
(2005) 01 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 5753 of 2001

Kedar Nath Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 11, 11(0), 15, 15(1)

Citation : (2005) 1 PLJR 614

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioners and the S.C.I, appearing for the State. Prayer of the petitioner in the present application is for issuance of an appropriate writ for quashing the order dated 23.3.2001 passed by the Collector, Jehanabad in Ceiling Case No. 07/DM/91-92 by which the application filed by the State u/s 37 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the Act) has been allowed and the order dated 30.12.1998 passed by the Additional Collector, Land Reforms, Jehanabad has been set aside.

2. A land ceiling proceeding being Ceiling Case No. 526/73-74 was initiated against Sahdeo Singh on 24.9.1973 before the Collector, Gaya which was transferred to the Land Reforms Deputy Collector, Jehanabad for disposal. The L.R.D.C. Jehanabad on the basis of the report submitted by the Circle Officer, Jehanabad as well as the objection filed by the land holder u/s 10(2) of the Act, dropped the proceeding by his order dated 22.7.1996 with this finding that the land holder do not possess land in excess of the ceiling area. The land holder had given genealogical table of the family giving details of the family, that there being 7 land holders each entitled for one unit lands are not in excess of- the ceiling unit. The proceeding which was dropped on 22.7.1996 was re-opened by

the Collector, Jehanabad for fishing enquiry by his order dated 15.8.1995 and it was transferred to the Deputy Collector, Land Reforms, Jehanabad for disposal. By order dated 15.1.1997 the D.C.L.R. allowed 18 acres of Class II lands only for one unit to Sahdeo Singh and declared 17 acres as surplus. He also directed for publication of gazette u/s 11 of the Act in the Jehanabad district gazette. The gazette u/s 11(0) dated 16.5.1987 was accordingly published. The land holder preferred appeal No. 1 DM/1987-88 before the Collector, Jehanabad which was dismissed on 8.3.1988 on the point of limitation. Being aggrieved by the aforesaid order the land holder moved before the Member Board of Revenue in Board Revision Case No. 88 of 1988 which was also dismissed by order dated 22.8.1990. The land holder preferred C.W.J.C. No. 6614 of 1990 against these orders and by order dated 29.10.1990 counsel for the State was directed to seek instruction and in the meantime it was directed that the lands which are subject matter of the writ application shall not be disturbed and no notification u/s 15(1) of Ceiling Act would be published. The writ application was finally disposed of on 4.2.1991 the orders passed by the Collector as well as Member Board of Revenue were quashed and the matter was sent back to the Collector to decide the case on merit. The delay whatsoever in filing of the appeal was also condoned by this order. On remand of the case the Additional Collector vide letter No. 908 dated 18.9.1998 called for a report from the Anchal Adhikari, Jehanabad with regard to the details of the lands held by petitioners. A report was submitted by the Circle Officer on 12.12.1998 wherein it was stated that the land holders possessed 32.82 acres of Class-III and 0.17 acres of Class II lands in the joint family of land holder Sahdeo Singh. There are other brothers namely Satyadeo Nr. Singh and Chandradeo Singh. The report also contained the genealogical table and it was reported that full brother and cousin of Sahdeo had share in the land in dispute as such all seven co-sharers having share in the land in dispute were land holders on 9.9.1970, each entitled for one unit as such there is no surplus land. Considering this report the order of the L.R.D.C. Jehanabad was set aside and appeal No. 1/DM/87-88/7DM/97-98 was allowed by order dated 30.12.1998.

3. After much delay on 14.7.1999 a petition u/s 37 of the Act was filed by the State before the Collector, Jehanabad, with a prayer to dismiss the appeal after recalling the order dated 30.12.1998 The Collector, Jehanabad by order dated 25.3.2001 has allowed the petition u/s 37 of the Act and has set aside the order dated 30.12.1998, passed in appeal.

4. The impugned order has been challenged by the petitioner on three grounds, firstly it has been stated that the petition u/s 37 of the Act was filed by the State on 14.7.1999 and section 37 of the Act at that time has already been deleted from the Bihar Land Ceiling Act, 1961 by Bihar Act 8 of 1997 with effect from 27.3.1997. Prior to the coming into force of Bihar Act 8 of 1997 section 37 of the Act was deleted by Ordinance No. 20 of 1995 with effect from 8.9.1995. Thus the application u/s 37 of the Act was not maintainable on 14.7.99, in as much as the Collector Jehanabad in view of the deletion of section 37 of the Act had no jurisdiction to proceed against the petitioners. His order dated 10.10.1999 taking

cognizance of the petition filed u/s 37 of the Act was illegal and without jurisdiction. Secondly it has been stated that the order dated 30.12.1998 was passed by the Additional Collector, Jehanabad in appeal after the remand order passed in C.W.J.C. No. 6614 of 1990. The order dated 30.12.1998 passed in appeal could have been quashed only in revision preferred u/s 32 of the Act before the Member Board of Revenue within a period of 30 days of such order. Since no revision was preferred against the order dated 30.12.1998 the Collector while exercising concurrent jurisdiction in exercise of which the Additional Collector u/s 30 of the Act had passed the order, the Collector, Jehanabad could not have exercised jurisdiction either to review recall or set aside that order. The order of the Collector dated 10.10.1999 is without jurisdiction as there is no provision for review jurisdiction under the Act. Further it has been submitted that the land of the petitioner which has illegally been declared surplus has been acquired and distributed in most illegal manner. Appeal was preferred by the petitioner in the year 1988. Section 15 of the Ceiling Act provides that the State Government or the Collector of the District, specially empowered in this behalf, shall after the statement under subsection 1 of section 11 has been finally published and subject to appeal or revision, if any, acquire, the surplus land by publishing in the official gazette of the district, a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of acquisition to the person or persons concerned.

5. In the present case during the pendency of the appeal, without any publication of gazette u/s 15(1) of the Act going against the provisions of section 15(1) of the Act, the lands of the petitioners were acquired and distributed amongst some parcha holders. The petitioners have no knowledge about any notification u/s 15(1) of the Act acquiring the lands declared surplus as it has never been published in the gazette and no such gazette have been furnished to them which is also mandatory under the Ceiling Rules. Land declared surplus could not have been distributed without its acquisition after publishing the notification in the District gazette as provided u/s 15(1) of the Act. From the impugned order it transpires that the lands declared surplus have been distributed amongst the parcha holders by effecting delivery of possession which is an error of record as the lands have not been distributed to the parcha holders. Further it has been stated acquisition and distribution of the land is illegal as by order dated 29.10.1990, passed in C.W.J.C. No. 6614 of 1990 the publication of notification u/s 15(1) as well as distribution of the surplus lands were stayed. In this circumstance the lands of the petitioners could not have been distributed and if at all it has been done it is a nullity and no right could accrue to any one much less to the parcha holders, if without publication of the gazette u/s 15(1) as well as in contravention of the order passed by the High Court, lands of the petitioners have been distributed among the purcha holders on paper.

6. A counter affidavit has been filed by the State. In paragraph 15 of the counter affidavit it has been stated that prior to the passing of the order dated 29.10.90

in C.W.J.C. No. 6614/90 the surplus land were distributed amongst beneficiaries (Parcha holders). The lands were distributed after completing the formalities parwana were issued to the parcha holders in 1987-88 and since then they are in possession of the same. With regard to deletion of section 37 of the Act on coming of the Ordinance No. 20 of 1995 from 8.9.1995 the statements in the counter affidavit is that the Land Ceiling Case was started on 24.9.1973 and since the ordinance is prospective it cannot be enforced in such cases in retrospective manner. It has also been stated that the word "Collector" has been defined u/s 2B of the Act and there is basic difference between the Collector within the act and the Collector of the district as such order dated 30.12.1998, passed by the Additional Collector u/s 30 of the Act can be quashed by Collector of the District u/s 37 of the Act. Section 37 of the Act provides that the Collector is to decide the dispute for which no specific provision is made in this Act. Since in this case the Additional Collector did not hear the State before the passing of the order dated 30.12.1998 as such there is no error in the order dated 10.10.1999 or subsequent order passed by the Collector u/s 37 of the Ceiling Act.

7. In paragraph 15 of the counter affidavit it has been stated that the surplus lands were distributed amongst the beneficiaries before passing of the order in C.W.J.C. No. 6614 of 1990. Parwana were issued in favour of the beneficiaries and since then they are in possession of the same. It has also been stated that the Anchal Adhikari In his report dated 19.2.2004 has stated that out of 15 beneficiaries Parwanas were not made available to seven beneficiaries due to their absence and rest eight beneficiaries are in possession over the distributed land.

8. On consideration of the statements made in the writ application as well as in the counter affidavit and also the submissions made by the petitioners counsel as well as the counsel appearing for the State, I find, that the stand taken in the counter affidavit is not acceptable. Admittedly section 37 of the Act was deleted by Ordinance 20 of 1995 with effect from 8.9.1995 which was subsequently made an Act by Bihar Act 8 of 1997 which was published in Bihar Gazette on 27.3.1997. In sum and substance the provision u/s 37 was deleted with effect from 8.9.1995. It has been admitted in counter affidavit that the petition u/s 37 was filed on 14.7.1997 i.e. much after the provision u/s 37 was deleted. In this circumstance the Collector was not authorised to exercise jurisdiction u/s 37 of the Act. The stand taken in the counter affidavit that since the ceiling proceeding was initiated in the year 1973-74 and the amendment in the Act is prospective as such the Collector is competent to exercise jurisdiction u/s 37 of the Act is patently illegal and it cannot be accepted by any stretch of imagination. In this view of the matter the order dated 25.3.2001 passed by the Collector, Jehanabad in Land Ceiling Case No. 7/DM/91-92 is without jurisdiction and fit to be quashed.

9. Further it has rightly been pointed out by the counsel for the petitioners that u/s 30 the Additional Collector and the Collector of the district both exercise concurrent jurisdiction. Since the jurisdiction u/s 37 was not available to the

Collector on account of its deletion in that case even considering that the Collector, Jehanabad has passed the impugned order in exercise of jurisdiction u/s 30 which is the appellate jurisdiction. The impugned order is bad. The order dated 30.12.1998 was passed by the Additional Collector in exercise of jurisdiction u/s 30 as such the impugned order passed by the Collector will amount to be an order passed in exercise of review jurisdiction. Once the order was passed by the Additional Collector u/s 30 of the Act, the Collector had no jurisdiction either to review, recall or set aside that order. His order dated 10.10.1999, therefore, at best can be treated to be an order passed under review jurisdiction. As the Statute has not provided any review jurisdiction to the authorities under the Act, the impugned order is wholly without jurisdiction and fit to be quashed.

10. So far the distribution of the surplus land is concerned, the counsel appearing for the State could not point out any notification published u/s 15(1) of the Act notifying the acquisition of the surplus lands for distribution. The petitioner in paragraph 22 of his writ petition has emphatically stated that no gazette u/s 15(1) of the Act has been published notifying the acquisition of surplus land. This statement has not been contradicted by the respondent State in its counter affidavit. Since the surplus land cannot be distributed without publication of the notification of acquisition in the district gazette the distribution and acquisition of surplus land is illegal and without jurisdiction. In the counter affidavit simply it has been stated that the names and other details of the parcha holders have been given in Annexure-B to the counter affidavit. Unless there is gazette notification u/s 15(1) of the Act as provided under the rules, and the copy of that gazette is served to the land holder, there cannot be any acquisition or distribution of the surplus land under the Act. In the present case the respondent State has not disclosed particulars of the gazette published u/s 15(1) of the Act enabling the State to distribute the surplus land. This statement that prior to the order passed in the writ application lands were distributed is not acceptable. If any such distribution has been made it is in violation of the provisions u/s 15(1) of the Act under the provision of which the State Government or the Collector of the District, specially so empowered in this behalf, shall after the statement under sub-section 1 of section 11 has been finally published and subject to appeal or revision, if any, acquire, the surplus land by publishing in the official gazette of the district, a notification to the effect that such land is acquired for public and such publication shall be conclusive evidence of the notice of the acquisition to the person or the persons concerned.

11. Statement as made in the counter affidavit clearly indicates that the surplus land was distributed without any notification in the district gazette and without giving its information to the land holders, during the pendency of the appeal which is not permissible under the Act. Once the appeal was preferred by the petitioners, in such case, till the disposal of the appeal no steps for acquisition of surplus land and its distribution should have been taken by the respondents. Since in violation of the provision u/s 15(1) of the Act the lands have been

distributed the respondent State has committed serious illegality. They will have to take steps for cancellation of such distribution of the land and make arrangement for restoration of petitioners possession over those lands. Admittedly the order dated 30.12.1998 indicate that there are seven land holders in the family of the petitioners and after giving one unit to each land holder there is no surplus land. In such case there is no scope for any distribution of petitioners land to any one. The order dated 30.12.1998 being final order the respondents are directed to publish a notification in the district gazette denotifying the surplus land. If land declared surplus have been distributed amongst the land less persons then respondents will take steps for cancellation of their parwana after issuing notice to such beneficiaries and to restore the possession of the petitioners over their lands. So far the period for which the petitioners have illegally been deprived from enjoying the benefits of their lands it is open to the petitioners to take any legal recourse before the appropriate forum. The order dated 25.3.2001 passed in Ceiling Case No. 07/ DM/91-92 is quashed. With the aforesaid observations/ directions, this writ application is allowed.