

(1993) 01 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8201 of 1992

Maresh Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 32A, 6

Citation : (1993) 2 BLJR 765

Hon'ble Judges : S.B. Sinha, J; R.M. Prasad, J

Bench : Division Bench

Judgement

S.B. Sinha, J.—This application is directed against an order dated 28-1-1989 passed by the Sub-divisional officer, Jhanjharpur (Respondent No 4), the order dated 9-11-1990 passed by the Collector, Madhubani, (Respondent No. 3), and the order dated 31-7-1992 passed by the Additional Member, Board of Revenue, Patna (Respondent No. 2) as contained in Annexures 3, 5 and 6 respectively.

2. The petitioner is admittedly a landholder. He submitted a return in terms of Section 6 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act).

3. Upon receipt of the said return a proceeding under the said Act was initiated and a report from the Anchal Adhikari, Jhanjharpur was called for. The Anchal Adhikari allegedly reported that the date of birth of Sri Suresh Jha was 7-12-1955. However, as the petitioner had lands in village Khutouna Anchal, a report from the Anchal Adhikari of the said Anchal was called for and he had reported that the petitioner had 55.49 acres of land in the name of his wife and all the lands had been sold.

4. According to the petitioner the lands in the aforementioned Khutouna Anchal belonged to his wife. The petitioner has contended that he had lands only in Lohna Anchal in the Sub-division of Jhanjharpur only and all the lands in village Malin within Khutouna Anchal belonged to his wife and the purchasers are in

possession thereof.

5. A draft publication u/s 10 of the said Act was issued. The lands situated at Khutauna Anchal had also been shown to be belonging to the petitioner and thus the petitioner was allowed, to retain 32.50 acres of land and 60.01 acres of land was declared to be surplus.

6. The petitioner filed objection petition to the said draft publication which is contained in Annexure-2 to the writ application.

7. By an order dated 30th April, 197y, the said objection petition was rejected and all the transfers made in respect of the lands belonging to the lands belonging to the petitioner's wife were annulled.

8. The petitioner preferred an appeal before the Respondent No. 3 being Appeal No. 7/1979 which was remanded on the point of classification of the lands by an order dated 7-8-1979.

9. According to the petitioner in view of coming into force of Sections 32-A and 32-B of the said Act with effect from 1-5-1981 all the proceedings abated and the same were to be re-started again from the stage of Section 10 of the said Act.

10. The petitioner has contended that no fresh proceeding was initiated but the authorities relied upon the old reports and in a draft statement prepared u/s 10 of the Act the petitioner was allowed to retain only 30.10 acres of land out of which 15 acres of land allowed to be retained in village Khutauna Anchal.

11. The petitioner filed objection inter alia contending that he should be permitted to retain 30 acres of lands in village Lohna.

12. According to the petitioner, the respondent No. 4 did not initiate a proceeding u/s 5(i)(iii) of the Act and by an order dated 28-1-1989 annulled the transfers made in between 22-10-1959 and 9-8-1970. The petitioner was allowed to retain 39 acres of Class IV lands out of which he was to select 19.50 acres of land in village Lohna and rest in Khutauna Anchal.

13. According to the petitioner before annulling the orders of transfer no notice was given to the transferees. The petitioner preferred an appeal which was registered as Appeal No. 1/89-90 but the same was dismissed by an order dated 9-11-1990.

14. A revision application was thereafter filed by the petitioner before the Respondent No. 2 being Revision No. 194/90 and the said revision application has also been dismissed by an order dated 31-7-1992.

15. Mr. Tara Kant Jha, learned Counsel appearing on behalf of the petitioner has raised three fold contentions in support this application.

16. The learned Counsel firstly submitted that in view of the fact that all the lands belonging to the petitioner's wife had been disposed of in between the

period 1960 to 1970, the said transfers could not have been annulled without initiating any fresh proceeding u/s 5(i)(iii) of the said Act as the earlier proceeding abated upon coming into force of Section 32-A of the said Act.

17. The learned Counsel next contended that the impugned orders are vitiated in law inasmuch as, before passing the said order no fresh proceedings had been initiated and the old reports submitted by the Anchal Adhikari in the earlier proceedings had been taken into consideration. The learned Counsel in support of this contention relied upon a decision of this Court in Chandrajot Kuer v. State of Bihar 1983 BBCJ 197 and in Smt. Kunti Sharma v. State of Bihar 1990 (1) PLJR 66.

18. It was further submitted that in any event in view of the explanation appended to Section 5 of the said Act, as the petitioner did not own and hold the land in Khutauna Anchal, the said lands could not have been taken into consideration for the purpose of determining the surplus lands at the hands of the petitioner.

19. Mr. Hamendra Kumar Singh, the learned standing Counsel appearing on behalf of the State, however, on the other hand, submitted that the petitioner and his wife transferred all the lands in Khutauna Anchal which had rightly been considered by the respondent Nos. 2, 3 and 4 as the lands available at the hands of the petitioners family.

20. The learned Counsel further contended that enquiry u/s 5 (i)(iii) of the Act had also been held and the petitioner did not raise any grievances in relation thereto before the concerned respondents.

21. The contention of Mr. Jha to the effect that the lands which belonged to his wife should be excluded is merely stated to be rejected. In terms of Section 5(1) of the said Act the criteria for the purpose of determination of surplus land is the lands belonging to the family which in terms of Section 2(ee) thereof, means and includes a person, his or her spouse and minor children, Thus all the lands belonging to the petitioner and his wife and their minor children have to be taken into consideration for the purpose of determining the surplus lands available at the hands of the family.

22. Section 32-A of the said Act reads thus:

Section 32-A, Abatement of Appeal revision, review or reference. An appeal, revision, review or reference other than those arising out of orders passed u/s 8 or Sub-section (3) of Section 16 pending before any authority on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 shall abate ;

Provided that on such abatement, the Collector shall proceed with the case afresh in accordance with the provisions of Section 10:

Provided further that such appeal, review or reference arising out of orders

passed u/s 8 or Sub-section (3) of Section 16 as has abated u/s 13 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Ordinance, 1981 (Bihar Ordinance No. 66 of 1981) shall stand automatically restored before the proper authority on the commencement of this Act.

23. Sections 32-A and 32-B have been enacted to effectuate the substantive law by directing redetermination of the surplus area as laid down therein.

24. However, the combined effect of Section 32-A and 32-B is only that all the findings arrived at earlier stages of the proceedings must be considered to be wiped off. As the said proceedings were to be revival from the stage of Section 10 of the said Act, the procedures as laid down under Rule 8 of the Bihar Land Ceiling Rules, 1963 were not required to be followed.

25. Rule 9, however, reads as follows:

9. Declaration of the land exempted from the operation of Section 5 (1) After the information given by or on behalf of the Land holder under Sections 6, 8 or 9 to the information obtained u/s 7 has been checked and verified in the manner prescribed in Rule 8, the Collector shall, after giving the parties a reasonable opportunity of being heard and adducing evidence, hold enquiry regarding the land in respect of which exemptions from the operation of Section 5 have been claimed under items (i), (iv), (v), (vi) or (vii) of Clause (b) of Sub-section (1) or under Sub-section (2) or Section 29 and hereupon:

(i) in respect of exemption claimed under item (i), (vi) or (vii) of Clause (b) of Sub-section (1) of Section 29, pass necessary orders, declaring the area and description of the land exempted under one or more of the said items, (ii). In respect of exemptions claimed under items (iv), (v) and (vi) of Clause (b) of Sub-section (1) or item (i) or (u) of Clause (a) of Sub-section (2) of Section 29 forward the evidence, if any, adduced before him and his enquiry report together with his recommendations in this regard to the Collector of the district who shall, after perusing the same and after giving the parties concerned a reasonable opportunity of being heard:

(a) determine the area and description of the land which should be exempted under item (ii) of Clause (a) of Sub-section (2) of Section 29 and forward his recommendation in this regard to the State Government,

(b) forward his recommendation to the State Government in respect of exemption claimed under items (iv), (v) or (vi) or Clause (b) of Sub-section (1) or item (i) of Clause (a) of Sub-section (2) of Section 29:

Provided that in respect of item (i) of Sub-section (2) of Section 29 of the Act, Collector shall not recommend exemption at the rate exceeding one acre for every ten thousand quintals or part thereof the annual requirement of sugarcane of the factory concerned as determined by the Cane Commissioner under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1969 (Act VII of 1969)

subject to maximum of one hundred acres.

(2) While forwarding his recommendations to the State Government, the Collector of the District shall also send the evidence, if any, adduced before the Collector and the enquiry report and the recommendation of the Collector.

(3) On receipt of the recommendations from Collector of the district and the papers mentioned in Sub-rule (2), and after considering the same, the State Government shall issue the necessary notification specifying the area and the description of the land exempted from the operation of Section 5 under items (iv), (v) or (vi) of Clause (b) of Sub-section (1) or under item (i) or (u) of Clause (a) of Sub-section (2) of Section 29, and the period for which such exemption shall continue.

26. It is therefore, clear that enquiries which are required to be made after complying with the requirement of Rule 8 regarding the land in respect of which exemptions from the operation of Section 5 have been claimed are as enumerate therein. Clause (iii) of Sub-section (1) of Section 5, thus does not come within the purview of the aforementioned Rules.

27. There cannot however, be any doubt that although the draft publication under Sub-section 1 of Section 10 of the Act has to be made only upon passing of a final order u/s 5(i)(iii) of the Act and an enquiry made thereunder cannot be said to be an enquiry within the meanings of Rules 8 and 9 Such an enquiry, in my opinion, must be held to be an independent enquiry which has a limited scope and in which the parties may be different inasmuch as the proceeding even the transferees may have to be noticed.

28. In Chandrajot Kuer's case (supra) as also in Srimati Kunti Sharma's (supra) this Court was not concerned with any proceeding u/s 5(1)(iii) of the said Act, but were only concerned with the proceedings as against the landholder.

29. From a bare perusal of the impugned order as contained in Annexure 3 to the writ application, it appears that the petitioner's objection filed in terms of Sub-section (3) of Section 10 was barred by limitation.

30. In 1992 CWJC 4176 this Court has held that in terms of Section 32-A and 32-B of the said Act only the proceedings should be started afresh from the stage of Section 10 of the Act and not from the stage, of Son 6 thereof. It has further been held that unless the case of a landholder becomes covered by the Amendments effected by Act No 5. of 1982. as contained in Section 2(f) and Section 4 (f) thereof and unless any prejudice is caused to the landholder, the return submitted by the landholder as also the verifications made by the prescribed authorities can be acted upon while restarting the processing from the stage of Section 10 of the Act. In this case, the petitioner has not contend that he had any land which comes within the amended purview of Section 4 of the said Act as contained in Clause (f) thereof and in that of the matter, in my opinion, the respondents were entitled to consider return filed by the petitioner

as also the verifications made in the said returns It is not the case of the petitioner that while preparing the draft publication, the procedures laid down under Rule 8 of the Bihar Land Reforms Taxation of Ceiling Area and Acquisition of Surplus Land; Act were not complied with.

31. However, from the impugned order as contained in Annexure 3 to the writ application, it further appears that the respondent No. 4 even did not rely upon the reports of Anchal Adhikari in the earlier proceedings, inasmuch as the lands had been classified as class III lands therein whereas by reason of his order dated 28.1-1991 as contained in Annexure-3 to the writ application, the lands in question had been held to be the Class IV" lands. The respondent No. 4, Therefore, took into consideration all the materials placed before him by the parties to the said proceeding and did not rely upon the reports submitted by the Anchal Adhikari,

32. From a perusal of the appellate order dated 5-11-1990 as contained in Annexure-5 to the writ application it appears that the appellate court had taken into consideration the orders passed in the earlier appeal and inter alia held that as the petitioner did not prefer any revision application against the order, the same became final. The respondent No. 3, therefore, took into consideration an irrelevant fact inasmuch as, the effect of the earlier appellate order became non est as the proceedings abated in terms of Section 32-A of the said Act.

33. In this view of the matter, the appellate order dated 9-11-1985 and consequently order passed by the Additional Member, Board of Revenue dated 31-7-1992 as contained in Annexures 5 and 6 cannot be sustained.

34. This application, is therefore, allowed in part and the orders as contained in Annexures 5 and 6 are quashed and the matter is remanded to Collector, Madhubani for passing a fresh order in accordance with law. The Collector should dispose of the appeal preferred by the petitioner upon taking into consideration the facts and circumstances as expeditiously as possible and preferably within a period of one month from the date of receipt of a copy of this orders, In the facts and circumstances, there will be no order as to costs.

R.M. Prasad, J.

35. I agree.