

(1999) 11 PAT CK 0088
In the Patna High Court
Case No : C.W.J.C. No. 609 of 1990

Mohan Chaudhary and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 — Section 10, 11(1), 16(3), 8
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(1), 10(3), 11(1), 2
Bihar Tenancy Act, 1885 — Section 112

Citation : (2000) 3 PLJR 780

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : S.K. Sharma, R.S. Chaudhary, Sandeep Kumar, Pushkar Narain Shahi and Lalit Kishore, for the Appellant; O.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The Petitioners, who are twelve in number, have filed the present application for issuance of writ of certiorari for quashing the order dated 12.10.94 passed u/s 10(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) by the Addl. Collector (Ceiling), Katihar in Case No. 106/1973-74 disposing of the objections filed to the draft statement published u/s 10(1) of the Act, the order dated 31.1.89 passed by the appellate authority (the Collector, Katihar) in Ceiling Appl. No. 433/1985-86 dismissing the appeal against the aforesaid order and the resolution dated 3.10.89 passed by the Addl. Member, Board of Revenue in Revenue case No. 111/89 dismissing the revision against the aforesaid appellate order. Copies of the said orders have been annexed as Annexures-1, 2 and 3 respectively.

2. The facts necessary for disposal of the present application are that Awadheshwari Pd. Chaudhary (deceased), the father of the Petitioners, owned

large areas of agriculture land in village Binodpur, police station Korha, district Katihar. He died in the year, 1967 leaving behind his widow Rohini Devi, who died in 1987, and nine sons and three daughters, who are Petitioners before this Court. Land Ceiling Case No. 106/1973-74 was initiated against the Petitioner Mohan Chaudhary and others and a draft statement u/s 10(1) of the Act was issued and 760.67 acres of land was shown held by the family. Out of which 592.25 was shown as Class III land, 190.37 was shown as Class IV land and 57.12 was shown as Class v. lands. An objection petition u/s 10(3) was filed on behalf of the land holders. It was stated therein that total land possessed by the family is 402.73 acres and the family is entitled to 13 units, one unit for the widow of Awadheshwari Prasad Chaudhary and remaining for his children. The said objection was disposed of by the order dated 28.8.76 by the Addl. Collector and the assertion made on behalf of the Petitioner that the total land was only 402.73 acres was accepted and eight units were allowed. One unit for the widow and the remaining for the Petitioner Nos. 1 to 7. The said order was challenged before the Collector, Katihar in Appl. No. 240/1976-77. While the appeal was pending the Act was amended by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (Bihar Act 55/1982). Apart from the other material amendment in the Act Sections 32A and 32B of the Act were also inserted in the statute, which provided for abatement of the pending appeal, revision, review or reference arising out of the surplus land proceeding in which no final publication u/s 11(1) of the Act has been made and the Collector shall proceed with the case afresh in accordance with the amended law.

3. In view of the aforesaid provision the appeal abated and the matter was remanded to the Addl. Collector to dispose of the same in terms of the amended provisions. The Addl. Collector thereafter passed a fresh order on 26.4.82 in the said proceeding after remand and upheld the earlier order dated 28.8.76. The Petitioners preferred an appeal No. 263/1982-83 before the Collector, Katihar which after admission was dismissed for default on 14.11.82 and thereafter they filed an application for restoration which was dismissed on 4.1.83. They filed a revision application before the Member, Board of Revenue being revision No. 10/1983 and the Addl. Member, Board of Revenue allowed the revision application and remanded the matter to the Addl. Collector for afresh decision according to law.

4. After remand order a draft statement u/s 10(1) of the Act was issued on 1.11.83, according to which the total land shown in possession of the land holder Petitioners was 760.67 acres and six units were allowed and the remaining lands were declared as surplus land. The Petitioners filed an objection on 13.2.84 wherein they claimed 13 units, one for their mother and the remaining for them. They also claimed in the objection petition that 192.93 acres of land have been disposed of by the land holder out of which 127.48 acres were sold prior to 22.10.59 that is prior to coming into force of the aforesaid Act and as such the same could not be treated as land of the land holder. 64.90 acres of land were

transferred by the registered sale deed between 22.10.59 to 3.9.92 and as such the said lands cannot be treated as land of the land holder unless in an enquiry u/s 5(1)(iii) of the Act is held and the transfers are annuled on the ground that such transfers were made with object of defeating or in contravention of the provision of the Act or for retaining Benami and Farzi land in excess of the ceiling area. 81.29 acres of land were already surrendered in 1976 and the same should have also been excluded from the draft statement. 94.36 acres of lands which belong to their agnate Deveshwari Prasad Chaudhary have been wrongly shown as their land and the said land should also be excluded from the ceiling proceeding. The classification of the land was also not according to law. All the lands are of Class VI category but they have been wrongly classified as Class III and Class IV category. Petitioner Binod Mohan Choudhary was wrongly shown as a minor on the appointed date. He was major on that date.

5. The Addl. Collector considered the objections and by order dated 24.4.82 rejected all the objections except one with regard to 81.29 acres of land which were surrendered by the Petitioners. Thereafter, the Petitioners preferred an appeal and the appellate court allowed their appeal only with regard to 87.48 acres of land which were sold prior to 22.10.59 and directed that the aforesaid land should be excluded from the ceiling proceeding and the revisional court agreed with the view taking by the both the courts below and rejected all the objections.

6. Learned Counsel for the Petitioners submitted that once an appeal abated in terms of the amendment Act the proceeding should have started afresh from the stage of Section 10 of the Act meaning thereby that the authority should have proceeded afresh in the light of the amendment brought about in the Act by the amendment Act which has brought material changes by the amendment. In this case the Addl. Collector after abatement of the proceeding passed the order on the same very materials. As such the entire proceeding after the abatement and remand by the Collector is vitiated in law. He has further submitted that with regard to the transfer of the land which were effected prior to 22.10.59 when the Act came into force the ceiling authority has no jurisdiction to treat the said land as land of the land holder and accordingly the authorities have wrongly treated the land of the land holder, which admittedly was transferred prior to 22.10.59. Regarding transfer made after 22.10.59 and prior to the appointed date i.e. 9.9.70, the details have been given in the petition, it has been submitted that without holding enquiry u/s 5(1)(iii) of the Act and annulling the deeds as provided therein the said land cannot be treated as land of the land holder and the authorities have wrongly treated them as land of the land holder. It is further submitted that the land belonging to agnate Deveshwari Prasad Choudhary has been wrongly treated as their land. In place of thirteen units only six units have been allowed. It is also submitted that Awadheshwari Prasad Choudhary. died in 1967 leaving his widow, nine sons and three daughters. The daughters being Class I heirs in terms of the provision of the Hindu Succession, 1956 inherited the land and they also became the land holder with regard to the extent of their

share inherited by them and the authorities, have wrongly said that the daughters, who are Petitioner Nos. 10 to 12 were not entitled to share as they cannot be termed as land holder within the meaning of the Act. It is also submitted that the authorities have wrongly classified the land as Class III and Class IV lands though the Assistant Settlement Officer in Case No. 58/1971-72 passed u/s 112 of the Bihar Tenancy Act has held that the lands belong to Class VI category and the said report has been wrongly overlooked by the authority.

7. No counter affidavit has been filed on behalf of the State.

8. However, learned Counsel for the State on the other hand submitted that after the abatement of the appeal in terms of the amendment Act the Addl. Collector passed the order afresh and the matter again came before the Board of Revenue and the Board of Revenue remanded the matter and thereafter again the proceeding has been disposed of according to law. The requirement in law to proceed afresh from the stage of Section 10 does not mean that the proceeding is to be started denovo from the stage of verification etc. and as such there is no infirmity in the disposal of the proceeding by the ceiling authorities. With regard to the various objections or claim made by the Petitioners it was submitted that all the three authorities have considered the matter and have found that there is no merit in any of the claims. This Court sitting in writ jurisdiction will not re-examine the matter. However, he fairly conceded that no enquiry u/s 5(1)(iii) of the Act has been held with regard to the transfer of the lands made after 22.10.59 and before the appointed date 9.9.70. He also fairly conceded that the land which has been transferred by the Petitioners or their father prior to 22.10.59 cannot be treated as land of the land holder Petitioners.

9. The first question to be determined is as to whether after abatement of the appeal in terms of the provision of the Amending Act and the remand by the appellate court the proceeding has been decided afresh from the stage of Section 10 of the Act in terms of the provisions contained under Sections 32A and 32B of the Amendment Act or not.

10. The Act was enforced in 1962 which was amended from time to time. The Bihar Ordinance 66 of 1981 was published in the Bihar Gazette on 9th April, 81 and as usual in this State it was followed by the successive Ordinances and lastly substituted by the Amendment Act 55/1982. By the aforesaid Ordinance and the Amendment Act substantial changes by way of amendment/substitution were made in the principal Act. Sections 2 and 4 were amended. Sections 5 and 9 were substituted and Sub-clause (01)-(02) and (03) were inserted into Sub-clause (c) of Sub-section (1) of Section 10 of the Act. Sections 32A and 32B were also inserted in the Statute.

11. To appreciate the point raised in this case it is apt to quote the provisions of Sections 32A and 32B of the Act which run 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;

32B. Initiation of fresh proceeding. - All those proceedings other than appeal, revision, review or reference referred to in Section 32A 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.

These provisions were added with a view to give effect to the amendments brought by the Act 55/1982.

12. The conjoint reading of the aforesaid provisions show that appeal, revision, review or reference other than those arising out of an order passed u/s 8 or Sub-section (3) of Section 16 (Preemption) shall abate and the Collector shall proceed afresh in accordance with the provision of Section 10 of the Act. Similarly, the proceeding other than the appeal, revision, review or reference in which final publication u/s 11(1) of the Act has not been made shall be disposed of afresh in accordance with the amended law.

13. The scope of the aforesaid these two sections was considered by a Division Bench of this Court in the case of Chandrajot Kuer v. State of Bihar 1983 Pat 220 : 1984 PLJR 90 wherein it was held that the effect of Sections 32A and 32B of the Act is that the entire proceeding from the beginning to end must be carried out afresh after abatement of the proceeding. It was held in that case as follows:

The above provision shows that all the proceedings pending on the date of commencement of the Ordinance of 1981 and in which final publication u/s 11(1) has not been made shall be disposed of afresh in accordance with the provisions of Section 10 of the Act. The combined effect of Sections 32A and 32B, therefore, is that the entire Procedure from beginning to end must be carried out afresh. Since the proceedings have got to be decided afresh, all findings arrived at earlier stages of the proceedings must be considered to have been wiped off whether the findings of fact were in favour the land holder or were in favour the revenue. Findings in favour or, against a land holder or revenue must be considered afresh.

14. The scope of the aforesaid sections was considered by a Full Bench of this Court in the case of Harendra Prasad Singh Vs. State of Bihar and Another, wherein the ratio laid down in Chandrajot Kuer (supra) was affirmed and held that when both the Sections 32A and 32B are read together they cry a halt to all

the earlier proceedings and to begin on a clean slate and to have them disposed of afresh. With effect from 9th April, 1981 the proceeding has to be decided afresh in accordance with the provision of Section 10 of the Act meaning thereby in accordance with the changes brought about in the law.

15. Recently a Division Bench of this Court relying upon the aforesaid decision in the case of *Sri Hanuman Sugar Industries and Ors. v. State of Bihar* 1997 PLJR 497 held that after abatement of the proceeding the Collector has to proceed afresh in accordance with the amended provision from the stage of Section 10 of the Act.

16. Thus, the settled law is that the proceeding which has not attained the finality has to proceed afresh from the stage of Section 10 of the Act and all the findings in the earlier proceeding are wiped out. The fresh proceeding has to be initiated in terms of the changes brought about by the Amendment Act.

17. The Act 55/1982 has brought substantial changes in the Act and the fresh proceeding from the stage of Section 10 has to be disposed of in terms of the amended provisions. The first step at the stage of Section 10 is to prepare a draft statement u/s 10(1) of the Act. This draft statement has to be prepared by following the Procedure provided under Rule 8 of the Rules, framed under the Act. It provides inter alia that the Collector on receiving returns u/s 6 or 8 or the information u/s 9 of the Act shall call upon the Anchal Adhikari and other officers as mentioned in the aforesaid rule to make a verification and to send the report which shall be verified by Collector having jurisdiction over the area concerned with the revenue records. The Collector is also empowered under Rule 8 to examine any document produced by the land holder and to hold a local enquiry after he considers necessary and thereafter a draft statement has to be prepared. Rule 9 of the rules empowers the Collector to make an enquiry regarding the land in respect of exemption/claim u/s 29 of the Act and thereafter a draft statement shall be prepared as provided in Rule 10 in Form LC.5.

18. Rule 8 has to be followed before preparing a draft statement u/s 10(1) of the Act. While preparing the draft statement, according to the amended provision, the area and the discription of the land transferred by the land holder in accordance with or in contravention of the provision of Clause (ii) of Sub-section (1) of Section 5 as required by (C1), the substance of finding of the Collector under Clause (iii) of Sub-section (1) of Section 5 as required by (C2) and the substance of the recommendation and order regarding exemption u/s 29 have to be also incorporated meaning thereby enquiry u/s 5(iii) regarding annulment of the sale deed has to be held earlier before the draft statement and then this finding is to be incorporated. Similarly, the substance of the information recommendation and the order regarding exemption u/s 29 of the Act have also to be incorporated. Accordingly, the recommendation and the exemption have to be initially determined by the authority before publishing of the draft statement.

19. Thus, in view of the amended provision when the earlier proceedings are

nullified in terms of the Amending Act then while proceeding afresh u/s 10(1) of the Act as amended the authorities have to comply with the aforesaid requirement before issuing draft statement u/s 10(1) of the Act. Unless, these things are done afresh the proceeding cannot be treated to have been started in terms of the provisions contained under Sections 32A and 32B of the Act.

20. In the present case it is clear that after the appeal abated and the matter was remanded the authorities have not proceeded in the matter afresh and have decided the matter on the basis of the same materials. No enquiry u/s 5(1)(iii) of the Act has been held at all. In other words, they have not complied with the mandatory direction contained under Sections 32A and 32B of the Act as interpreted by this Court and on this ground alone the order passed by the authorities contained in Annexures-1, 2 and 3 are vitiated.

21. As I am of the view that the proceeding has to be decided afresh in the light of the provision contained under Sections 32A and 32B of the Act, it is not necessary to go into the other points raised on behalf of the Petitioners. However, I would like to clarify certain legal points which have not been correctly appreciated by the revenue authorities. So far transfer made prior to 22.10.59 is concerned the same cannot be treated as land of the land holder and the same has to be excluded from the proceeding. So far the lands which were transferred after 22.10.59 but before 9.9.70 is concerned unless an annulment proceeding in terms of Section 5(1)(iii) of the Act has been initiated and the registered sale deeds have been annulled the said land can also not be treated as land of the land holder.

22. Admittedly, in this case no proceeding u/s 5(1)(iii) of the Act was initiated at any point of time and as such the authorities were not justified in treating the land transferred after 22.10.59 and prior to 9.9.70 as land of the land holder.

23. The authorities have wrongly held that the daughters of the land holder cannot be treated as land holder. This Court in the Division Bench case of Ram Dulari Kuer v. State of Bihar 1976 BBCJ 641 has already held that the definition of the family includes his or her spouse and minor children/Major children sons and daughters are not included in the definition of family and the land inherited by major sons and daughters in terms of the provision of the Hindu Succession Act, 1956 cannot be clubbed together with the land held by the land holder.

24. Thus if the father of the Petitioners died in 1967 the daughters were also entitled to inherit the property to the extent of their share in terms of the provisions of the Hindu Succession Act and those lands inherited by them cannot be treated as land of the other land holders.

25. In the result, the application is allowed and the orders contained in Annexures-1, 2 and 3 are quashed and the matter is remanded to the Additional Collector, who is directed to proceed with the matter afresh in the light of the observations made above.