorities had been misled in passing the impugned order in favour of the landholder.

8. Neither of the decisions supports the petitioner's case that there must be a "new material" before the authorities for reopening a disposed proceeding. Possession of a new material may be relevant ground for reopening a proceeding but it cannot be the sole ground. On the other hand, in the case of Surendra Nath Ghosh v. State of Bihar, 1983 BLJ 18 it was held that this power could be exercised if on the basis of the reports of the case it appears that the proceedings had not been conducted or concluded in accordance with the provisions of the Act.

9. The power conferred on the Collector under this provision appears to be very much similar to that conferred u/s 397, Criminal P. C., upon the High Court and the Sessions Judge to call for and examine the records of any proceeding of the inferior criminal court under their jurisdiction, in order to correct the miscarriage of justice arising from misconception of law, irregularity of procedure and the like. It is true that in exercise of such a power the Court cannot make a fishing enquiry or look in to see under a fair record there lie some traces of possible error. But at the same time the purpose of conferring such a power is to secure setting right of a patent error or defect, no doubt.

10. In the case before us, the Collector, as already seen earlier, on examining the records has come to the conclusion that Sub-divisional Officer had not properly conducted himself in disposing of the proceeding, meaning thereby that he did not understand the scope of Section 5 (1) (iii) and the significance of the "appointed day", and committed an apparent and patent error. I, therefore, do not find any error in the impugned order for reopening the proceeding for a fresh disposal.

11. The application, therefore, must fail and is hereby dismissed, but in the circumstances I shall make no order as to costs.

Surendra Narain Jha, J.

I agree.