

(2002) 09 PAT CK 0074
In the Patna High Court
Case No : C.W.J.C. No. 9026 of 2000

Krishak Sangathan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3, 4

Constitution of India, 1950 — Article 162, 243

Citation : AIR 2003 Patna 44 : (2003) 1 PLJR 714

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Shashi Nath Thakur, for the Appellant; S.D. Yadav, Government Advocate and K.H. Subramaniam, Secy.-cum-Commissioner, Revenue Dept., for the Respondent

Final Decision : Allowed

Judgement

1. This matter as a public interest litigation (PIL) has as its subject consolidation of agricultural holdings, under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. After the entire process of consolidation of holdings was over and carried out in villages of Boorhia Bari and Pakri, under Bhiria Gram Panchayat of Kateya Anchal, Gopalganj District and holdings (chaks) had been allotted consequent upon promulgation and preparation of scheme, this notification cancels the scheme and its finality and the allotment of allotted chaks.
2. For the final order on this petition let the orders dated 9-8-2002, 12-8-2002, 13-8-2002 and 2-9-2002 be recorded seriatim chronologically.
3. 9-8-2002. Learned Government Advocate, Mr. S. D. Yadav submits that he has been asked by the Secretary, Department of Revenue to seek one month's time to explain to the Court as to why consolidation of holdings has come to a halt. This is a ridiculous mention. Let the Secretary, Revenue Department be present in the Court on Monday as legislation regarding consolidation of holdings was a

sequel to silent revolution following the abolition of Zamindari.

4. Put up on Monday (12 August 2002).

5. 12-8-2002. Apparently time again is being sought from the Court to produce the record. It is not understood why time is being sought to find out the recorded power which brought the entire consolidation of holdings exercise, in Bihar, to a halt. At least this part of the record should be identified. Clearly the intention of the legislation of the Act known as the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 was to take agricultural Bihar into consolidation of holdings. This legislation was virtually a sequel to the abolition of Zamindari and was part of the silent revolution to bring an agrarian reform so that the agricultural holdings particularly of the marginal farmer becomes an economically viable holding. At the time when the Act was passed Bihar could take credit that its legislation was prior to other States. Today, as other States are winding up their consolidation of holding operations, in rural Bihar time has stood still and the legislation which was meant to aid land reforms has been halted. The Act is the law. It's rule in its operation cannot be halted.

6. The Court has not understood this game of taking time to show to the Court the power by which the consolidation was stopped in Bihar. If it was the notification dated 2 November 1993 No. 1166 reference to which was made by the Government Advocate, on instructions of the Secretary present in Court, then the State respondents may save themselves their effort as this notification is lying in the High Court's Library. Now the Government Advocate may explain how consolidation was stopped when the legislation said that it must go forward.

7. Passed over for tomorrow. Put up tomorrow 13 August 2002 under the same heading.

8. 13-8-2002. These proceedings have continued from yesterday. The matter is about cessation of the process and exercise on consolidation of holdings under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. The necessary corollary of this legislation is to prevent fragmentation of agricultural holdings also. The preamble to this legislation reads,

"An Act to provide for the consolidation of holdings and prevention of fragmentation".

9. The petition challenges the action of the State Government to put a halt to the consolidation exercise intended by the aforesaid legislation. Since this matter had been pending, the State Government is avoiding making any statement to explain how and under what sanction the State Government halted the exercise. The legislative Intent is to carry the agrarian reform and complete it. In fact, at one place in the counter affidavit there is even a suggestion that should the petitioner (or any like him) may desire consolidation of their agricultural holdings then they may go to the competent Civil Court to vent their grievance. The question does not arise with Civil Courts having been ousted to deal with this

subject and the matter having been left entirely to the Special Courts or Tribunals constituted under the Act. The petitioner can go nowhere except the quasi judicial tribunals mentioned in the Act. A Secretary to the State Government should not have made such an irresponsible statement.

10. With such a defence on behalf of the State the Court required the Government Advocate Mr. S. D. Yadav to explain the action of the State Government, as to from where it drew its power to stop the exercise for consolidation of holdings and prevent fragmentation of them. The answer was not forthwith coming. Time was being sought to place a notification (No. 1166 dated 2-11-1993) to justify the situation that consolidation of holdings was stopped by an executive fiat. The Court required the High Court librarian to place the notification before the Court. Thus, it frustrated the exercise of granting time to locate the series of notifications at the Secretariat as it was otherwise available at the High Court Library. The notification(s) recite parrot-like that because of certain difficulties the consolidation work in Bihar had been stopped. What the difficulties were have not been specified. It appears to be standardised for all Bihar (then it was Jharkhand inclusive).

11. At this juncture it will be necessary to refer to the relevant provisions of the Act. To begin consolidation operations in reference to a particular area the action has to be notified (Section 3). Then, till the close of the consolidation operations the process will ensue in the area to which the notification relates (Section 4). The Act also gives discretion to the Government that should an occasion arise then consolidation exercise may be cancelled in respect of the whole or part of the specified area in the notification. Such a notification may also be in respect of any unit of such area. This exercise of halting consolidation with respect to a specified area, its part or a unit is subject to the final orders relating to correction of land records (Section 4A). Unit is understood as a village or part of a village which the designated authority specifies, Section 2 (18). But the intention of giving discretion to the State Government for halting consolidation operations temporarily is for a purpose. This is to permit the administrative machinery which is carrying out consolidation operation to consolidate and correct the land records of that area. The power is for specific purpose. Otherwise, there is no power in the State . Government that by one stroke of pen it can halt the consolidation operation throughout the State. This will be a direct confrontation between the State Government and an act of the legislature. A situation negating parliamentary democracy, Unfortunately, this situation has existed on the record whenever notifications were issued to stop the consolidation operations in 1992 and thereafter. The power to issue such notifications to frustrate the purpose of the Act could not be shown.

12. While the exercise on consolidation of holdings was brought to a grinding halt in Bihar by the State Government, the Constitution of India was being amended. Perhaps, unknown to the powers within the Government of Bihar, this very aspect and subject of consolidation of agricultural holdings was being made part

of an entirely new Schedule to the Constitution of India. Thus, an action to carry out an exercise for the consolidation of agricultural holdings was becoming a constitutional obligation, whereas the Act itself was a legislative intent that there shall be consolidation of agricultural holdings in Bihar and prevention of fragmented holdings.

13. The Constitution of India by the 73rd and the 74th amendments was witnessing insertion of Chapters on Panchayats and Municipalities. Simultaneously, for each of the institutions of self government the Schedule to the Constitution were also being added. These were the 11th Schedule and the 12th Schedule. The 11th Schedule corresponds with the chapter on Panchayats and the 12th Schedule corresponds with the chapter on Municipalities. The second entry to the 11th Schedule is very relevant. It reads :

ELEVENTH SCHEDULE (Article 243 G)

2. Land improvement, Implementation of land reforms, land consolidation and soil conservation.

3.

14. Thus, right before the eyes of the State Government lay the constitution obligation to carry in furtherance the intention of land reforms on land consolidation (Article 243 G). There was no escape from this. Land consolidation scheme having become a law of the State, it was also being made an obligation of the administration. This subject was also becoming the Panchayats obligation. Clearly, Panchayats were being given responsibility to carry forward aid and facilitate agrarian reforms. Rural Bihar was being encouraged by the Constitution of India to actively associate and implement agrarian reforms. The Panchayats were being cast with duties to participate in socio-economic agrarian reforms. How could the State Government stop land reforms on land consolidation? The Constitution of India protects this Act from being challenged by giving it protection in the Ninth Schedule (Entry 259). How could the State Government frustrate its implementation?

15. Further, the people of Bihar need to know that when the notifications had been challenged for halting the consolidation proceedings and a judgment of Patna High Court hold such an exercise to be bad, the notifications were quashed. The State of Bihar went to the Supreme Court. Thereafter, the people of Bihar were fed with information that land consolidation in rural Bihar is at a still because there is a matter pending before the Supreme Court. This is not so. This is the same game the State Government played when elections to Panchayats and Municipalities were held up. Whether cultivators, citizens within the State or lawyers not excluded, all are under the impression that there is matter pending at the Supreme Court and it is subjudice and, thus, land consolidation matters are held up. The Court is told this whenever a consolidation of holding related matter is placed for consideration before the Court. In this very case the Court was being told that there is matter pending at

the Supreme Court on the appeal of the State of Bihar. The records were being located alongwith the records of the lost notifications. But, rural Bihar is not aware that the SLP of the State of Bihar had been simply dismissed with a very short order "Special leave petition is dismissed".* This happened on 2,8th July 1995 i.e. seven years ago.

16. Thus, any action which was taken to stop the land consolidation process in the face of the Constitution of India amended by 73rd and 74th amendment, was at every given time an unconstitutional act of the State Government. The record is so certified on this certiorari action, which a writ petition is.

17. But, today the Court is impressed and appreciates the statement which has been made by the Secretary, Government of Bihar. He is K.A.H. Subramanian, Secretary-cum-Commissioner, Revenue and Land Reforms, Department, Government of Bihar. He is not the same Secretary who swore the counter affidavit.

18. By leave of the Court, he submitted that since yesterday he has been hearing proceedings at the Bar and he is now convinced that it is the constitutional obligation of the State of Bihar that the programme of land consolidation cannot remain in the freeze and has to be resumed. He further submitted that it will be his effort to put up a note before the Government that regard being had to the present state of halt to land consolidation, it is an obligation of the State Government that land consolidation operations must be carried out. He stated that he will record and put. up a note for the State Government without loss of time. This statement of the Secretary has been recorded in presence of the Government Advocate, Mr. S. D. Yadav. The Secretary to the State Government also offered that he will file an affidavit and append his note to show the steps taken. Appending the note which the Secretary will make out for the Government is a matter between him and the Government. The stage for looking into this aspect of the record has not arrived. For the Court, the affidavit of the Secretary will suffice. This may be filed within two weeks.

19. Hereinafter, the Court will judge the State Government, to fall in line with the law, the Bihar Consolidation of Holdings and Prevention of Fragmentation Act 1956 and the constitutional obligation to carry forward land reforms on land consolidation.

20. Learned Government Advocate prays that, this matter may be listed after two weeks so that he will make formal announcement on the resumption of land consolidation process under the Act and the Constitution of India. As prayed list after two weeks.

21. Let a copy of this order to be given to the Government Advocate.

22. 2-9-2002 On 13 August 2002 the Court gave it's orders noticing that the Government of Bihar had frustrated the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. The Court is not repeating the contents

of the order. The Court, thus, appreciates the stand of the Secretary-cum-Commissioner, Government of Bihar. Today, he has filed an affidavit by which he has made a statement, to the effect, that he has done all that he could do as a Secretary to the Government: closer to the theme that he has taken the horse to the water but he cannot make it drink.

23. The Court fails to understand that this is not a matter of a legislation which by the Constitution and under the norms of parliamentary democracy will be put up for consideration of the Minister concerned and, thereafter, for further consideration by a select committee of the legislature for receiving more views and discussion, and then a Bill for presentation to the legislature for further debate on the Bill.

24. The present is a case of a law which was passed in 1956. The law is an agrarian reform a sequel to the abolition of Zamindari. The Court reminded the Government on the last occasion that with the 73rd and 74th amendment it must pay attention to entry No. 2 of the Eleventh Schedule read with Article 243G under the Chapter Panchayat, the Constitution of India. The subject "land consolidation" is part of a subject on which the Panchayats are also concerned.

25. Fragmentation of holdings can be the bane of marginal farmer. Bihar's economy is basically rural. While the other States have by now virtually completed their programme on the consolidation of holdings, Bihar has yet to make start on it. In the circumstances no time is to be lost and the State Government must make a statement before the Court on how it proposes to restart consolidation and take care of the entry in the Constitution of India which the Court has pointed out.

26. The action of dropping an exercise on consolidation of holdings so as to disband the Department of Consolidation of Holdings and dissipate this staff to other government departments was a wrong step. Social agrarian reforms laws were meant to be executed with dedication.

27. Put up after 10 days under the same heading.

28. The affidavit of the Secretary-cum-Commissioner, Revenue and Land Reforms Department, Government of Bihar is dated 28 August 2002. This affidavit accepts that the exercise on consolidation of holdings had been stopped wrongly, irregularly and illegally in the face of a law that consolidation of agricultural holdings is an obligation on the State of Bihar. The affidavit of the Secretary reads :

"4. That this deponent has placed before the Government all facts, relating the present case along with the order of the Hon'ble Court dated 13-8-2002, as stated earlier, on 23-8-2002.

5. That this deponent has made it clear that this scheme of consolidation is certainly a major programme of Land Reforms and is also highly beneficial for land holders, particularly the small and marginal farmers.

6. That this deponent has clearly pointed it out that shortcomings in the implementation and execution of the scheme could be obviated by taking up suitable remedial measures.

7. That the deponent, has also referred to the XI-Schedule Item-2 of the Constitution of India under which this has now become a constitutional obligation for the State to take up the work of land consolidation in the light of Article 243(G) of the Constitution.

8. That at the moment the matter is put up at the level of Hon"ble State Minister Revenue and Land Reform Department, Government of Bihar, Patna. Who has kept it for discussion to be held on 30th of this month.

29. Consequent upon the submissions of the Secretary to the Government on an affidavit the notification dated 27-7-1998 as contained in Annexure 11 on the statement of the Government itself is quashed.

30. The petition succeeds.