

(1998) 03 PAT CK 0035

In the Patna High Court

Case No : Letters Patent Appeal No. 136 of 1991

Mahanth Onkar Giri Chela

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45B

Citation : AIR 1999 Patna 8

Hon'ble Judges : Bisheshwar Prasad Singh, J; Bharat Prasad Sharma, J

Bench : Division Bench

Advocate : Y.V. Giri and Mahesh Narayan Parbat, for the Appellant; Raghib Ahsan, S.C. (Ceiling) and K.A. Siddique, J.C. to S.C. (Ceiling), for the Respondent

Judgement

1. The appellant herein filed a writ petition being CWJC No. 3138 of 1983 praying for quashing of the notice dated 27-5-1983, Annexure-10, issued by the Achal Adhikari. Motipur as also the notice dated 30th June, 1983. Annexure-13, issued by the Additional Collector. Land Reforms, Muzaffarpur and the various orders passed by the Additional Collector. Land Reforms Muzaffarpur in Land Ceiling Case No. 578/74-75 as contained in Annexure-14, particularly the order dated 14-6-1983 whereby the Additional Collector. Land Reforms recalled his earlier order, Annexure-9, dated 6-9-1982.

2. The facts not in dispute are that a land ceiling case was initiated against the petitioner in which by order dated 30th December, 1977, Annexure-5, the Additional Collector, after remand from the Member Board of Revenue, recorded a finding that the land holder was entitled to two units i.e. 60 acres of Class IV lands, and an area of" 2.44 acres of class IV land was declared surplus. The Additional Collector recorded a finding of fact that one of the son of the petitioner had attained majority on the relevant date, namely the 9th of September, 1970 and therefore they were entitled to two units. The Additional Collector's order was not appealed from. However, in view of the coming into force of Section 45B

of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, all the proceedings were re-opened, including the land ceiling case relating to the petitioner.

3. It appears that by order dated 6th of September, 1982, Annexure-9, the Additional Collector, kind Reforms, after a careful consideration of all aspects of the matter found the land holder entitled to two units of land, and it was again held that one of the sons of the petitioner was a major on the relevant date and was entitled to one unit apart from the petitioner. The transfer made by the petitioner in favour of his wife relating to 15.73 acres of land was nullified and the said lands were clubbed with the holding of the petitioner, as was done in the earlier proceeding which was disposed of by Annexure-5. Thereafter an area of two acres and odd was declared surplus. In sum and substance, the earlier order passed by the Additional Collector, Annexure-5, was re-affirmed by the Additional Collector's order dated 6-9-1982 Annexure-9. after the proceeding was reopened pursuant to the incorporation of Section 45B of the Act. The case of the petitioner is that he is the Mukhiya of the village. As would be apparent from Annexure-II date 30th December, 1982, various Mukhiyas and the Surpanches of the villages as also several citizens made a complaint against the conduct of the Anchal Adhikari to the higher authorities. According to the petitioner this infuriated the Anchal Adhikari who issued the impugned notice, Annexure-10, dated 27-5-1983 in which it was stated that on consideration of the extents of lands held by the petitioner and his family members, and having regard to their classification, it was apparent that the total lands held by the petitioner were beyond the ceiling area. The petitioner was, therefore, directed to appear before the Anchal Adhikari with all relevant papers failing which the matter was to be referred to higher authorities for appropriate action. Counsel for the petitioner submitted that the Anchal Adhikari is not a Collector under the Act, and it is not understood how he could issue the aforesaid notice to the petitioner. Counsel for the State fairly submits that the Anchal Adhikari has no such jurisdiction. It appears from the ordersheet of the Additional Collector dated 14-6-1983 that on the basis of the report of the Anchal Adhikari stating that various facts have been discovered, it had become necessary to re-examine the matter. In the light of the said report, he recalled the order earlier passed by him on 6-9-1982 and also stayed the final publication which was earlier ordered. By order dated 30th June, 1983, he directed the issuance of a notice u/s 10 of the Act. The said notice has been issued which is Annexure-13, dated 30th June, 1983, whereby the petitioner has been informed that a report had been received from the Anchal Adhikari in which it has been stated that information had been received in regard to several matters and, therefore, it is necessary to re-examine the matter u/s 5(1)(iii) of the Act. The petitioner was, therefore, directed to appear before the Additional Collector, Land Reforms on 8-7-1983.

4. Counsel for the petitioner submitted that the land ceiling case was disposed of by the Additional Collector, Land Reforms by his order, Annexure-9 dated 6-9-1982. So far as order passed by the Additional Collector is concerned, the

matter was finally disposed of by him subject to any appeal against his order. The Additional Collector, therefore, did not have authority to recall his earlier order, Annexure-9. dated 6-9-1982 by passing another order on 14-6-1983 which is part of Annexure-14. When questioned, counsel for the State submitted that there is no provision in the Act which empowers the Additional Collector to recall a final order passed by him. So far as the order, Annexure-9, dated 6-9-1982 is concerned, he fairly submitted that was the final order which an Additional Collector was required to pass in a land ceiling proceeding. We find ourselves in agreement with the learned counsel appearing for the State because there is no power vested in the Additional Collector, Land Reforms to recall a final order passed by him under the provisions of the Act. So far as the Additional Collector is concerned, once he disposes of the matter by recording his findings and by directing publication of the final statement, he is left with no jurisdiction in the matter. We, therefore, find that the order dated 14-6-1983, Annexure-14, recalling the order, Annexure-9 dated 6-9-1982 is without jurisdiction. Consequently the notice issued to the petitioner, Annexure-13 dated 30th June, 1983 pursuant to the orders dated 14-6-1983 and 30-6-1983 as contained in Annexure-14 is illegal and without jurisdiction. We also notice that the Anchal Adhikari in this case, who is not even a Collector under the Act, issued the notice, Annexure-10 dated 27-5-1983 calling upon the petitioner to produce before him necessary records to satisfy him that he was not possessed of lands beyond the ceiling area. We fail to understand how the Circle Officer could have issued such a notice, particularly when the matter was finally disposed of by the Additional Collector Land Reforms by his order dated 6th September, 1982, Annexure-9. The whole process was set in motion by the aforesaid impugned notice issued by the Anchal Adhikari, who had no jurisdiction in the matter.

5. Apart from these infirmities, we find that there is nothing on record to show as to what is the nature of facts discovered or found which justified the recalling of an order passed by the Additional Collector. No counter affidavit was filed before this Court to rebut the assertions in the writ petition. Apart from the fact that the Additional Collector had no jurisdiction to recall an earlier order passed by him, we find that there is no material on record even to justify a re-opening of the proceeding u/s 45B of the Act which, of course, can be done only by the State Government.

6. The learned Judge, in our view, has erred in holding that the order Annexure-9 dated 6-9-1982 passed by the Additional Collector was not a final order. Even counsel for the State conceded that the order Annexure-9 dated 6-9-1982 was a final order so far as the Additional Collector, Land Reforms, was concerned who was acting in a quasi-judicial capacity to determine the land ceiling case.

7. In these circumstances, the impugned judgment and order of the learned Judge dated 24th June, 1991 is set aside and the writ petition is allowed quashing Annexure 10 dated 27-5-1983, the orders dated 14-6-1983 and 30-6-1983 as contained in Annexure-14 and the notice Annexure-13 dated 30th

June, 1983. There will be no order as to costs