

(1976) 05 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1889 of 1975

Mohammad Fakhruddin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-1976

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 4

Citation : AIR 1976 Patna 382 : (1976) 9 PLJR 384

Hon'ble Judges : Shambhu Prasad Singh, J; Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Naseem Ahmad and H. Anzar, for the Appellant; S. Shamsul Hassan, Standing Counsel No. 1, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—The petitioner in this writ application has questioned the legality of an order passed by the Deputy Collector in-charge Land Reforms, Katihar (hereinafter referred to as the "D. C. L. R.") in purported exercise of powers conferred on him by the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the "Act"), by which he has declared 6.16 1/2 acres of lands belonging to the petitioner as surplus under the provisions of the Act, on a finding that the lands of the petitioner being Class III lands, the petitioner was entitled to retain only 25 acres. A copy of the said order is Annexure "2" to the writ application. An appeal was preferred by the petitioner before the Additional Collector, who called for a report from the Block Development Officer, Balrampur, The Block Development Officer submitted a report on the 13th January, 1975, regarding the nature of the lands possessed by the petitioner. The respondent Additional Collector, however, without proper consideration of the said report, dismissed the appeal of the petitioner and confirmed the finding of the D. C. L. R. A copy of the said order is Annexure "1" to the writ application. A copy of the report of the Block Development Officer has also been annexed to the writ application and

marked as Annexure "3".

2. According to the petitioner, the finding of the Additional Collector (respondent No. 3) and the D. C. L. R. (respondent No. 4) regarding the nature and classification of the lands in question is erroneous, and, on a proper appreciation of: the legal position, they should have accepted the contention of the petitioner that the lands in question are Class IV lands and the petitioner was entitled to retain 30 acres in accordance with the provisions of the Act.

3. Learned counsel appearing for the petitioner has in this connection drawn attention to the aforesaid report of the Block Development Officer (Annexure "3"). Towards the end of the said report the Block Development Officer has stated that the lands belonging to the petitioner are cultivable, but there is no arrangement for irrigation. According to learned counsel, the Block Development Officer, V having reported that there was no arrangement for irrigation, should not have stated that, in spite of that, the lands are of Class III. In this connection learned counsel placed Section 4 of the Act which fixes the ceiling area of different categories of lands. Section 4 has been amended from time to time. On the relevant date, by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 (Bihar Act IX of 1973), Section 4 had been amended and after that amendment the ceiling had been fixed on the basis of six classes of lands. Section 4 reads as follows:

"4. The following shall be the ceiling area of land for one family consisting of not more than five members for the purposes of this Act :--

(a) Fifteen acres, that is, equivalent to 6.0705(?) hectares of land, irrigated or capable of being irrigated by flow irrigation work or tube-wells or lift irrigation which are constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law and which provide or are capable of providing water for more than one season (hereinafter referred to as class I land).

Explanation :-- A land shall not be regarded as Class I land unless it is capable of growing at least two crops in a year; or

(b) eighteen acres, equivalent to 7.2846 hectares of land irrigated by such private lift irrigation or private tube-wells as are operated by electric or die-sel power, and provide or are capable of providing water for more than one season (hereinafter referred to as Class II land).

"Explanation -- Private lift irrigation or private tube-wells mean those which are not constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law, or

(c) twenty-five acres, equivalent to 10.1175 hectares of land, irrigated or capable of being irrigated by works which provide or are capable of providing water for only one season (hereinafter referred to as Class III land); or

(d) thirty acres, equivalent to 12.141 hectares of land, other than those referred to in Clauses (a), (b), (c), (e) and (f) or land which is an orchard or used for any other horticultural purpose (hereinafter referred to as class IV land), or

(e) thirty-seven and a half acres, equivalent to 15.368 hectares of Diara land, or chaur (hereinafter referred to as class V land), or

(f) forty-five acres, equivalent to 18.211 hectares of hilly, sandy or other kind of land none of which yields paddy, rabbi or cash crop (hereinafter referred to as class VI land)."

4. From a perusal of Clauses (a) to (d) of Section 4 it appears that under Clause (a) ceiling area has been fixed at 15 acres in respect of lands which are irrigated or are capable of being irrigated by flow irrigation work or tube-wells or lift irrigation which are constructed and maintained by Central or State Government, or by any body corporate, which provide or are capable of providing water for more than one season. Ceiling of 13 acres under Clause (b) has been fixed in respect of lands which are irrigated by private lift irrigation or private tube-wells which are operated by electric or diesel power and provide or are capable of providing water for more than one season. The explanation to Clause (b) makes it clear that such irrigational facilities are those which are not constructed or maintained by Central or the State Government or a body corporate; they are constructed and maintained by private individuals. Ceiling of 25 acres described in Clause (c) and referred to as class III lands include such lands which are irrigated or are capable of being irrigated by works which provide or are capable of providing water for only one season. Lands which are not covered by any of Clauses (a) to (c) or Clauses (e) to (f) have been included in Clause (d), and those lands have been referred to as class IV lands. On a plain reading it appears that class IV lands are those lands which are neither diara or sandy nor lands which have irrigational facility, maintained either by the Central or the State Government or by private individuals.

5. Learned Counsel appearing for the State has submitted that even in absence of irrigational facilities lands can be included in class III lands under Clause (c) of Section 4, if it is "capable of being irrigated by works which provide or are capable of providing water for only one season". He further submitted that, if the lands are capable of being irrigated, the petitioner cannot claim a higher ceiling merely because he is not availing of the opportunity of irrigating the lands in question, inasmuch as in that event the petitioner wants to derive benefit of his own inaction. On the face of it the argument seems to be attractive, but I shall immediately demonstrate that that is not the scheme of Clause (c) of Section 4.

6. Clause (c) of Section 4 refers to lands which are capable of being irrigated "by works which provide or are capable of providing water for only one season". In the Hindi version of this clause the word "works" has been described as "Nirman". On a plain reading also, the word "works" means some sort of construction of a permanent nature and it must be in existence on the date the

ceiling is going to be fixed. If Clause (c) is read in this light, the irresistible conclusion is that the ceiling of 25 acres can be fixed only in respect of lands which are being irrigated or are capable of being irrigated by such irrigational works which are providing or are capable of providing water for one season. If such irrigational works are not in existence, in my opinion, there is no question of applying Clause (c) to such lands and re-ferring to them as class III lands. In this connection I may point out that the word "works" has been used only in Clauses (a) and (c); it has not been used in Clause (b), which means that the legislature by the word "works" means some construction (Nirman) for providing irrigation, which has been constructed and is being maintained by the Central or the State Government or a body corporate constituted under any law. In any case, the word "works" mentioned in Clause (c) refers to the mode of irrigation mentioned in Clauses (a) and (b), that is, flow irrigation works, tube-wells and lift irrigation, which are constructed and maintained by Central or the State Government or by a body corporate, or private lift irrigation or tube-wells which are operated by electric or diesel power. In other words, if some private individual is irrigating his land even twice a year but by some other means of irrigation than those mentioned in Clauses (a) and (b), then the lands in question will not be covered by Clause (c) and they cannot be referred to as class III lands. The said lands, in my opinion, will be covered by Clause (d) and can be referred to as class IV lands.

7. So far as the facts of the present case are concerned, as I have already pointed out, the Block Development Officer, towards the end of his report, had stated that there was no means of irrigation available to the petitioner. In view of the said report, in my opinion, without further examination and verification, the learned Additional Collector should not have come to the conclusion that the lands are class III lands. After recording the said finding, it was incumbent upon him to find out whether any irrigation work was in existence, which, though not providing irrigational facility, was none the less capable of providing water at least for one season to the petitioner. This aspect of the matter has been examined neither by the D. C. L. R. nor by the Additional Collector. As such, I am left with no option but to quash the two orders and to direct the respondent D. C. L. R. to hear the parties on the question of classification of the lands in question in the light of the observations made in this judgment. If it is held that no work is in existence which provides or is capable of providing water for only one season to the petitioner, then he will fix the ceiling on the lands belonging to the petitioner treating them as class IV lands. If, however, he takes a contrary view on the materials on record, then it will be open to him to treat the lands as class III lands and to fix the ceiling accordingly. If necessary, the petitioner as well as the State should be given opportunity to adduce such evidence on the question as they may be advised, and the respondent D. C. L. R. will also consider the report of the Block Development Officer (annexure "3").

8. On behalf of the petitioner a grievance has been made that two plots of land which were not mentioned in the draft publication u/s 10 (2) of the Act were

included in the final publication while rejecting the objection filed on behalf of the petitioner. It has been submitted that the petitioner had no opportunity to raise objection against the inclusion of those two plots. I have not examined this aspect of the matter in detail in view of the fact that the case is being remitted for a fresh decision in accordance with law. The respondent D. C. L. R. will also examine this aspect of the matter and pass suitable orders in accordance with law.

9. In the result, the application is allowed, the order of the respondent Additional Collector contained in Annexure "1" and the order of the respondent D. C. L. R. contained in Annexure "2" are hereby quashed and the case is sent back to the respondent Deputy Collector Incharge Land Reforms, Katihar for a fresh decision in accordance with law and in the light of the observations made above. In the circumstances of the case, there will be no order as to costs.

Shambhu Prasad Singh, J.

10. I agree. The expression "works" in Clause (c) of Section 4 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, must be a work of the kind referred to in Clauses (a) and (b). It is not possible to give any other meaning to that expression so as to include natural sources or other sources of irrigation not referred to in Clauses (a) and (b). It has already been pointed out by my learned brother N. P. Singh, J., that the word used in Section 4 (c) -- really (ga) -- of the Act as originally passed in Hindi is "Nirman". In the official English translation the word "works" finds place only once in Clause (a) and nowhere in Clause (b), but in the Act as originally passed in Hindi, the expression "Nirman" has been used twice in Clause (ka) and again once in Clause (kha) which have been translated in official translation in English as Clauses (a) and (b). Clause (d) covers all lands which are not covered by Clauses (a), (b), (c), (e) and (f). Now Clause (a) refers to certain works which are constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law and which provide or are capable of providing water for more than one season. Clause (b) refers to works which are private and are operated by electric or diesel power and provide or are capable of providing water for more than one season. Clause (c) refers only to such works which provide or are capable of providing water for only one season. Now, if a meaning other than one as stated earlier is to be given to the expression "works" in Clause (c) so as to cover even natural or other sources of irrigation which are not covered by Clauses (a) and (b), then if such natural sources or other sources provide or are capable of providing water for only one season they will be governed by Clause (c), but if they provide or are capable of providing water for more than one season, then they will be governed by Clause (d) as they will not be covered by any of the Clauses (a), (b), (c), (e) and (f). It could not have been the intention of the legislature that such sources of irrigation if they provide or are capable of providing water for more than one season, the owner thereof should have 30 acres, but if they provide or are capable of providing water for

only one season, the owner thereof should have 25 acres only. This being the position the expression "works" in Clause (c) must be given a meaning so as to refer to only such works which are mentioned in and covered by Clauses (a) and (b).