
(1980) 04 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 666 of 1980

Narsingh Prasad Sah

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1981) 29 BLJR 443

Hon'ble Judges : Sia Saran Sinha, J;B.P. Jha, J

Bench : Division Bench

Judgement

B.P. Jha, J.—In an application under Articles 226 and 227 of the Constitution, the petitioner prays for quashing Annexures 2, 3 and 4 Annexures 2 and 3 contained order of the State Government and the District Collector for reopening the case u/s 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the Act). Annexure 4 contains a notice which was issued by the ceiling authority for initiating a fresh proceeding in accordance with law.

2. The simple point for consideration is whether on the facts and circumstances of this case, the order passed in Annexure I could be reopened either by the State Government or by the Collector u/s 45-B of the Act.

3. In my opinion, the answer must be given in negative on the basis of the facts and circumstances of this case. In the earlier land ceiling case, two points were for consideration before the ceiling authority (i) whether Baijnath Sah, father of the petitioner, died on 27-1-1970; if so, whether the three daughters of Baijnath Sah are entitled to the share in the property of Baijnath Sah and (ii) whether Arun Kumar Sah attained majority on or before 9-9-1970. The matter went up to the Board of Revenue. The Board of Revenue remanded the matter to the ceiling authority which was ultimately decided by the Deputy Collector, Land Reforms as contained in Annexure 1.

4. On remand, the Deputy Collector, Land Reforms, held that Baijnath. Sah died on 27-1-1970. He came to this conclusion on the basis of the death register and other documents on record. It is for this reason that the Land Reforms Deputy Collector held in Annexure 1 that the three daughters of Baijnath Sah was entitled to separate units after the death of Baijnath Sah in view of the provisions of the Hindu Succession Act, 1956.

5. So far as the minority question was concerned, the Land Reforms Deputy Collector considered the following documents, namely.

(i) Certificate issued by the Sub-divisional Education Officer, Purnea,

(ii) Medical certificate of Dr. A.Z. Mallick, and

(iii) Affidavit,

(iv) Horoscope.

In the certificate of the Sub-divisional Education Officer, the date of birth of Arun Kumar was mentioned as 4-2-1952. According to the medical certificate and other documents, it was clear that the son of the petitioner Arun Kumar had attained majority on 9-9-1970. In view of these findings, it was not at all necessary to reopen the matter u/s 45-B of the Act specially when the State did not prefer any appeal or revision against the order contained in Annexure 1. In my opinion, the order contained in Annexure 1 is a correct order. If it is so, the State Government and the Collector erred in reopening the matter u/s 45-B of the Act.

5. In the result, the petition is allowed. Annexures 2, 3 and 4 are hereby quashed parties shall bear their own costs.

Sia Saran Sinha, J.—The orders of reopening u/s 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act" were undisputedly. passed without any notice to the petitioner. It has been held by this Court that before the powers bestowed u/s 45-B of the Act are exercised, a notice must be issued to the person or persons concerned going to be affected by the order. This is a serious infirmity in the decision taken by the State Government in the matter of reopening and the consequent order contained in Annexure "3". The notice (Annexure "4") has been issued in pursuance of Annexures "2" and "3". I, therefore, agree with my learned brother the Annexures "2" "3" and "4" have got to be quashed.

2. The matter involves disputed questions of facts. While the Land Reforms Deputy Collector found certain facts in favour of the petitioner, the Additional Collector found them to the contrary, which, according to Annexure 2, makes the conduct of the former highly suspicious. After the decision of the Land Reforms Deputy Collector on remand consequent to the orders passed by the learned Member, Board of Revenue, these controversial facts did not come up for scrutiny of the other higher revenue authorities in appeal or revision as the respondent

did not prefer any appeal or revision but took recourse to the provisions of Section 45B of the Act.

3. A question arises whether, after quashing the impugned annexures the disputed questions of facts should be examined in detail by this Court as an appellate Court while sitting in writ jurisdiction or, as contended by the learned Counsel for the State, an opportunity should be allowed to the authorities concerned, in case they are so advised, to reconsider the question of reopening after issuing notices to the petitioner or other persons concerned, taking into consideration the the entire facts and circumstances of this case including the findings of the Land Reforms Deputy Collector on remand as also keeping in view the principle that the powers exercisable u/s 45B of the Act are to be exercised sparingly in appropriate circumstances and not as a matter of course. In my opinion, the latter course would be more appropriate, while therefore, quashing Annexures"2" "3"and "4". I am of the view that instead of closing the matter ones for all, the authorities concerned may, if they are so advised, reconsider the question of reopening of the matter after issuing notices to the petitioner and other persons concerned if any, hearing them and keeping in view of the observations made above.