
(2003) 10 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 2551 of 2003

Mahanth Brij Narain Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 311(2)

Citation : (2003) 10 PAT CK 0043

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Yogendra Mishra, for the Appellant; Ashish Anshu and V.K. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 30.1.2003 (Annexure 4), passed by the Minister for Revenue and Land Reforms, Govt. of Bihar, initiating proceeding u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act"), and has called upon the petitioner to present his case. Land ceiling proceeding were started against the petitioner which had attained finality, whereby in substance three units had been allowed to the petitioner. Thereafter the Collector of the district reopened the proceeding u/s 45B of the Act which was registered as Land Ceiling Case No. 5/73-74 (State of Bihar vs. Mahanth Ram Charitra Das), whereby one more unit was allowed to the petitioner, over and above the three units earlier granted. It was further stated in this order that 30 acres had been declared surplus which had been surrendered by the petitioner which vested in the State of Bihar. This order not having been challenged became final vide Annexure 1. Much after the proceeding u/s 45B of the Act concluded, the Collector of the district decided to re-open the matter once again u/s 45B and was registered as Case No. 5/73-74 / 59/92 (State of Bihar vs. Mahanth Brijnarain Das). After affording an opportunity of hearing to

the petitioner, the learned Collector of the district of Sheohar disposed of the same by this order dt. 30.1.95 (Annexure 4), whereby he has affirmed his earlier order 15.9.83 (Annexure 1), and there was no alteration in the existing position. Section 45B of the Act has been amended by Act VIII of 1997, whereby Collector of the district has been omitted and the State Government remains the only authority u/s 45B empowered to re-open closed land ceiling proceedings under the Act. The Minister of the Department of Revenue and Land Reforms is now the prescribed authority, and has issued the impugned notice dated 31.1.2003 (Annexure 5) u/s 45B of the Act whereby he has conveyed his decision to the petitioner to re-open the proceeding under the said provision and has called him upon to explain his position. Hence this writ petition.

2. While assailing the validity of the impugned order learned counsel for the petitioner submits that the present proceeding is beyond the scope of Section 45B of the Act. He relies on the following reported judgments :-

(i) 1987 BBCJ 231 (FB) [: 1987 PLJR 154] (Praveen Shankar Singh vs. State of Bihar)

(ii) 1992 BBCJ 22 (DB) (Dr. Jagannath Mishra vs. State of Bihar)

(iii) Dhruv Narayan Singh and Another Vs. The State of Bihar and Others,

3. Learned government counsel has taken me through his counter affidavit wherein the prescribed authority has taken the stand that it is open to the petitioner to explain his case before the prescribed authority and has the opportunity of persuading him that no case is made out to reopen the proceeding.

4. I have perused the materials on record and considered the submissions of learned counsel for the parties. Section 45B of the Act reads as follows :

"45B. State Government to call for and examine records.-The State Government or the Collector of the district, who may be authorised in this behalf may, at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit direct that the case be reopened and disposed of afresh in accordance with the provision of the Act."

5. The scope of Section 45B of the Act had fallen for the consideration of a Full Bench of this Court in the case of Praveen Shankar Singh vs. State of Bihar (supra). Paragraph-17 of the judgment is relevant in the present context and is set out hereinbelow for the facility of quick reference :

"17. Now the question as to whether the authority can decide to reopen the proceeding on a re-consideration of the materials which had earlier been considered. In my view, it is not permissible to do so and this interpretation of the section would be consistent with the age-old principles mentioned above and would be reasonable, just and consistent with fair play. It will save not only the land-holder but also the State from a perpetual threat of uncertainty and consequent harassment; for, it is a power which the land-holder may also invite

to be exercised in his favour and not only once but repeatedly. If the section is construed in its widest amplitude implying unbridled and unlimited power, the Collector when asked by an aggrieved land-holder to exercise the same, cannot, without applying his mind, refuse to entertain the prayer as that would amount to abdication of power. I, therefore, hold that if the materials on the records of a case are taken into consideration by the authorities concerned and a conclusion is reached which becomes final (on appeal and revision or in absence thereof), its finality has to be respected and the proceeding cannot be reopened for giving a second thought. If, however, any material or matter has been omitted from consideration which may be so substantial as to lead to a different conclusion, the power under the section may be exercised. As the observations Mr. Justice B P Jha in paragraph 7 of the judgment in *Yamuna Rai vs. The State of Bihar* (supra) are consistent with his view, I hold that the case was correctly decided."

6. This provision was considered by a Division Bench of this Court in its judgment reported in 1984 PLJR 988 (*Harish Chandra Singh vs. State of Bihar*), wherein the pre-conditions for exercise of powers were spelt out, the relevant portion of which is set out hereinbelow for the facility of quick reference :

"A perusal of the provisions quoted above would reveal that there is no blanket power upon the State Government to reopen any case. The power to reopen is hedged by two limitations. The Section call upon the State to examine any record. This is the first limitation. The section directs the State Government or the Collector to reopen a case, if it thinks fit. The expression "if it thinks fit" is rather poignant which is the second limitation upon the State Government in the matter of reopening of closed ceiling cases. Reverting to the first limitation, the second does not leave it open to the authorities to reopen any case, but it enjoins a duty of examining any record. Examination of the record necessarily implies application of mind-a judicial mind. The mind has to be exercised in order to find out whether the case had been disposed of in accordance with the provisions of the Act. It is not in controversy and cannot be doubted that the final order in regard to declaration of surplus land must be in accordance with the provisions of the Act. The authorities were, therefore, enjoined to examine any record to find out if the ceiling case had been disposed of in accordance with the provisions of the Act or not. The infirmity may be either procedural or substantive in nature. After examining of the records, if the authority finds that the case had not been disposed of in accordance with the provisions of the Act, it was empowered to reopen closed cases. In my view, the requirement of examining any record takes away the sting of arbitrariness. At the same time, it introduces an element of guide for the officer to act."

7. Following the law illumined in the aforesaid judgments of this Court, a learned Single Judge of this Court held in the case of *Dhrub Narayan Singh vs. State of Bihar* (supra), that if the materials on record of a case are taken into consideration by the concerned authorities and conclusion is reached which becomes final, its finality has to be respected and the proceedings cannot be re-

opened for giving a second thought. If, however, any material or matter was submitted for consideration which may be so substantiated as to lead to a different conclusion, the power u/s 45B of the Act can be exercised. It is equally well settled that while re-opening the case, the revenue authority cannot revise an order and take a different view of the matter on the same materials. Consideration of fresh materials or new law or a new provision of law coming into force at a later date are somewhat recognised grounds to reopen the same.

8. It is thus manifest that the Section 45B vests the State Government with the power to re-open concluded land ceiling proceeding with the duty to examine the records of the proceedings disposed of under the Act after the same became final. The second limitation is that the prescribed authority must apply his judicial mind before reaching the conclusion that it is a fit case in which the proceedings be reopened. The same can be exercised only after proceedings have attained finality, and if fresh materials have come to light or had gone unnoticed, or new provision of law has been brought on the Statute book, or a new judgment of the Court has to be noticed. The proceedings cannot be re-opened if the prescribed authority feels that a different view which, to his mind, was a preferable view, on the same materials. It is here that the authorities seem to have erred in the present case. In view of the legal position that the prescribed authority is enjoined to examine record of any proceeding under the Act, means by necessary implication that the land ceiling proceeding which had taken place as per detailed procedure prescribed under the Act has been re-examined and then a decision is being taken to re-open the proceeding. Neither the impugned order nor the counter affidavit fulfils this condition. On the contrary, the same create an impression that the prescribed authority shall apply his mind after the petitioner puts up his case. This is putting the cart before the horse. Furthermore, the power u/s 45B of the Act has already been exercised twice in this case. The impugned order verges on mala fide exercise of power. In my view, there is no scope to invoke the powers u/s 45B of the Act in the present case.

9. A similar issue had fallen for the consideration of a Division Bench of this Court in the case of *Dr. Jagannath Mishra vs. State of Bihar* (supra), wherein the prescribed authority had taken the decision to re-open the case u/s 45B of the Act. The land ceiling proceeding as per the detailed procedure had been finally concluded long time ago whereafter the ceiling case was re-opened in 1975 which was decided in the year 1990. No appeal or revision was filed against that order which had become final. The Division Bench came to the conclusion that the order re-opening the case again on the same facts with respect to issue which had become final cannot be re-opened. In fact, the issue had become *Res Judicata* and the notice impugned therein had been quashed. The situation in the present case is far worse for the reason that the common factor in both the cases is that there was no fresh material before the prescribed authority justifying re-opening of the same, and the land ceiling proceeding in the reported judgment was re-opened for the second time whereas the same is being re-

opened for the third time in the present case. The present case is fully covered by the Division Bench judgment in Dr. Jagannath Mishra vs. State of Bihar (supra).

10. The prescribed authority has taken the stand in its counter affidavit that it is open to the petitioner to present his whole case before the prescribed authority so that the proceeding may be terminated. Paragraph-6 of the counter affidavit is relevant in this connection and is being set out hereinbelow :

"6. That it is pertinent to state that the petitioner, without filing his objections, before the Respondent authority, who issued the said notice, for re-opening the matter u/s 45B of the Act has directly rushed to this Hon"ble Court and hence it is entirely impossible for this Hon"ble Court to judge the matter in its correct perspective as no order re-opening the case has been brought on the record."

I am unable to appreciate that the stand taken by the respondent authorities which completely overlooks the scope and content of the provisions of Section 45B. Such an approach on the part of the respondent authorities confronting the Court with its conclusion is utterly untenable, and has the tendency to erode the powers of judicial review conferred on this Court by the Constitution of India. Law is well settled that once an act has been challenged, then the concerned authority is bound to disclose the materials or reasons leading to the order enabling the Court to consider the validity of the action taken. The prescribed authority has in the context doubly erred. It has failed to disclose the relevant materials in the impugned notice enabling it to re-open the matter for the third time on the self-same facts. It has further compounded its irresponsible approach by refusing to disclose the materials and/or the reasons in its counter affidavit. The impugned order is, therefore, bad in law from this angle also.

11. There is one more aspect of the matter. The prescribed authority must remind themselves of the scope and content of Section 45B of the Act before they take the decision to exercise the power. It is inherent in the provision that it is an extraordinary power which has to be seen in the background of the preceding provisions of the Act whereunder the land ceiling proceedings had been concluded and is sought to be re-opened had undergone the detailed procedure which is quite exhaustive. If such an approach is allowed to continue, the prescribed authority would be vested with arbitrary power to harass the landholder for objects or reasons clearly beyond the scope of the provision and for mala fide reasons, as has happened in the present case. It may not be irrelevant to compare the aim and objects of the present Act in contradistinction of those of the Bihar Land Reforms Act. In so far as the latter is concerned, the intermediary rights were taken away of the persons who had no title to the property, whereas the aim and object of the present Act is to deprive the landholder of their title to the property. In other words, it is confiscatory in nature and, in case of doubt or difficulty, the Courts would lean in favour of the landholder.

12. There is yet another aspect of the matter. It is now settled by a long line of cases that assigning reasons is essential for proper administration of law and good governance. The relevant portion of the judgment of the Supreme Court in the case of Govt. Branch Press vs. D B Baiappa reported in AIR 1979 SC 429 is set out hereinbelow for the facility of quick reference :

"24. Conversely, if the services of a temporary Government servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct of the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is leveled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Art. 311(2), Proviso (c), the authority cannot withhold such information from the Court on the lame excuse that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in Breen vs. Amalgamated Engineering Union (1971) 1 All ER 1148 "is one of the fundamentals of good administration" and, to recall the words of this Court in Khudiram Das Vs. The State of West Bengal and Others, in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability". The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Arts. 14 and 16(1)."

I had the occasion to rely on this passage in my order dated 13.10.03, in CWJC No. 5370 of 2003.

13. There is yet another aspect of the matter. The impugned order amounts to sitting in judgment over his own action. As stated hereinabove, the power u/s 45B of the Act has in the present case been exercised twice earlier, and it is now being invoked for the third time. Law is well settled that appeal lies before a higher authority and review lies before the same authority and, therefore, the powers of review are traditionally very narrow and well recognised in the world of law. I have no manner of doubt that the impugned order amounts to sitting in judgment over its own order and is bad in law from that angle also. In the result, the writ petition is allowed, and the impugned notice dated 31.1.2003 (Annexure 5) is hereby quashed.