(2007) 05 PAT CK 0079

In the Patna High Court

Case No : C.W.J.C. No. 1576/07

Harinagar Sugar Mills Ltd. and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(3), 27, 29(1), 29(2)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 — Rule 9, 9(3)

Citation : (2007) 2 BLJR 2651 : (2007) 4 PLJR 536

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Y.V. Giri, Ramesh Kr. Agrawal, D. Chhapghar and D.P. Verma, for the Appellant; Ajay, S.C. (C)3 and Rajnish Kant, J.C. to S.C. (C)3, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard.

2. By the present writ application the petitioners have challenged the approval as granted by the State Government in respect of the proposal sent by the Collector of the district in terms of Bihar Land. Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, in respect of lands which are required to be exempted from the ceiling proceedings in respect of the petitioners and lands which ought to be declared surplus. The said communication is contained in letter dated 20.10.2006 (Annexure-10/A).

3. The contention raised by the petitioners being pure question of law and all facts being on record and not in dispute the State has chosen not to file a counter affidavit.

4. With the consent of the parties this writ application was heard and is being disposed of at the stage of admission itself.

5. The petitioner-company was established for the purposes of manufacturing sugar. It has a sugar mill at Harinagar in the district of West Champaran in the State of Bihar. Originally when the factory was set up, the factory by itself did not have any farm land. Right from beginning the substantial lands were held by some of the Directors of the company under Managing Agency which was exclusively used to produce sugar cane for the exclusive use for the petitioner''s sugar mill. In about 1956 those Directors agreed to transfer the lands to the company and it is not disputed that since then upto date company has used these lands exclusively in association with their mills for producing sugarcane. It is also not in dispute that the company which had over 5000 acres of such lands used a small part thereof as a sugarcane seed farm. This was a statutory requirement as well under the provision of the Bihar Sugarcane (Regulations of Supply and Purchase) Act, 1981 and its predecessor ordinances since 1968 and its predecessor-enactment.

6. The contention of the petitioner-sugar mill is that all the lands it has are exclusively used by it to produce its solitary raw materials, that is, sugarcane. No part of the said farm land is used for any other purpose, other than sugarcane farming or seed farm nor is the sugarcane sold for consumption outside the petitioner''s sugar mill. The produces of the seed farm are meant for supply to farms to encourage sufficient good quality of sugarcane so that the petitioners can survive. It is, therefore, submitted that cane farm is an integral part of the industrial purposes of the petitioner''s mills. It is accordingly submitted that petitioner is entitled to land for sugarcane seed farm upto 100 acres in terms of Section 29(2)(a)(i) of the Act and the remaining part of the sugarcane farm being required for industrial purposes, i.e. providing for raw material to the sugar mill it ought to have been exempted in terms of Section 29(1)(b)(vi) of the Act. This aspect of the matter has not been either appreciated or properly considered by the Collector, who though admitting that the entire land is used for producing sugarcane as raw material for captive use apart from small area used for sugarcane seed farm, still he recommended the exemption in terms of Section 29(1)(b)(vi) of the Act, only the actual land on which the mill premises is situated. It is the submission on behalf of the petitioner that not only the land on which the mill premises are situated but the land from which raw materials are obtained are also lands in connection with industrial purposes.

7. It is then submitted that the Collector having given a finding in this regard then made its recommendation to the State Government, as contemplated under Rule 9(3) of the Bihar Land Ceiling Rules, 1963, seeking approval for exempting the 105.33 acres mill land and 100 acres for seed farm and for declaring the rest of land as surplus.

8. The petitioner on coming to know of the said recommendation made a detailed representation vide Annexure 8 to the State Government. They sought personal hearing in the matter. They were neither heard nor their representation was considered muchless dealt with and the State Government has taken a decision

and communicated the same by Annexure-10/A, which is impugned.

9. By the said communication to the Collector, it is only the mill premises land and 100 acres of sugarcane seed farms which are said to be exempted and the rest has been ordered to be declared as surplus. The matter, unfortunately, does not end there. It directs the Collector to take over the possession of the surplus land and distribute accordingly and inform the government.

10. Apart from several contentions raised by the petitioner including the validity of the provisions of the Act itself and its applicability to the sugarmill to which I do not propose to advert as I find it unnecessary in the facts and in the circumstances.

11. It is submitted that in terms of Rule 9(3) of the Rules the Collector having made a proposal and the State Government having the obligation to consider the same, it was incumbent upon the State Government to consider the detailed representation made by the petitioner as well hear the petitioner.

12. The petitioners have filed a supplementary affidavit today on being supplied detailed ordersheet of the proceedings before the State Government, which they just managed to get by exercise of the right under Rights to Information Act. With reference to the said ordersheet, it is submitted that except in one place noticing in one line that the petitioners had filed a representation against the recommendation as made by the Collector, it is clear that there is not a word about consideration of the contention raised therein. Admittedly, the petitioner was neither noticed nor heard in the matter.

13. The entire ordersheet shows only the recommendation of the Collector and the necessity to approve the same, as if the other side (the petitioner) has no say in the matter, even though their valuable land which supplied part of their raw material was to be taken away/acquired.

14. To my mind, this is sufficient to vitiate the approval as granted by the State Government and is sufficient to remand the matter to the State Government for fresh consideration and it is because of that, that this Court has refrained to go into the matter on merit on any issue except the jurisdiction of the State Government in terms of Rule 9(3) of the Rules aforesaid.

15. The manner in which Rule 9 operates is clear that the State Government exercises a very responsible jurisdiction in deciding matters with regard to grant of exemption. Parties have their say and as valuable property is to be taken away, they must have a right to be heard. It is well settled that the greater the invasion into personal night, the greater safeguard are to be read into procedure and seeking its scruples compliance by courts. Here the petitioner had a triable issue to raise. The petitioner relied on various judgments and various provisions of the Act to show that raw material is an integral part of an industrial process and if lands are taken away and distributed in the manner as being directed by the State Government that would be death blow to the sugar industry itself

because then the persons to whom the land is distributed will not be under any obligation to grow sugarcane much less sell it only to this sugar mill. Alternatively, if the government was to exercise its discretion in terms of Section 27(i)(vi) third provisiso the very object for which the Act was enacted would stand defeated because then government would be obliged to maintain the sugarcane farm as a sugarcane farm for the mill. The Act is not to deprive to a person of his agriculture land but for equitable distribution of ceiling surplus land. These are connected matters which have not received the consideration of the State Government as apparent from the ordersheet.

16. In that view of the matter, this Court is of the view that the State Government must hear the petitioner. It is further pointed out and rightly so that once the State Government grants approval in terms of Rule 9(3) and issue direction in the manner in which it has been done, as contained in Annexure-10/A then objections which are to be filed after draft statement is published in terms of Section 10(3) would be an empty formality as the Collector would be helpless in the matter and cannot be expected to sit over its own recommendation and the direction of the State Government.

17. In this situations, this Court accepts the submissions of the petitioners that in view of the scheme of the Act and the right of the parties as involved, it is incumbent upon the State Government to grant an opportunity of hearing to the petitioners and consider petitioner''s objection as against the recommendations made by the Collector and then decide the matter regarding its approval. The decision of the State Government has to be an informed decision and not mechanical.

18. That having not been done, I have no option but to set aside Annexure-10/A, the communication of approval of the State Government and direct the State Government to hear the petitioner and after considering all its objection pass an appropriate order afresh in accordance with law on the recommendation as made by the Collector.

19. This writ petition is allowed and the impugned order, as contained in Annexure 10/A is set aside.

