

(2006) 09 PAT CK 0040
In the Patna High Court
Case No : CWJC No. 6371 of 2005

Pramila Saha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 11(1), 5
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2006) 4 PLJR 568

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : S.K. Verma, Shankar Kumar and Jitendra Kishore Verma, for the Appellant; Kumari Amrita, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard learned counsel for the parties. The petitioners seek direction upon the respondent authorities to confirm four units of land, which have already been granted to them by District Gazette No. 27, Purnia dated 20.8.1991 issued by the Sub divisional Officer, Sadar Purnia on the basis of Land Acquisition Case No. 91 of 1966-67 and further to quash the entire proceedings of Ceiling Appeal No. 188 of 1993 filed by the State of Bihar.

2. The main contention of the learned counsel for the petitioners is that after final publication u/s 11 (1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the "Act") an appeal against the same could have been filed within the period of 30 days statutorily prescribed by Section 30(1)(a) of the Act and the Collector, as the appellate authority, had no jurisdiction to admit the appeal and proceed with the same when the appeal was filed on 8.9.1993 more than two years after the said order. The appeal had been admitted on 5.11.1993 and thereafter parties were finally heard and the matter had been reserved for order on 19.8.1995, but no

order was passed by the Collector and again the appeal proceedings have been directed for fresh hearing by the successor Collector.-

3. Learned counsel for the petitioner in this context relies upon Section 3 of the Limitation Act which provides that subject to the provisions contained in Sections 4 to 24 every appeal preferred after the prescribed period shall be dismissed, although limitation has not been set up as a defence. According to learned counsel for the petitioners, it is the duty of the appellate authority to examine the memo of appeal and see whether it has been filed within or beyond the period of limitation and if it has been filed beyond the period of limitation and is not accompanied by an application for condonation u/s 5 of the Act then the same must be outright rejected. For the said reasons, learned counsel for the petitioners submits that the Collector had no jurisdiction to admit the appeal on 5.11.1993 and proceed with the same. Accordingly, the entire appellate proceedings must be quashed.

4. In support of his said contention, learned counsel for the petitioner relies upon a decision of the Supreme Court in the case of Ragho Singh vs. Mohan Singh and Ors. : 2001(3) PLJR (SC) 137, which was also a case under the provisions of the Ceiling Act related to pre-emption. In the said case, the appeal had been filed 10 days beyond the period of limitation without being accompanied by any application u/s 5 of the Limitation Act for condonation of delay. When the matter went before the Board of Revenue it held that the application for condonation of delay, though not filed, shall be deemed to have been condoned. A learned single Judge of this court as well as the L.P.A. Bench set aside the judgments of the Addl. Collector as also the Board of Revenue and the same was upheld by the Supreme Court after holding that in such circumstances, there was no jurisdiction in the Addl. Collector to allow the appeal and the same was liable to be dismissed on the ground of limitation and the decision of the Board of Revenue that the delay shall be deemed to have been condoned was patently erroneous.

5. Learned counsel for the State, however, contended that the writ petition itself is not maintainable as it is open to the petitioners to raise the said point in appeal and further that the petitioners have an alternative remedy u/s 32 of the Act. It was contended by learned counsel for the State that the Collector has merely admitted the appeal but has not allowed the appeal and thus at this stage no grievance can be made by the petitioner until final order is passed by the Collector and the writ petition is, premature. In support of the said stand, learned counsel for the State relies upon a decision of the Supreme Court in the case of Govinda Menon Vs. Union of India (UOI), in which it has been held that the jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain Courts or inferior Tribunals from exercising a jurisdiction which they do not possess at all or to prevent them from exceeding the limits of their jurisdiction. Thus the said ratio applies not only for excess of jurisdiction or for absence of jurisdiction but also in a case of departure from the

rules of natural justice Learned counsel for the State submits that since no final order has been passed in the present matter, thus, it is not a case where this court can interfere in its writ jurisdiction under Article 226 of the Constitution of India.

6. On a consideration of the rival submissions, I find substance in the submissions of the learned counsel for the petitioners. So far as reliance placed by learned counsel for the State on the case of S. Govinda Menon (supra) is concerned, the said case in fact goes against the stand taken by the State. It has clearly been laid down in the said decision that if there is absence of jurisdiction or the authority acts in excess of jurisdiction, the same is liable to be interfered with under the writ jurisdiction under Article 226 of the Constitution of India. The law in the present matter u/s 3 of the Limitation Act enjoins upon the Collector while considering the memo of appeal filed before him to see whether it is beyond the period of limitation or not and if it is so and at the same time is not accompanied by an application for condonation of delay u/s 5 of the Limitation Act then he has no jurisdiction at all to hear the matter or admit the appeal but his only option is to dismiss the same. Clearly, that has not been done by the Collector in the present case and he has not only admitted the appeal but has proceeded to hear the matter on merit, which jurisdiction the law does not confer upon him once the appeal was filed beyond the period of limitation.

7. In the case of Ragho Singh (supra) relied upon by learned counsel for the petitioners, the appeal was filed only 10 days beyond the period of limitation, yet this court and the Supreme Court have held that the Addl. Collector did not have any jurisdiction to entertain the appeal. In the present case the situation is much worse, since the appeal has been filed beyond two years of the period of limitation. For the aforesaid reasons the proceedings of Ceiling Appeal No. 188 of 1993 are quashed. Accordingly, the writ application is allowed. However, in the facts and circumstances of this case there shall be no order as to costs.