

(2014) 01 JH CK 0042
In the Jharkhand High Court
Case No : C.W.J.C. No. 3029 of 2000 (R)

Kumar Gubardhan Prasad Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(1), 10(3), 11(1), 9

Citation : (2014) 01 JH CK 0042

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Indrajit Sinha and Shashank Shekhar, Advocate for the Appellant; Arvind Kumar, J.C. to G.P.-II, Advocate for the Respondent

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioners have prayed for quashing the order dated 28.3.2000 (Annexure-4), passed by the respondent No. 3 in L.C. Case No. 20/1973-74, whereby the lands have been allotted to the petitioners without keeping in view the option exercised by the petitioners in accordance with Section 9 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 [hereinafter referred to as "the said Act"] and without considering the objection against the draft statement filed u/s 10(3) of the said Act and also without taking into consideration the order dated 16.2.1996 passed by the then Ranchi Bench of the Patna High Court in C.W.J.C. No. 2865/1995(R). The petitioners have further prayed for quashing the consequential order dated 19.5.2000 (Annexure-5) directing for publication of the final draft statement u/s 11(1) of the said Act and the final draft statement published on 19.5.2000 (Annexure-6).

2. It has been stated that earlier without publishing the draft statement u/s 10 of the said Act, the Additional Collector, Garhwa had directed for final publication of the draft statement u/s 11(1) of the said Act. The petitioners were thereby deprived of their right to file objection under Sub-section 3 of Section 10 of the

said Act. Aggrieved by the said final publication of the draft statement u/s 11(1) of the said Act, the petitioners filed C.W.J.C. No. 2865/1995(R) before the then Ranchi Bench of the Patna High Court. After hearing the parties, the said writ petition was disposed of by order dated 16.2.1996 directing the Additional Collector to publish the draft statement u/s 10 of the said Act giving opportunity to the petitioners to exercise their option in accordance with law.

3. After the matter was remitted to the Additional Collector, the petitioners had exercised their option, but the same was not considered and draft statement u/s 10 of the said Act was published, which also followed publication of final draft statement u/s 11(1) of the said Act. It has been submitted that though the Collector is the prescribed authority under the law, the Additional Collector, who exercised the power of Collector, did not apply his mind and passed the impugned orders on the advice of the Government Pleader. The impugned orders of the Additional Collector are wholly arbitrary, illegal, contrary to the direction of this Court passed in C.W.J.C. No. 2865/1995(R) and are liable to be quashed.

4. The respondents have opposed the writ petition. In the counter affidavit, it has been, inter alia, stated that after the matter was remitted, the petitioners were asked to exercise their option by Letter No. 636 dated 2.12.1998, sent through the registered post dated 7.12.1998, but the petitioners did not submit their option, though sufficient opportunity was given to them. In that situation, the respondents sought legal advice from the Government Pleader and in accordance with his advice, they proceeded further and passed the order dated 8.6.1999 u/s 10(1) of the said Act. Thereafter, the draft statement was published and final draft statement was also published u/s 11(1) of the said Act. It has been submitted that there is no illegality or arbitrariness in the impugned orders and the writ petition is not maintainable and is liable to be dismissed.

5. I have heard learned counsel for the parties and considered the facts and materials appearing on record. I have also perused the relevant orders produced before this Court. The respondent No. 3 in his order dated 16.2.2000 has specifically mentioned that the petitioners were asked to exercise their option u/s 9 of the said Act and they submitted their option under the said provision. But the lands, which are described in the said option, have not been included in the draft statement made u/s 10(1) of the said Act. Further, in his order dated 28.3.2000, he repeated the same thing and mentioned that there was no mention of Village - Banazangh in the draft statement published u/s 10(1) of the said Act. Under that circumstance, opinion was sought from the Government Pleader and on getting his advice for proceeding further in the matter, the draft statement u/s 10(1) of the said Act was published and in view of the option exercised by the petitioners, the lands have been allotted in the Village - Karson and Khurakalan to the extent of 45 Acres of Class - 6 land for seven permissible units in total $45 \times 7 = 315.00$ Acres.

6. Thus, two contradictory versions of the respondents have come on record. One is that the petitioners exercised their option u/s 9 of the said Act after the

matter was remitted by this Court (vide the order sheet of L.C. Case No. 20/1973-74) dated 16.2.2000, whereas in Paragraph 11 of the counter affidavit filed by the respondents, it has been stated that in spite of request made and opportunities provided, the petitioners did not submit their option.

7. The said contradictions in the orders and the statement made in the counter affidavit by the respondents strengthen the force of the petitioners' contention that the option exercised by them has not been duly considered in spite of the clear direction of this Court in the order dated 16.2.1996 passed in C.W.J.C. No. 2865/1995(R). In view of the said contradictory statements of the respondents, the grievance raised by the petitioners in the writ petition, the entire matter, thus, deserves reconsideration and fresh decision.

8. Since the proceeding has been disposed of erroneously by the Collector twice earlier, it is a fit case in which the State Government, in exercise of its jurisdiction u/s 45(B) of the said Act, should call for and examine the whole record and pass appropriate order.

9. In view of above, this writ petition is disposed of giving liberty to the petitioners to file petition before the State Government praying for reopening of the case and disposal of the same afresh in accordance with the provisions of the said Act.

10. If such petition is filed, the State Government shall consider the same and pass a reasoned order in accordance with law within six months from the date of receipt of the petition.