(1980) 02 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jur. Case No. 4803 of 1978

Radha Krishna Prasad Singh and Another APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-02-1980

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 32, 32(2), 32(3)

Citation : AIR 1981 Patna 16

Hon'ble Judges : M.P. Varma, J;B.P. Jha, J

Bench : Division Bench

Advocate : Indu Shekhar Prasad Sinha and Madan Mohan, for the Appellant; Angad Ojha, Govt. Pleader No. 1 and Ram Prasad Bhagat, Jr. Counsel to Govt. Pleader No. 3, for the Respondent

Final Decision : Dismissed

Judgement

1. In an application under Articles 226 and 227 of the Constitution, these petitioners pray for quashing Annexure 8. Annexure 8 contains an order passed by the Additional Member, Board of Revenue.

2. By Annexure 8, the learned Additional Member, Board of Revenue, was pleased to set aside the order of the Additional Collector and to remand the same to him for a fresh disposal in accordance with law and evidence. It is against this order that these petitioners have moved this Court.

3. Learned counsel for the petitioners contends that the learned Additional Member, Board of Revenue, had no jurisdiction to remand the matter after setting aside the order of the Additional Collector. We are unable to accept this contention. Annexure 6 contains the order of the Collector under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as ''the Act''). These petitioners preferred an appeal u/s 30 of the Act to the Collector of the district. The Collector of the district in appeal upheld the order contained in Annexure 6. In revision u/s

32 of the Act, the learned Additional Member, Board of Revenue, set aside the orders contained in Annexures 6 and 7 and remanded the whole matter to the Additional Collector (Collector under the Act) for a fresh decision in accordance with law.

4. Learned counsel for the petitioners contends that after setting aside the orders in question, the learned Additional Member, Board of Revenue, had no jurisdiction to remand the matter to the Additional Collector. In this connection, he refers to the amended Section 32 of the Act. Section 32 was amended by Bihar Act 22 of 1976. After amendment, the following Section 32 was inserted in place of the old section:

"32. Revision to the Board of Revenue.-- (1) A revision shall lie to the Board of Revenue from any appellate order passed by a Collector.

(2) When a reference is made to the Board of Revenue u/s 38 or a revision is filed under Sub-section (1) of this section, the Board may, after hearing the parties, confirm, modify, or set aside the order.

(3) The Board of Revenue may of its own motion or on an application made to it, call for from the Collector any document or record in connection with any enquiry conducted by the Collector or may direct the Collector to institute, for the purpose of this section, an enquiry and to submit his findings to the Board.''''

It is also relevant to quote the old provision of Section 32 which runs as follows:--

"32. Power of the Board of Revenue to call for proceedings:-- The Board of Revenue may, at any time for the purpose of satisfying itself as to the legality or propriety of any order by any authority or officer under this Act or the rules made thereunder, call for and examine the record of any case pending before or disposed of by such authority or officer and may pass such order as it thinks fit:

Provided that no order modifying, altering or setting aside any order made by such authority or officer shall be passed by the Board unless the parties concerned are given a reasonable opportunity of being heard."

5. Under the old provision, the Board of Revenue was authorised to call for and examine any record which is pending for disposal before any authority below it. By the old provision, the re-visional authority could have passed any order which he would have thought fit and proper in the circumstances of the case. By virtue of the amendment by Bihar Act 22 of 1976, a revision petition before the Board of Revenue can be filed against any appellate order passed by the Collector. Under Sub-section (2) of Section 32, the Board may, after hearing the parties, confirm, modify or set aside the order. In the present case, the Board set aside the order and remanded the case for fresh hearing in accordance with law. In our opinion, such an order is covered by Sub-section (2) of Section 32 of the Act. Under Sub-section (3) of amended Section 32 of the Act, the Board can direct the Collector to institute an enquiry and submit his findings to the Board.

6. Learned counsel for the petitioners contends that the Board had no jurisdiction to remand the matter after setting aside the orders in question. We are unable to accept his contention. The Board is authorised in law to set aside the orders in question under the amended Section 32 (2) of the Act. After setting aside the orders, the learned Additional Member was fully justified in remanding the matter for fresh consideration in accordance with law. There is nothing in the section which prohibits the revisional authority not to remand the matter after setting aside the orders in question.

7. Learned counsel for the petitioners contends that in view of amended Section 32 (3) of the Act, the Board has no jurisdiction to remand the matter. In other words, in view of amended Section 32 (3) of the Act, learned counsel for the petitioners contends that the Board has to decide the matter itself instead of remanding the same. We are unable to accept this contention. By virtue of amended Section 32 (3) of the Act, the Board is also vested with the power to call for the enquiry report from the Collector in respect of certain matters, and it does not prohibit the Board to remand the matter after setting aside the orders in question. By virtue of Sub-section (3) of Section 32 of the Act, if the Board feels any difficulty in deciding certain matters in dispute, it can certainly call for an enquiry report from the Collector and decide the matter himself. But, by virtue of Sub-section (3) of Section 32, the power of remanding a certain matter for a fresh decision in accordance with law is not being curtailed. We are, therefore, of opinion that the Board of Revenue under Sub-section (2) of Section 32 can certainly set aside the order in question and remand the matter for a fresh consideration. In our opinion, the order of remand is a consequential order after setting aside the order in question.

8. In the result, the petition is dismissed and the order of the Board contained in Annexure 8 is upheld. The parties shall bear their own costs.