
(1980) 03 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jur. Case No. 3573 of 1979

Nawal Kishore Singh and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-1980

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45B

Citation : AIR 1980 Patna 286 : (1981) PLJR 488

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

Bench : Division Bench

Advocate : S.B. Sanyal and S.K. Mishra, for the Appellant; R.S. Roy (Standing Counsel No. 3) and D.P. Chaudhary (Jr. Counsel to Standing Counsel No. 3), for the Respondent

Final Decision : Allowed

Judgement

B.P. Jha, J.—In an application under Articles 226 and 227 of the Constitution, these petitioners pray for quashing annexures "1" and "2". Annexure T contains the order of the District Collector 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"). Annexure "2" contains the order of the Deputy Collector, Land Reforms, after reopening the case u/s 45-B of the Act

2. In the present case there was a proceeding against the petitioners in Ceiling case No. 10/73-74. In that proceeding

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the matter went up to the High Court. The High Court remanded the case to the Deputy Collector, Land Reforms--vide annexure "3", for a fresh decision in accordance with law. On remand the Land Reforms Deputy Collector examined the matter and delivered his judgment--vide annexure "5".

3. The point for consideration in annexure "5" was in respect of the age of Amar

Kumar Singh as well as in respect of classification of lands. The Land Reforms Deputy Collector held that Amar Kumar Singh attained majority on 9-9-1970 on the basis of the materials on record. He also classified the lands in third and fourth categories. This very matter was reopened by the Collector--vide annexure "1". After reopening the Land Reforms Deputy Collector delivered his judgment--vide annexure "2". In annexure "2" it has been held that Amar Kumar Singh had not attained majority on 9-9-1970. This finding is based on no evidence. Earlier, the Land Reforms Deputy Collector considered medical certificate and other affidavits on the point of age of Amar Kumar Singh--vide annexure "5". But, after reopening, the Land Reforms Deputy Collector did not consider any of the materials already considered in annexure "5". Hence, I am of the opinion that the finding of the Land Reforms Deputy Collector in respect of the age of Amar Kumar Singh is based on no material.

4. So far as the classification of the lands is concerned, it has been held by the Land Reforms Deputy Collector that the lands in question are being irrigated by the Kosi Project. There is no finding to the effect that the lands were being irrigated by the Kosi Project on 9-9-1970. In the absence of such a finding or evidence, I am unable to uphold the finding of the Land Reforms Deputy Collector in this connection. Hence, in view of these infirmities, I quash annexure "2".

5. Another question for decision is whether a case of this type can be reopened by the District Collector u/s 45-B of the Act or not. The Collector of the District or the State Government can reopen a ceiling case u/s 45-B of the Act on the ground that there are apparent mistakes on the face of the record. The Collector can also reopen the case u/s 45-B of the Act if there has been no decision on the merits of the case. If a case has been dropped without considering the merits of the case, then it is a fit case in which the District Collector or the State Government can reopen the matter. The District Collector can also reopen a case if it is found subsequently by the authorities that the land-holder is in excess possession of the lands, for example, if a land-holder had filed his return in respect of 100 bighas of land only, but subsequently the Collector came to know that the land-holder is in possession of 500 bighas of land, then certainly it is a case of reopening. In my opinion, the Collector should apply his mind before reopening the case and he should not act in a mechanical way. The order of reopening should also be passed after hearing the parties concerned. So far as the present case is concerned, it does not appear that the petitioners were heard before passing the order contained in annexure "1". In view of this infirmity I quash annexure "1" as well.

6. In the result, the application is allowed and annexures "1" and "2" are hereby quashed. Parties shall bear their own cost.

Chaudhary Sia Saran Sinha, J.

7. I agree to the order proposed by my learned brother.

8. The reasons assigned by the Collector for reopening the matter are mentioned in annexure "1". As regards the classification, it has been stated that it is not in accordance with the rules without indicating the rule, if any. As regards the age, annexure "1" states that the evidence has not been examined in correct perspective, here again, without indicating the infirmity therein.

9. Wide powers have been given to the State Government and to the Collector of the District authorised in that behalf by the newly amended provisions of Section 45-B of the Act. The scope and ambit of the powers given u/s 45-B of the Act came up for consideration before a Division Bench of this Court earlier in C.W.J.C. No. 1925 of 1979, disposed of on 24th October, 1979. Their Lordships observed therein that Section 45-B of the Act was not intended to bestow a blanket power on the authority, mentioned therein. Their Lordships further observed that generally the power of reopening envisaged therein should be exercised if, on the basis of the records of the case, it appears that the proceeding had not been conducted or concluded in accordance with the provisions of the Act. It is neither possible nor expedient to lay down an exhaustive list of cases where the reopening can be ordered, as the same will depend on the facts and circumstances of each case. In view of the Scheme of the Act and the context in which Section 45-B appears in the Act, it is, however, obvious that before passing the order for reopening of the matter, the Collector or the State Government, as the case may be, shall generally allow an opportunity to the parties, going to be affected by such an order, to be heard in the matter and that the order to be passed by the authority must be a speaking order in the sense that reasons must be assigned which have led the authority to pass the order. The reason is obvious, namely, that a proceeding purporting to have been concluded in the regular course should not be ordered to be reopened in an arbitrary or capricious manner, but only for reasons which should, prima facie, justify the reopening. The question of vires of this provision was not pressed and it is, therefore, not necessary to decide any such question in the instant proceeding.