

(1989) 09 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 95 of 1983 (R)

Lal Mohan Bej

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 1, 16(3), 2, 3, 4
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 — Rule 19(3), 19(4)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2

Citation : (1990) 1 PLJR 750

Hon'ble Judges : S.B. Sinha, J; B.P. Singh, J

Bench : Division Bench

Advocate : V.N. Sinha, for the Appellant; M.P. Pandey and Ganpati Trivedi, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—In this writ application, the Petitioner has assailed the order of the Land Reforms Deputy Collector, Saraikella dated 14.6.82 in L.C. Case No. 28 of 1981-82 whereby he rejected the application filed by the Petitioner u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be stated "as the Act) claiming pre-emption in respect of plot No. 1394 of khata No. 534 of village Bara Gamaria.

2. The case of the Petitioner is that he is an occupanacy raiyat of village Bara Gamarla aforesaid plot No. 1394 of village Bara Gamaria was recorded in the name of Man Govenda Das and Jugal Das (Respondent No. 6) and Kiranbala Dasi as their raiyati holding. The aforesaid plot having an area of 005.020 hectares has been recently renumbered as plot No. 1188. In a mutual partition, the entire plot fell to the share of Man Govinda Das and Jugal Das (Respondent No. 6). Man Govinda Das died leaving behind his two sons, Bhola Nath Das, Respondent No. 4 and Shyam Sunder Das, Respondent No. 5. According to the Petitioner, the

village map relating to plot No. 1394 would disclose that on the northern boundary of the plot, was plot No. 1391 recorded in the names of Gauri Das, Amulya Das and Agasta as as raiyats. To its east was plot No. 3626 which was also raiyati land of Man Govinda Das and Jugal Das and Kiranbala Dasi. Thus, Respondent Nos. 4 to 6 were the raiyats of this plot as well. Out of this plot, Petitioner (sic) from Respondents 4 to 6 an area measuring 0.04 acres. The area purchased by the Petitioner was adjacent to plot No. 1394 and, therefore by reason of such purchase on (sic) the Petitioners became an adjacent raiyat of No. 1394. To the south of plot No. 1394 is plot No. 1395 which according to the Petitioner belongs jointly to him and his agnates and his father was recorded as one of the raiyats. The Petitioner, therefore, claims that even to the south of plot No. 1391 was his plot No. 1395 and, therefore, he was also an adjacent raiyat to the south of the plot in-question. On the west of plot No. 1394 is a road.

3. On the 30th of September, 1981, Respondents sold an area of 01.50 hectares out of plot No. 1394 to Respondent No. 3. for a consideration of Rs. 5000/-. Respondent No. 3 was neither a co-sharer nor an adjacent raiyat in relation to plot No. 1394. The sale deed mentioned the boundary of the plot sold to Respondent No. 3 as having on its southern side the land of the father of the Petitioner and to its east the land of the Petitioner himself. This, according to the Petitioner, also establishes that he was a raiyat in respect of the lands adjacent south and east of the land in-question.

4. In view of sale of a portion of plot No. 1394 in favour of Respondent No. 3 on 30th September, 1981, the Petitioner filed an application on 21.11.81 u/s 16(3) of the Act within the prescribed period and after depositing the necessary amount, the application was registered as L.C. case No. 28 of 1981-82 before Respondent No. 2. the Land Reforms Deputy Collector, Saraikella.

5. The ordersheet of the case before the Land Reforms Deputy Collector has been annexed as Annexure-2. The ordersheet discloses that on the 23rd of November, 1981 the case was adjourned to the 1st of December, 1981 for hearing. Again on 1.12.81 on the request of the Petitioner, the case was adjourned to 7.12.81. On 7.12.81 attendance was filed on behalf of the Petitioner but the matter was adjourned to the 10th of January, 1982. From the ordersheet it appears that in spite of the matter being disected to be listed on the 10th of January 1982, it was again put up for hearing on 1982 instead of 10.1.82. On that date the Petitioner was obviously not present and the matter was adjourned to 8th February, 1982. On 8th February, 1982 as well, the Petitioner was not present and the matter stood adjourned to 26th of March, 1982. On that date as well, the Petitioner was not present and matter was adjourned to the 14th of June, 1982. The impugned order was passed on 14.6.1982.

6. I may observe that on account of the fact that the matter was listed on the 4th of January 1982 by mistake, the Petitioner, perhaps did not appear on the subsequent dates. That however, is not very material. The impugned order dated 14.6.82 mentions the fact that Land Reforms Deputy Collector heard both the

parties and examined the documents. It also mentions that on 26.3.82, Respondent No. 3 had appeared even without notice and had filed a rejoinder in which it was stated that Since the plot of land in-question fell within the urban agglomeration of Jamshedpur town it was covered by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and not by the provisions of the Act. It was also claimed by Respondent No. 3 that in any event, she being an adjacent raiyat of plot No. 1394, the application filed by the Petitioner for pre-emption of the land in-question could not be granted. The Land Reforms Deputy Collector held that in view of the fact that the land fell within the Urban Agglomeration of the town of Jamshedpur, the Act did not apply to the land in-question. He also held that since Respondent No. 3 was also an adjacent raiyat being the raiyat of plot No. 1391, the application for pre-emption filed by the Petitioner could not be granted.

7. The grievance of the Petitioner is that he was given no opportunity of hearing. It has been submitted on behalf of the Petitioner that under Rule 19(3) and (4) of the Rules framed under the Act, the Land Reforms Deputy Collector ought to have issued notice to the transferor and the transferee when an application u/s 16(3) of the Act had been filed before him. Unfortunately he did not issue notice to them. This fact is also obvious from the order-sheet and from the statements recorded in the impugned order that Respondent No. 3 appeared even without notice. The second grievance of the Petitioner is that he had no intimation regarding the date of hearing. It is stated that he never appeared before the Land Reforms Deputy Collector and the statement recorded in the impugned order that both the parties were heard is not correct because the Petitioner was not present. He, therefore, submitted that the order of the Land Reforms Deputy Collector had been passed in violation of the principles of natural justice.

On the merit it was submitted that both the grounds given in the impugned order for disposal of the application u/s 16(3) of the Act were untenable in law. It was contended that the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 did not either expressly or by necessary implication exclude the operation of the Act which applied through out the territory of Bihar. Secondly, it was submitted that there was no discussion whatsoever in the order of the Land Reforms Deputy Collector as to what documents were examined by him. No evidence was adduced before him and the order itself does not disclose on what material or evidence, the Land Reforms Deputy Collector recorded a finding of fact that Respondent No. 3 was also as adjoining raiyat.

8. Section 1 of the act provides that it extends to the whole of the state of Bihar. In Section 2(f) of the Act land has been defined as follows:

2(f): Land means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, kharhur or pasturage or forest land or even land perennially submerged under water or the homestead of a land-holder

Section 3 of the Act provides as follows:

3. Provisions of the Act to prevail over other laws. - The provision of this Act shall have effect, notwithstanding anything to the contrary contained in any other law, custom, usage or agreement for the time being in force or in any decree or order of any decree or order of any Court:

Provided that nothing contained in this Act shall be deemed to have any effect on the provisions of the Bihar Bhoodan Yagna Act, 1954 (Bihar Act XXII of 1954)

Section 4 of the Act provides for the ceiling area of the land for one family consisting of not more than five members for the purposes of the Act. The provisions of the Act, therefore, leave no manner of doubt that it provides for the ceiling area of the land which is used or capable of being used for agricultural or horticultural purposes and includes land which is an orchard, harshar or pasturage or forest land or even land perennially submerged under water or the homestead of a land holder;

On the other hand, the Urban Land (Ceiling and Regulation) Act, 1976 defines "urban land" u/s 2(o) of that Act which is as follows:

Urban Land means - (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area and town committee, a small town committee, a cantonment board or a Panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

Explanation. - For the purpose of this clause and Clause (q)

(A) "agriculture" includes horticulture but does not include

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breeding of live-stock, and

(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of a agriculture, or land records before the appointed day as for purpose of a agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the

purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farmhouses, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in Clause (B) of this explanation land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture; Vacant Land has been defined as follows:

2(q) "vacant land" land, not being land mainly used for the purpose of agriculture, in a urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such is situated;

(ii) in an area where there are building is not permissible under the building regulations the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

(iii) in area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live stock, on any land situated in a village in within an urban agglomeration (described as a village in the revenue records). Then so, much extent of the land as has been ordinary used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purpose of this clause.

Section 3 provides that except as otherwise provide in the Act on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit prescribed by Act.

9. It will thus appear from a perusal of the relevant provisions of the Acts that while The Bihar Land Reforms (Fixation of ceiling Area and Acquisition of Surplus Land) Act deals with ceiling of land which is used or is capable of being used for a agriculture or horticulture the Urban Land (ceiling and regulation)Act, 1976 deals with ceiling of land not being land mainly used for the purpose of agriculture. It is, therefore apparent that two Acts deal with two distinct types of land , one is concerned with what may be broadly called agricultural land" while the other deals with what may be described broadly as urban land which excludes land mainly used for the purpose of agriculture. I, therefore, find nothing in the provisions of the two Acts which can lead me to conclude that one Act excludes the operation of the other. In my view, there is no dichotomy between the two Acts and they deal with two distinct types of land. The same

view has been taken by one of us sitting singly S.B. Sinha, J. in 1988 B.B.C.J. 769. It was observed that:

However, in my opinion, the submission made on behalf of the earned Counsel for the Petitioners that the provision of the Act will have no application in a case where the provisions of Urban Land (Ceiling Regulation) Act, 1976 applies has no substance. There appears to be in my opinion no conflict between the provisions of the aforementioned two Acts. In any event in this case it is not possible to hold that the land in question is situated within the Urban agglomeration as the said point was not taken before the courts below nor is there any finding in relation thereto. I am also of the view that the Section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 does not bar the application of the said Act and upon a harmonious consideration of the provisions of both the Acts, it is clear that the provision of the said Act also applies to the agricultural lands situated within the limits of municipality or notified area committee.

I, therefore, hold that the first ground given by the Land Reforms Deputy Collector for dismissing an application filed by the Petitioner u/s 16(3) of the Act is untenable.

10. So far as the second ground is concerned, the contention of the Petitioner appears to be well founded, It appears that Respondent No. 3 appeared on her own without notice and joinder. It is not stated in the order what documents were filed by the parties is considered by the Land Reforms Deputy Collector. No such document has either been described or discussed in the order. There is no reference to any evidence that may have been adduced by any one in that proceeding without a discussion of the material evidence on record, the Land Reforms Deputy Collector has held without any evidence that Respondent, No. 3 is also an adjacent raiyat being the raiyat of plot No. 1391. The order passed by the Land Reforms Deputy Collector u/s 16(3) of the Act is an appealable order. It is well settled that an authority exercising quasi-judicial functions, under an Act is required to give reasons for its Conclusion the reason should be apparent on the face of the order. A finding recorded by such an authority without reference to any evidence on record must lead to the conclusion that the finding is based on no evidence whatsoever. Such an order, if challenged, cannot be sustained. Respondent No. 3 was represented s before us by Mrs. Jaya Roy Respondent No. 3 has filed no counter-affidavit to rebut the statements made in the writ application. We are therefore to proceed on the basis that the factual averments contained in the writ application are correct being uncontroverted. The Petitioner has categorically stated in paragraphs 19 and 22 of his writ application that the impugned order incorrectly mentions that both patties were heard on that date. In fact the Petitioner had no knowledge about the fact that the case was to be heard on 14.6.82 and hence he was denied his statutory right of being heard in the matter. The contention of the Petitioner is also supported by the orders feet of the case. In this view of the matter, I old that apart from the fact that the finding fact recorded by the Land Reforms Deputy Collector is not based on any

evidence on record, at least the order does not disclose so, the impugned order was passed in violation of the principles of natural justice and of the statutory mandate of affording an opportunity to the Petitioner of being heard in the matter.

11. In view of the above findings this writ application is allowed and the impugned order passed by the Land Reforms Deputy Collector, saraikella dt. 14.6.82 in the Land Ceiling Case No. 28 of 1981-82 as contained in Annexure 2 is hereby quashed. The Land Reforms Deputy Collector is directed to issue notice to the parties and, thereafter, to proceed to decide the application filed by the Petitioner u/s 16(3) of the Act in accordance with law. There will be no order as to costs.

S.B. Sinha, J.

12. I agree.