

(1997) 07 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 1652 of 1986

Mahmudul Hasan and Others		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 11(1), 15, 18, 18(1), 18(2)

Citation : (1997) 2 PLJR 600

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Chandrashekhar, Krishana Kumar Singh and Shrawan Kumar Singh, for the Appellant; Birendra Prasad Verma, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ application the prayer on behalf of the Petitioners is to issue a writ in the nature of certiorari quashing Ceiling Case No. 2/76-77 and the order dated 25.2.1986 passed therein, whereby 373.83 acres of land have been declared surplus showing it to be of the Petitioner No. 1 after giving one unit to him and, further, to give effect to the order dated 11.9.1975 passed by the Collector in Land Ceiling Case No. 62/73, whereby after giving seven units to the family members of Petitioner No. 1 the ceiling proceeding was dropped as no land was found surplus.

2. It appears that earlier also the land ceiling proceeding was re-opened by the Collector. Saharsa against which the Petitioners filed C.W.J.C. No. 1873 of 1976 which was finally heard along with C.W.J.C. No. 1872 of 1976 filed by Choudhary Md. Salahuddin and disposed of by a Division Bench of this Court, vide judgment and order contained in Annexure 2. This Court held that the Collector, Saharsa was not competent to issue notices reopening the land ceiling case and the proceedings started upon those notices were held to be not legal. The writ applications were, accordingly, allowed and the notices impugned were quashed

with an observation that the same will not bar the Collector of the District to take further action u/s 45-B of the amended Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act"), if he considers it necessary. It appears that thereafter the same proceeding continued.

3. It is submitted by Mr. Chandra Shekhar, learned Counsel appearing for the Petitioners that no fresh order re-opening the case u/s 45-B of the Act was passed by the Collector pursuant to which further action was taken. According to him, in fact, from the impugned order dated 25.2.1986, contained in Annexure 7, it would appear that the Collector proceeded to act u/s 38 of the Act for which there was no occasion as contemplated therein.

4. Mr. Verma, learned Counsel appearing for the Respondents submitted that Section 38 of the Act gives wide power in the Collector to re-open a case already disposed of and dispose it of afresh taking recourse to a summary requisition if any person is found by him to be in possession of any area of land in excess of the area he may hold u/s 5. The only requirement is that the Collector shall give such person or other persons, if any, who may prefer any claim in respect of any land, a reasonable opportunity, as may be prescribed, to show cause and adduce evidence, if any, why the said excess area should not be acquired by the State Government. According to him, since, in the instant case, the Petitioners were given reasonable opportunity, the Collector rightly proceeded u/s 38 of the Act to acquire the land under the Act.

5. Mr. Chandrashekhar, learned Counsel appearing for the Petitioners, in reply, submitted that the recourse to summary requisition u/s 38 of the Act is only contemplated in case of a future acquisition of land by land-holder by inheritance, bequest, gift or on alluvial action, but from the very perusal of various orders, it would appear that there was no such occasion for the Collector to take recourse to Section 38 of the Act. As such, according to him, the impugned order is fit to be quashed on this ground alone.

6. I do not find substance in the submission of Mr. Chandrashekhar. Section 38 of the Act provides that if any person is found by the Collector, at any time after the expiry of the period prescribed u/s 15 or 18 to be in possession of any area of land in excess of the area he may hold u/s 5, the Collector shall take recourse to summary requisition under the said provision with respect to such land after giving reasonable opportunity to show cause and adduce evidence. u/s 15 the State Government or the Collector of the district empowered in that behalf has been vested with the power to acquire the surplus land after final publication u/s 11(1) and subject to appeal or revision by publishing in the Official Gazette of the District. A copy of the notification is to be sent to the land-holder concerned by registered post with acknowledgement due. On the publication of the notification the lands specified therein are deemed to have been acquired, subject to the provisions of the Act and vested in the State free from all encumbrances with effect from the date of the notification and all right, title and

interest of all persons claiming interest therein are deemed to have been extinguished.

7. Section 18 of the Act imposes restrictions on future acquisition by inheritance, bequest, gift, or on alluvial action beyond the aggregate of the ceiling area and on such acquisition the landholder is to submit to the Collector a return by registered post, with acknowledgment due, giving the particulars mentioned in the said section and selecting the land he desires to retain. Sub-section (2) gives power to the Collector to obtain the necessary information regarding it through such agency as he thinks proper. Under Sub-section (3), on receipt of the return prescribed in Sub-section (1) or collection of information under Sub-section (2), the Collector is to give a reasonable opportunity to the land-holder of being heard and of adducing evidence and also option to select the land which he wants to retain. Thereupon, under Sub-section (4) the Collector shall acquire the surplus land by publishing in the Official Gazette a notification to the above effect. As such, there cannot be any question of summary requisition u/s 38 of the Act in case of a future acquisition of land by inheritance, bequest, gift or on alluvial action by the land-holder inasmuch as Section 18 itself deals with such cases. At the same time, it is difficult to accept the submission of Mr. Verma, learned Standing Counsel (Ceiling) either. If the submission of Mr. Verma is accepted that Section 38 has given wide power in the Collector to re-open a case already disposed of and dispose it of afresh after taking recourse to summary requisition, then it would render Section 45B of the Act redundant inasmuch as there cannot be two provisions in the statute dealing with the same power.

8. u/s 45B of the Act the State Government and/or the Collector of the District has been vested with the power to call for and examine any record of any proceeding disposed of by a Collector under the Act and direct that the case be re-opened and disposed of afresh in accordance with the provisions of the Act whereas u/s 38 the process prescribed for acquisition of the excess area is by summary requisition by only giving reasonable opportunity to show cause and adduce evidence, if any. Thus, the above contention of Mr. Verma may lead to the consequences that the Collector in a given case may take recourse to Section 45B for disposal of the case on re-opening afresh in accordance with the detailed procedure prescribed under various provisions of the Act and in Anr. case he may follow the process of summary requisition u/s 38, which cannot be the intention of the Legislature. Vesting of discretion in the Collector to either take recourse to Section 45B or to Section 38 of the Act may lead to arbitrary exercise of the power by the Collector in a given case, according to his sweet-will. It is by now well settled that same authority cannot be vested with the same power under two different provisions of the statute leaving it on the sweet-will of the said authority to follow either of them.

9. The very reading Of Section 38 of the Act shows that the process of summary requisition is undertaken in case the Collector finds any person to be in possession of land in excess of the ceiling limit which could not be noticed at the time of

acquisition u/s 15 or 18. In such case the Collector is empowered to take recourse to summary requisition by giving a reasonable opportunity to such person or other persons before acquiring the remaining excess land. The two provisions contained in Section 15 and 18 of the Act are in themselves complete for final acquisition of the surplus land and there cannot be any question to take recourse to summary requisition of the land found by the Collector in possession of any person in excess of the area he may hold u/s 5 under the said provisions. In fact, the only possible interpretation with regard to the scope of the provisions contained in Section 38 of the Act can be that the Collector has been vested with the authority to acquire land by following the process of summary requisition, found in excess of the area which a land-holder is entitled to hold u/s 5 on noticing any omission in the notification acquiring the surplus land of the land-holder on account of which the possession of the said land could not be taken after the expiry of the period prescribed u/s 15 or 18.

10. However, Mr. Verma has not been able to show that there was any occasion for taking recourse to Section 38 of the Act, and, on the other hand, from the stand taken in the counter affidavit filed on behalf of the Respondents it appears that the Collector found the case fit to be reopened u/s 45-B of the Act. In fact, in paragraph 5 of the counter affidavit the plea of the Respondents is that the District Collector is competent to reopen the case u/s 45-B of the Act after getting a report from the Sub- divisional Officer, Saharsa. In paragraph 8 of the said counter affidavit it is stated that previously it was not detected by the State that the land-holder was holding 1156 bighas of land. Thus, it has rightly been submitted by Mr. Chandrashekhar that even according to the case of the Respondents, at best it can be said to be a case of re-opening of the land ceiling case u/s 45-B of the Act for which a separate procedure is prescribed which, admittedly, has not been undertaken/followed. As such, the impugned order cannot be sustained and the same is, accordingly, quashed.

11. In the result, the writ application is allowed, but without costs. However, it is made clear that this order shall not come in the way of the Collector from taking a fresh action as is permissible in law.