
(2005) 10 PAT CK 0027
In the Patna High Court
Case No : CWJC No. 3393 of 1984

Indira Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 11, 15(1)

Citation : (2006) 1 PLJR 171

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Shyam Sundar Singh Shyam, for the Appellant;

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties. Substantially, the petitioners are challenging the order, as contained in annexure 5, whereby and whereunder on remand of the ceiling case, objections filed by the petitioners have not been considered.

2. It is submitted by learned counsel for the petitioners that vide order, as contained in annexure 3, the appellate court remanded back the matter to the Additional Collector to reconsider the same on the following questions:--

(i) to reconsider the case for acquisition of the land under the Bihar Land Reforms (Fixation of Ceiling Area and Surplus Land) Act, 1961 (hereinafter to be referred to as "Act"), and

(ii) to consider the cases of other co-sharers, which have been included in the draft statement.

3. Pursuant to the order of remand, the petitioners filed their objections u/s 10(3) of the Act, but the Additional Collector refused to consider the second question pertaining to claims of the petitioners.

4. It is further submitted by learned counsel for the petitioners that initially the proceeding under the Act was initiated against one Mahendra Mishra for acquisition of surplus land under the provisions of the Act and details of the land were published u/s 10(2) of the Act on 27.2.1982, and, accordingly, a draft publication was published in the District gazette on 16.10.1982, pursuant to which Mahendra Mishra filed his objections u/s 10(3) of the Act, wherein he stated that the alleged surplus lands are also owned by his co-sharers, namely, the petitioners, but the authority under the Act did not consider the matter on the line of the objections filed by Mahendra Mishra nor any notice was caused to be served upon the other co-sharers, whose names were disclosed in objections filed by Mahendra Mishra. However, in appeal filed by Mahendra Mishra these questions were considered and the appellate authority keeping in view the objections filed by Mahendra Mishra u/s 10(3) of the Act remanded the matter to the Additional Collector for fresh consideration. It is also submitted that after remand the petitioners filed their objections u/s 10(3) of the Act on 13.3.1984 before final publication of draft statement u/s 11 of the Act, which has been summarily rejected by the Additional Collector by the order impugned.

5. Prima facie, it appears from annexure 5 that the matter was remanded to the Additional Collector for reconsideration of the same pertaining to the shares of the petitioners in the lands in question, it is further manifest that after rejection of the objections filed by the petitioners, the Additional Collector directed for final publication of the draft statement u/s 11 of the Act fixing 9.7.1984.

6. It appears from the materials on record that much before the final publication u/s 11 of the Act, the petitioners' co-sharers filed their objections u/s 10(3) of the Act. Pursuant to the direction of the appellate authority, which was to be considered in accordance with law, the matter was not finally disposed of after remand on filing of the objections.

7. Final publication of the draft statement made after expiry of the limitation is subject to the result of appeal or revision and the final publication u/s 11 of the Act and its publication in the official gazette u/s 15(1) of the Act shall abide by the result of the appeal or revision.

8. In this connection, reference may be made to the case of Mahanth Daya Ram Das & Ors. vs. The State of Bihar and Ors. (1975 Bihar Bar Council Journal 667).

9. Learned counsel for the State submitted that since objections were filed at a belated stage, the same was not considered by the Additional Collector.

10. Since the matter had come to the Additional Collector on remand to consider the cases of the petitioners, who were said to be the co-sharers, the objections filed after passing of the order in appeal was worth consideration. The submission of learned counsel for the State is, therefore, fit to be rejected.

11. It appears that the learned Additional Collector without appreciating the order of remand and without considering the objections filed by the petitioners

passed the order impugned, as contained in annexure 5, which appears to be wholly illegal and without jurisdiction.

12. It is submitted by learned counsel for the petitioners that by virtue of the interim order passed by this Court dated 19.7.1984, the lands have not been distributed. For the reasons, aforementioned, this application is allowed, the order impugned, as contained in annexure 5, is set aside and the matter is remitted back to the Additional Collector, Khagaria to reconsider the same afresh in light of the objections filed by the petitioners in accordance with law.

No order as to costs.