
(1996) 08 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 5476 of 1985

Muneshwar Prasad and Another	Vs	APPELLANT
Board of Revenue and Others		RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 5

Citation : (1997) 1 BLJR 140

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ petition, the petitioners have prayed for quashing of the proceeding in Land Ceiling Case No. 234 of 1975-76 of the Court Additional Collector, Motihari, including the draft statement dated 21.12.1982 prepared in pursuance of the order u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land)" Act, 1961 (hereinafter referred to as "the said Act"). The prayer has also been made for setting aside the ex parte order dated 23.2.1983 passed by the Additional Collector (respondent No. 1) for preparing a final publication contained in Annexure 4, notification No. 214 dated 19.2.1985, a copy of which has been marked as Annexure 6 to the writ petition.

2. Petitioner No. 2 is the wife and petitioners 3 to 6 are sons of petitioners No. 1. According to the petitioners there was partition in their family in 1955 and two brothers of petitioner No. 1 separated from him and he settled in the district of East Champaran and his joint family acquired land in the said district in which he and his family members have got interest. Petitioners" case was that on 9.9, 1970, in the family of petitioner No. 1, there were five units but by virtue of the amendment in the said Act defining the word "family" the units were reduced to four only. Petitioner No. 1 filed his return on 5.4.1974 which gave rise to Land Ceiling case No. 234 of 1975-76 in the Court of Additional Collector, East

Champan, Motihari. It was alleged that the return was sent down for verification to the Anchal Adhikari who submitted his report to the effect that there were four adults in the family of petitioner No. 1. The learned Additional Collector, accordingly, by order dated 16.7.1976, dropped the proceeding on the ground that petitioner No. 1 could retain 120 acres of land u/s 5 of the said Act; whereas he was holding only 33.39 acres of Class IV land. A copy of the said order is Annexure-1 to the writ petition.

3. Petitioners' further case was that Land Ceiling Case No. 95 of 1975-76 was initiated in the district of Munger against Braj Nandan Prasad, younger brother of petitioner No. 2 Smt. Shobha Rani Devi in which a draft publication was made on 25.2.1977 against the above named Braj Nandan Prasad to which an objection u/s 10(3) of the said Act was filed. One of the objections in that case was that a gift was made to her as well as her three sons Rajeshwar Prasad Sah, Nileshtar Prasad Sah and Ratheswar Prasad Sah, petitioners 4 to 6. The said objection was disposed of on 22.6.1979 by the Additional Collector (Land Ceiling) Munger, holding that the so-called gift made by the land-holder Braj Nandan Prasad in favour of petitioner No. 2 and her three sons was farzi and the same was annulled. It was further stated that the Land Ceiling Case No. 234 of 1975-76 which was dropped in terms of the order dated 16.7.1976 was again revived by the Additional Collector, East Champaran, Motihari, for deciding as to whether petitioner No. 1 had any concern with the lands lying in the district of Munger. Petitioner No. 1 took up a stand that he had no concern with the lands lying in the district of Munger. The Additional Collector set up an enquiry in regard to the lands in Munger district and, while the said enquiry was pending, respondent No. 3, the Additional Collector, in terms of the order dated 30.6.82 ordered for preparing a draft statement with regard to 76.80 acres of land which included 50 acres of land of village Dahma of Munger district. In draft statement, 9.56 were shown as Class I, 2.34 acres as Class III; and 64.94 acres as Class IV lands without mentioning the basis of that classification. The said 76.80 acres were converted into Class IV lands and, on that conversion, they were shown as 83.63 acres after allowing one unit to the petitioner.

4. Respondent No. 3 also directed issuance of notice to petitioner No. 1. It is stated that a copy of the said notice was served on the petitioner but, because of the aliment, an objection u/s 10(3) could not be filed. Subsequently, respondent No. 3 by his order dated 23.2.1983, proceeded to pass ex parte order for final publication and, on 16.3.1983, a final publication was made. Petitioner No. 1 then preferred an appeal against the order dated 23.2.1983 and 16.3.1983 before the Collector which was registered as Ceiling Appeal No. 15 of 1983-84. The said appeal was dismissed by the appellate authority holding that the land of Munger district not having been put in the appellant's name rather they have been shown as surplus, the appellant is not going to lose anything. The appellate authority further held that the appellant has failed to file an objection u/s 10(3) of the Act and, therefore, his claim for five units could not be substantiated. After disposal of the appeal a final notification u/s 15(1) of the Act

was issued on 19.2.1985 by the Collector of the district, a copy of which is Annexure 6 to the writ petition.

5. A counter-affidavit has been filed on behalf of the respondent State stating, inter alia, that petitioner No. 1 was holding 24.17 acres of land in the district of East Champaran; 2.55 acres of land in the district of Saran; and 50.14 acres of land in the district of Munger. Although the petitioner disowned the land in the district of Munger, admittedly, the said land is said to have been gifted to his wife which became the land of the family. It was further stated that, since the Petitioner No. 1 failed to establish before the Court below about the majority of his son on the appointed date, only one unit of 30 acres of Class IV lands, which was allowed to be retained by him.

6. Mr. Kamal Nayan Chaubey, Senior Counsel appearing on behalf of the petitioners, firstly submitted that, in view of the fact that a bunk of the land, which was the subject-matter of the proceeding, fell within the jurisdiction of the Collector of Munger district the Additional Collector, East Champaran, had no jurisdiction to proceed with the preparation of the draft statement. Learned Counsel further submitted that the draft statement did not mention the area and the description of the land which petitioner No. 1 was entitled to retain and also the description of the land which the petitioner No. 1 was not entitled to hold which was the mandatory requirement of Section 10(1)(b) and (c) of the Act and the ex parte order dated 23.2.1983 is liable to be set aside.

7. Having heard the learned Counsel for the parties, I am of the view that the submission of the learned Counsel for the petitioners has much substance. I have failed to understand as to why the land covered by the gift was included in the lands of the petitioner when the Collector, Munger, by his specific order dated 22.6.1979 annulled the said gift holding that the gifted land belonged to the land-owner, i.e. the brother of the petitioner's wife.

8. Besides other infirmities which I find in the procedures adopted by the authorities in the ceiling proceeding, my attention was drawn to Annexure 4 which is the order dated 23.2.1983 passed in Ceiling Case No. 234 of 1975-76. By this order, the Additional Collector, Motihari, ordered for publication u/s 11 (1) of the Act. Learned Counsel for the petitioners by referring to Annexure 4 submitted that admittedly till 23rd February, 1983, the ceiling proceeding was pending before the Additional Collector. He further submitted that, in view of Section 32-B of the Act, the ceiling proceeding was liable to be disposed of afresh. Section 32-B was inserted by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus) Amendment Act 56 of 1982 which reads as under:-

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

9. By reading the provision of Section 32-B of the Act, it is apparent that the Legislature was of opinion that under the amended provision of law as a result of the enactment of the aforesaid Section, it will lead to identical result, namely, re-determination or disposal of the proceeding afresh in respect of determination of surplus area. As stated above, in the light of the Order 16.7.1976 passed by the Collector allowing four units to the petitioners and allowing the ceiling proceeding to become final as no surplus land was being held by the petitioner and further in view of the order dated 22.6.1979 passed by the Collector, Munger, annulling the gift and holding that the gifted land belonged to the land owner, the subsequent order dated 22.3.1983 and the draft statement purported to have been published u/s 10(2) as also the notification dated 19.2.1985 u/s 15(1) of the Act cannot be sustained in law. Moreover, in view of the provision of Section 32-B of the Act, the respondent authority has no option but to proceed afresh as, admittedly on 23.2.1983, the ceiling proceeding was pending before the Additional Collector.

10. In the result, this writ application is allowed, the impugned order is set aside the respondents 2 and 3 are directed to proceed afresh, if they so like and pass appropriate order in accordance with law.