

(2007) 04 PAT CK 0173
In the Patna High Court
Case No : LPA No. 209 of 1998

Manoranjan Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(3), 11, 11(1), 16

Citation : (2007) PLJR 107

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Siya Ram Shahi, for the Appellant; R.C. Thakur and K. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—After a draft statement was prepared, an objection was filed. After the same was disposed of by an order, the draft statement was finally published u/s 11(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. After disposal of the objection, an appeal was preferred and after the appeal was dismissed, the matter went before the revisional authority. The revisional authority set aside the order of the appellate authority and remitted back the matter to the appellate authority. The Collector, being the appellate authority, transferred the appeal for hearing before the Additional Collector, namely, the original authority. This, however, was done without setting aside the order passed by the original authority, whereby the objection was disposed of. The matter rested there. The logical conclusion therefore, would be that the appeal was pending, but before an incompetent authority. While the appeal was thus pending, on 9th April, 1981 the Act was amended, whereby, amongst others, Sections 32A and 32B were inserted in the Act. Those are as follows:-- "32A. 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, revision, 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.

32B. Initiation of fresh proceeding-- All those proceedings, other than appeal, revision, review or reference referred to in Section 32-A pending on the date of the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, and in which final publication under sub-section (1) of Section 11 of the Act as it stood before the amendment by aforesaid Act, had not been made, shall be disposed of afresh in accordance with the provisions of Section 10 of the Act."

Subsequent thereto fresh steps were taken to conclude the matter. Being aggrieved by the same, the appellant approached the Writ Court and contended that inasmuch as draft statement has been finally published u/s 11(1) of the Act in view of Section 32B of the Act, the matter cannot be disposed of afresh as was sought to be done by the authority concerned. The Writ petition having been dismissed on the ground that Section 11 of the Act has no relevance, the present appeal has been preferred.

2. The fact remains that Section 11 of the Act provides publication of draft statement finally after objection is decided. Such decision is required to be rendered by an order as provided in Section 10(3) of the Act. At the same time the statute do confer right to file appeal against an order. Therefore, when the appeal is pending against the order rejecting the objection, for all practical purposes the publication u/s 11 of the Act should be deemed to be subject to the appeal and accordingly it cannot be said that the draft statement has reached finality by publication thereof.

3. The legislature has inserted two separate sections, namely, Sections 32A and 32B in order to clarify the matter. In Section 32A it has provided that if an appeal is pending as on 9th April, 1981 the appeal will stand abated and the Collector shall proceed with the case afresh in accordance with the provisions of Section 10 of the Act. At the same time it has provided in Section 32B of the Act that if no appeal is pending, but draft statement has been published finally u/s 11 of the Act, no fresh disposal is required, for the matter has reached finality.

4. In those circumstances, insofar as the present case is concerned, Section 32A

of the Act is applicable. Respondent-authorities had no other option but to proceed on the basis that the said appeal stood abated and accordingly they were obliged to proceed with the matter afresh.

5. Although publication of draft statement u/s 11 of the Act has been made, but having regard to the fact that the appeal preferred by the appellants was pending as on 9th April, 1981, provisions contained in Section 32B of the Act did not apply. For the reasons stated above, the appeal fails and the same is dismissed.