

(1984) 07 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 2051 of 1977, 4699 of 1978 and 308 of 1979

Harishchandra Singh and etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(3), 35, 36, 45B
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 11
Constitution of India, 1950 — Article 14, 31A
Evidence Act, 1872 — Section 115

Citation : AIR 1984 Patna 337 : (1984) PLJR 988

Hon'ble Judges : Uday Sinha, J;S. Shamsul Hasan, J

Bench : Division Bench

Advocate : Rama Kant Verma and R. Chattah, for the Appellant; K.P. Verma, General, Daman Kant Jha, Government Advocate, Manilal, Standing Counsel No. 4, R.N. Choudhary and Uday Shankar Saran Singh and Yogendra Jha, Jr. Counsel to Govt. Advocate, for the Respondent

Judgement

Uday Sinha, J.—The common question of law involved in these three applications under Articles 226 and 227 of the Constitution relates to the ambit and parameter of the power of State Government or Collector to re-open concluded proceedings under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 hereinafter called "the Ceiling Act" by virtue of the power conferred by Section 45-B of the said Act as also the vires of Section 45-B. They have been heard together and shall, therefore, be disposed of by this common judgment.

2. The facts necessary for appreciating the submissions urged on behalf of the petitioners must be stated herein now. There is an Asthal (a kind of free monastery in which communities of religious meditants reside together under a Mahant) in the district of Vaishali known as Patepur Asthal. Mahanth Ramanand Das is the Head of the Asthal. The Asthal has set up temples at different places

and various deities have been installed therein. The Asthal was possessed of vast landed properties. According to the petitioner, the properties ascribed to separate temples in turn vest in the deities as Debottar properties. The Ceiling Act having been enacted, the petitioner Mahanth filed return of lands in possession of the petitioners. Ceiling Case No. 30 of 1974 was initiated accordingly. Draft statements in terms of Section 10 (2) having been published, the Collector after hearing objections, by order dated 23-12- 1975 (Annexure-1) declared 137.30 acres of class II lands as surplus. Notification in terms of Section 11 (1) was accordingly issued. The order of the Collector contained in Annexure-1 was approved by State Government by Annexure-4 in 1976. It appears that the approval by State Government by Annexure-4 did not conclude matters. In Jan., 1978 Government being of the view that probably the adjudication of surplus lands had not been in accordance with law, issued notice to Mahanth Ramanand Das to show cause why the adjudication regarding the declaration of surplus lands be not nullified and the matter be not re-examined afresh. This notice was in terms of Section 45-B of the Ceiling Act. Section 45-B has not been mentioned in the notice (Annexure-5), but the tenor of the notice shows clearly that it was in terms of Section 45-B. The petitioners showed cause challenging the power and jurisdiction of the State Government to take recourse to Section 45-B of the Ceiling Act. While the cause shown by the petitioners was under consideration, on 4-7-1978, by Annexure-6 Collector, Vaishali called upon petitioner No. 1 to produce the Cash Book for the period 1959-60 to 1970-71. This was to be produced by 22-7-1978. The order was not complied and no cash book was produced. By order dated 19-8-1978 (Annexure-7) the State Government resolved that the matter needed to be examined afresh. Orders were, therefore, passed to reopen and examine the matter afresh. The State Government having ordered re-opening of the ceiling case, the Collector, Vaishali by notice dated 29-9-1978 (Annexure-8) fixed 18-10-1978 for hearing of the matter. The petitioner was, therefore, asked to appear in person or through counsel before Collector, Vaishali. Being aggrieved by Annexures 7 and 8, re-opening the assessment of surplus, petitioner No. 1 and the deities have moved this Court in C.W.J.C. No. 4699 of 1978 for quashing Annexures-7 and 8.

3. C. W. J. C. No. 308 of 1979 is for quashing Annexures-6, 7 and 8 to the said application. By Annexure-6 of this application after the order for re-opening the assessment, the Collector under the Act by order dated 30-10-1978 ordered launching of prosecution of the petitioner for non-compliance of order dated 30-6-1978 (Annexure-6 in C.W.J.C. No. 4699 of 1978). Annexure-7 is the complaint in pursuance thereof by Collector, Vaishali against Mahanth Ramanand Das, his Chela Shrikant Saran and Shiva Chandra Prasad, an employee of accused No. 1 for prosecuting the accused u/s 36 of the Ceiling Act. By Annexure-8 dated 30-10-1978 the Sub-divisional Judicial Magistrate took cognizance of the offence and issued processes against the petitioners. Hence C.W.J.C. No. 308 of 1979 for quashing Annexures-6, 7 and 8.

4. C.W.J.C. No. 2051 of 1977 is for quashing Annexure-6 by which Collector,

Bhojpur ordered re-opening and fresh disposal in terms of Section 45-B of the Ceiling Act, as also for quashing Annexure-5 by which the petitioner was informed that the ceiling case would be heard and disposed of afresh.

5. Mr. Rama Kant Verma, learned counsel for the petitioners submitted that the order of the State Government for reopening the ceiling case against Mahanth Ramanand Das was illegal and without jurisdiction. It was submitted that the whole matter was gone into in detail earlier by the Collector and there was no occasion for fresh appraisal of the same facts. The order of Collector, Vaishali (Annexure-1) would act as *res judicata* to any pronouncement by the Collector and, therefore, the matter cannot be re-examined and reviewed. Thus submitted Mr. Verma for the petitioners. I regret, I find no substance in this submission. Section 45-B is a special provision conferring wide special powers upon the State Government and the Collector. It is enacted specifically to do away with any challenge on the ground of *res judicata*. It would be open to the Legislature to nullify the effect of the principles of *res judicata*. Once the Statute empowers a matter to be examined afresh, it is patent that the principles of *res judicata* can have no application. The ambit of Section 45-B has been subject matter of several decisions of this Court and none of them have laid down that re-examination of the matter in terms of Section 45-B would attract the principles, of *res judicata*. The decisions have only restrained the Collector or the State Government from acting in a hasty manner. Even in the case of Saurendra Nath Ghosh v. State of Bihar, ILR (1979) Pat 989 , S.K. Jha, J. observed that the matter can be looked afresh only if the previous order is not in accordance with the Act. Again in Harihar Singh Vs. State of Bihar and Others, his Lordship observed that the power u/s 45-B should be exercised in appropriate cases only and on reasonable basis. The plea regarding bar of *res judicata* is, therefore, of no moment and must be rejected.

6. It was submitted in the alternative, on behalf of the petitioners, that a new look was permissible only if there were fresh facts brought to light otherwise the travail of a land-holder would be endless. I regret, there is no warrant for this submission as well. This submission also was advanced before Agrawal, J in the case of Harihar Singh Vs. State of Bihar and Others, . His Lordship squarely rejected such a submission observing that 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. I am in complete agreement with the Division Bench decision of this Court in Harihar Singh's case (Supra).

7. The submission that the State is estopped by estoppel from re-opening the matter afresh. I regret, has only to be stated to be rejected. There is no charm in any particular expression. Section 45-B of the Act completely nullifies any plea of *res judicata*, estoppel or review by permitting re-opening of any disposed of case and dispose of the same case afresh.

8. The only submission worth taking note of is that the power of re-opening can be exercised only if the notification u/s 11 or declaring service has not been in

accordance with the Act. Section 45-B enjoins a Collector after the case has been re-opened to dispose it of afresh in accordance with the provisions of the Act. It would be trite to observe that a ceiling case must be disposed of in accordance with the provisions of the Ceiling Act. That being so, a final order or publication can be reopened only if it has not been in accordance with the provisions of the Act. In all the cases, referred to earlier as also in 1983 BLJ 33, *Shri Thakur Ram Jankiji v. State of Bihar* it has been laid down that a ceiling case may be re-opened only if the declaration of surplus land has not been in accordance with the provisions of the Act. Learned counsel for the petitioners submitted that the infraction of the provisions of the Act must have reference only to procedural lapses. Our attention was drawn to the decision of S.K. Jha, J. in the case of *Saurendra Nath Ghosh* ILR (1979) Pat 989 His Lordship gave some examples of acts done not in accordance with the provisions of the Act. The examples given by S.K. Jha, J. are only illustrative. They do not exhaust situations where an act has not been done in accordance with the provisions of the Act. I would add to the instances of situations where an act may not be said to have been done in accordance with the provisions of the Act. Just to illustrate where a person is entitled to only two units, but four units have been awarded that would be against the provisions of the Act calling for reopening of the proceedings and passing of appropriate orders. Further, if any finding of the Collector while passing orders is based on no evidence or material, a Collector, subsequently, or the State Government, may very well re-open the case because such a finding would be against the provisions of the Act. Further, if lands fall in one category, according to the record, but the Collector has awarded units on the basis of inferior/superior quality of lands, the power u/s 45-B may well be exercised. Instances of orders not being passed in accordance with the provisions of the Act may be innumerable. They cannot be limited only to procedural defects. The case of *Saurendra Nath Ghosh* ILR (1979) Pat 989 therefore, is of no help to the petitioners. It is now firmly established that if the previous orders disposing of objections u/s 10 (3) of the Ceiling Act was not in accordance with the provisions of the Act, it can very well be re-opened.

9. Let us now appraise the order of the Collector in this case in the background of the order of the State Government which ordered re-opening of the case. The order of the Collector (Annexure-1) dated 23-12-1975 shows that Mahanth Ramanand Das the Head of Patepur Asthal was possessed of about 1730.48 acres. The land-holder had shown 506 acres as being in his possession in the districts of Vaishali, Muzaffarpur and Samastipur. 1223.84 acres were shown as transferred by the landholder between 22-10-1959 and 8-9-1970. All that the Collector recorded in his order in regard to the transferred lands was that the transfers were in favour of block offices, schools, Bhudan Committee and other public institutions as also a large number of individual persons of the locality. The Collector did not set out in his order how much had been transferred to the block offices, how much to schools, Bhudan Committee etc. This slap-dash manner in dealing with the transfers came in for comment by the State Government. In the

absence of these specifications, the order of the Collector was certainly liable to fresh scrutiny. A Collector disposing of objections u/s 10 (3) has to act in a judicial manner. His order must show that he has applied his mind judiciously. The State Government was, therefore, fully justified in holding that the matter required fresh consideration.

10. The question of grant of number of units is also a moot question in this case. Although the Trust is only one and, therefore, only one unit was permissible, but the learned Collector allowed six units. If the trust is one, separate units cannot be allowed for each of the temples. There seems to be no registered dedication of properties to any particular deity. The Asthai seems to have established temples at three places. The trust being one, four units cannot be allowed for all the temples. This observation of mine is only tentative to illustrate that the order of the Collector was not in accordance with the provisions of the Act. My observation in regard to the number of units admissible to the petitioners will not prejudice the Collector from considering and arriving at his independent finding in regard to the number of units that can be allowed. It is obvious, however, that more units had been granted than was permissible under the provisions of the Act. In my view, therefore, the order of the Collector contained in Annexure-1 cannot be held to have been passed in accordance with the provisions of the Act. The fact that huge expenditure is being incurred as observed by the Collector in Annexure-t is of no moment in the matter of grant of units. It will also be a moot question to be considered whether Shreekant Das, Chela of Mahanth Ramanand Das can be allotted a separate unit. These two aspects clearly show that the order of the Collector, Vaishali contained in Annexure-1 was not in accordance with the provisions of the Act. That being the position, the power of the State Government and the validity of the order to re-open the ceiling case cannot be doubted. The impugned order reopening the ceiling case is, therefore, not open to any serious challenge. The Ceiling Act is a Welfare legislation aimed at levelling of economic disparities. Section 45-B was engrafted to deal with official vagary. The power of re-opening closed matters would work not only in the interest of the State but also in the interest of the citizens the landholders who may have received a raw deal from the revenue authorities in their anxiety to rush through in order to please their political mentors. From the little experience that we have had since the enactment of Section 45-B, it has been used more often in favour of landholder than the State. Re-opening at the instance of State is few and far between in only gross cases.

11. The only other question which remains to be dealt with is the submission urged on behalf of the petitioners that Section 45-B is violative of Article 14 of the Constitution. It was submitted that no guideline had been laid down by the Act in regard to the choice of cases or in regard to manner in which the question of re-opening was to be disposed of. The Statute has thus conferred arbitrary and unguided powers on the State Government. Section 45-B of the Ceiling Act reads as follows :

"45-B. State Government to call for and examine records. 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 re-opened and disposed of afresh in accordance with the provisions of the Act."

A perusal of the provisions quoted above would reveal that there is no blanket power upon the State Government to re-open any case. The power to re-open is hedged by two limitations. The section calls upon the State to examine any record. That is the first limitation. The section directs the State Government or the Collector to reopen a case, if it thinks fit. The expression "if it thinks fit" is rather poignant. That is the second limitation upon the State Government in the matter of re-opening of closed ceiling cases. Reverting to the first limitation, the section does not leave it open to the authorities to re-open any case, but it enjoins a duty of examining any record. Examination of the record necessarily implies application of mind -- a judicial mind. The mind has to be exercised in order to find out whether the case had been disposed of in accordance with the provisions of the Act. It is not in controversy and cannot be doubted that the final order in regard to declaration of surplus land must be in accordance with the provisions of the Act. The authorities were, therefore, enjoined to examine any record to find out if the ceiling case had been disposed of in accordance with the provisions of the Act or not. The infirmity may be either procedural or substantive in nature. After examination of the records, if the authority finds that the case had not been disposed of in accordance with the provisions of the Act, it was empowered to re-open closed cases. In my view, the requirement of examining any record takes away the sting of arbitrariness. At the same time, it introduces an element of guide for the officers to act.

12. The expression "if it thinks fit" occurring in Section 45-B is of considerable significance. It indicates that a case may be re-opened only for adequate reasons. In Shiv Shankar Prasad Singh and Others Vs. State of Bihar and Others, a bench of this Court laid down that the power u/s 45-B should be exercised sparingly and for adequate reasons. The proceeding cannot be re-opened merely for verifying the correctness of the previous order. I would add to it that it cannot be re-opened for embarking on a fishing inquiry. The expression takes in its sweep a sort of judicial adjudication into the question whether the earlier proceeding had been disposed of in accordance with the provisions of the Act. In the case of Saurendra Nath Ghosh ILR (1979) Pat 989 S.K. Jha, J. observed at paragraph 7 as follows :

"In my view, the term "if it thinks fit" in Section 45-B cannot be read in isolation from the other parts of the section. It does not give any blanket power either to the State Government or to the Collector of the district merely to direct the re-opening of the concluded proceedings at its or his whim. Once a proceeding has been concluded and an order has become final, the statutory provision in question, namely, Section 45-B merely vests the State Government or specially

empowers the Collector of the district with the jurisdiction to initiate a proceeding or re-opening of such a concluded proceeding, if on the basis of the records of the case it appears that the proceedings have not been conducted or concluded in accordance with the provisions of the Act."

I am in respectful agreement with the observations of S.K. Jha, J. Thus Section 45-B imposes three limitations upon the revenue authorities before ordering re-opening of cases. The first is that the record must be examined. The second is that reasons must be recorded for re opening. The reasons must be adequate. The third limitation is that it can be re-opened only if the previous order was not in accordance with the provisions of the Act. With these three limitations the charge of arbitrariness or investment of unguided power does not merit serious consideration. Section 45-B cannot be held to be ultra vires Article 14 on that score.

13. It was lastly submitted on behalf of the petitioners that the power to re-open cases was discriminatory inasmuch as, the State Government or the Collector could pick up any case, if he did not like the nose of landholder and harass him. The investment of such power upon the revenue authorities was, therefore, Ultra vires Article 14. I regret, I am unable to find much substance in this submission. It is not every case which earn be re-opened. Only such cases can be re-opened which have not been disposed of in accordance with the provisions of the Act. Nobody quarrels with the position that if a ceiling case has been disposed of in contravention of the provisions of the Ceiling Act, that is not a state of affair which should be allowed to subsist. Vesting of such power was essential. If, however, there is nothing to show that the proceeding had not been disposed of in accordance with the provisions of the Act, the authorities cannot have the power to re-open. So far as the question of examining of record is concerned, undoubtedly the revenue authorities must have the power to examine every record. Whether it can examine every record or not is a different question. That will depend upon the strength and efficiency of the machinery including its personnel. The fact that every record cannot possibly be examined cannot imply a pick and choose method. It is up to the revenue authorities to devise method how largest number of records can be examined. The Statute, however, empowers the revenue authorities to examine any record -- one and all. There can, therefore, be no question of discrimination between one landholder and another. Till the stage of examining of record, the question of discrimination or arbitrariness does not arise. That may arise only at the stage of ordering of re-opening of cases. But it cannot be said that unless and until the authorities examine every record, it should not be permitted to examine any particular record. In my humble view, therefore, the charge of the Statute being discriminatory has no substance and must be rejected.

14. C.W.J.C No. 4699 of 1978 has no substance and must be dismissed.

15. C.W.J.C. No. 308 of 1979 is for quashing criminal prosecution of the petitioner Mahanth Ramanand Das. There is no case for quashing of criminal

prosecution. The Collector had called upon the petitioner to show cause why legal action be not taken against him for defeating the provisions of the Act. The petitioner remained absent on four dates. On 30-6-1978 the petitioner was called upon to file cash books. That also was not complied. Section 35 of the Ceiling Act empowers a Collector to call upon any landholder or other person or his agent to produce documents or to furnish, on affidavit as he may consider necessary. The petitioner paid no heed to the order. The assertion of fact thus clearly shows contravention of Section 35 of the Ceiling Act. The complaint, therefore, prima facie makes out an offence against the petitioner. The criminal case, therefore, cannot be quashed. No case for it has been made out. This application, therefore, also must be dismissed.

16. C.W.J.C No. 2051 of 1977-

The common questions of law having been disposed of while disposing of the other two applications, it only remains to see how far and in what manner the law applies in the instant case. The impugned order dated 1-10-1977 is Annexure-6 to this application. It reads as follows :

"Whereas ceiling record case No. 27/73-74 of Janki Prasad Singh of village Barkagaon, P. S. Tarari which was disposed by Sri A. Thakur Ex. D. C. L. R. Arrah Sadar has been examined by me and it appears to re-open the proceedings and to dispose it afresh.

1.1, K. Jha Collector of Bhojpur district do hereby order u/s 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 as amended by Bihar Act 22 of 1976 that the aforesaid land ceiling be re-opened and disposed of afresh. The proceeding is transferred to Sri S.K. Prasad, D.C.L.R., Arrah Sadar u/s 31 (1) of the Ceiling Act for disposal.

Sd. Illegible 1.10.77 Collector of Bhojpur."

Earlier a proceeding under the Ceiling Act had been initiated against the petitioner in 1973 which was numbered as Ceiling Case 27/73-74. The petitioner in answer to a notice (Annexure-1) submitted returns and claimed that he was not holding any surplus land, the draft statement shows that 14.33 acres of land was surplus. On objection being filed by the petitioner, the Land Reforms Deputy Collector, Arrah accepted the petitioner's-contention by Annexure-4 dated 7-4-1974 and held that there was no surplus. Matters lay dormant for three years when all of a sudden the petitioner was served with notice -in pursuance of Annexure-6 to this application informing him that the ceiling case had been reopened and would be disposed of afresh. The petitioner being aggrieved by the order of re-opening of the ceiling case (Annexure-6) and notice issued in pursuance thereof (Annexure-5) has moved this Court by the present application for quashing Annexures-5 and 6.

17. The point urged on behalf of the petitioner is that the Collector has reopened the ceiling case without assigning any reason. The order is, therefore, vitiated.

The order of the Collector has been quoted above. It will be seen that although it is recorded in the order that the record had been examined by the Collector, but the order does not bear any sign of examination of the record by the Collector. He did not record what was the infirmity in the proceeding before disposal. There is nothing in the Annexure-6 to indicate that the earlier order (Annexure-4) was not in accordance with the provisions of the Act. The order does not bear any sign of application of mind by the Collector. Reading Annexure-6 it is difficult to come to any conclusion whether the case had been re-opened on mere whim or for good reasons. The Collector should have in his order recorded why he considered that it was a fit case for re-opening. Learned Advocate General while supporting the vires of Article 14 conceded that to order reopening a disposed of ceiling case is a judicial process and reasons must be recorded for re-opening. He was candid in conceding that if reasons are not recorded for re-opening a case, it was liable to be struck down as not fulfilling the mandate and spirit behind Section 45-B of the Act. The order of the Collector (Annexure-6) thus suffers from a serious infirmity and is difficult to be sustained. This application must, therefore, be allowed with costs. It will, however, be open to Collector, Bhojpur to hear the petitioner and pass orders setting out the reasons for reopening the matter in terms of Section 45-B of the Ceiling Act, if he be of the view that this ceiling case has not been disposed of in accordance with law.

18. For the reasons, indicated above, C.W.J.C Nos. 4699 of 1978 and 308 of 1979 , are dismissed with costs. Hearing fee Rs. 200/- payable by petitioner No. 1 in each case. C.W.J.C. No. 2051 of 1977 is allowed with costs. Hearing fee Payable by Collector, Bhojpur to the petitioner Rs. 250A.

S. Shamsul Hasan, J.

19. I agree with my learned Brother but I would like to add a few words of my own in relation to vires of Section 45-B of the Ceiling Act. In my view, reading the section as it stands, undoubtedly it was hit by the provision of Article 14 of the Constitution, but it stands saved by application of Article 31A of the Constitution. The restrictions imported by the decision of Brother S.K. Jha, J. and accepted by Brother Uday Sinha, J. should have found place in the section itself. The matter, however, has now become academic in view of Article 31A of the Constitution.