

(2007) 04 PAT CK 0085
In the Patna High Court
Case No : C.W.J.C. No. 1986 of 2007

Rajeev Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 1, 16(3), 2, 30, 32

Citation : (2007) 2 BLJR 1459 : (2007) 2 PLJR 763

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Arun Pd. Ambastha, Ravindra Kr. Choudhary and Rupesh Ranjan, for the Appellant; Lalit Kishor, AAG III and Kumari Amrita, SC(C)I, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The petitioner by this writ application has challenged the orders issued from the Board of Revenue under the signature of the Secretary, Board of Revenue whereby purporting to act in pursuance to the amendment to Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, as made by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2006 [Bihar Act 10, 2006] as published in the Bihar Gazette (Extra Ordinary) dated 4.5.2006, all revision applications pending before the Board of Revenue which had been filed in matters arising from Section 16(3) of the Act u/s 32 thereof to be transferred to the Divisional Commissioners. In other words, all revision applications before the Board of Revenue in relation to pre-emption matters have been directed to be transferred to the Divisional Commissioners for final disposal.

2. The matter was heard and on behalf of the State. Sri Lalit Kishor, Sr. Advocate learned Addl. Advocate General III appeared. With consent of parties, this

application is being disposed of at the stage of admission itself.

3. Section 16(3) to the Act is a special provision in the Act. The Act primarily deals with imposition of ceiling in respect of agricultural holdings and necessary provisions in respect thereof. Section 16(3) of the Act has nothing to do with the ceiling proceedings or ceiling law. It is a law with regard to the right of pre-emption of an adjoining riyat or co-sharer in respect of agricultural land. It, inter alia, provides that in case a riyat or a co-sharer of adjoining agricultural land intends to purchase such land which has been sold by the said co-sharer or riyat to another person then he must make an application within three months of the date of registration of the document of transfer before the Collector complying with the prescribed conditions. The Collector has then to decide the issue and, if he allows the application for pre-emption, then he has to direct the vendor to execute the conveyance in favour of the pre-emptor or on his failure, get the same executed in favour of the pre-emptor. This Section, as originally enacted, did not provide for any remedy against the orders passed therein. The provisions with regard to remedy are to be found in Section 30 (Appeal) and Section 32 (being revision). Section 30 and Section 32 were general provisions with regard to various orders passed under the Act which, as noticed above, primarily deal with matters with regard to adjudication and declaration as well as distribution of agricultural land, which was beyond the ceiling area prescribed therein.

4. "Collector" has been defined by Section 2(b) of the Act to mean "Additional Collector and any person authorised by the State Government in this regard by a notification". This definition of "Collector" is for the purposes of the entire Act and unless context otherwise speaks, it has to be read wherever the expression "Collector" has been used. I may point out that u/s 30 itself a distinction has been drawn between "Collector" and "Collector of the District" "inasmuch as if an order has been passed by an Officer below the Collector of the District, then an appeal would lie to the Collector of the District though Collector of the District would also come within the meaning of the word "Collector".

5. It is not in dispute that by an appropriate notification, the Deputy Collector Land Reforms has been authorised to act as Collector for the purpose of Section 16(3) of the Act. He being the juniormost Officer authorised, all original applications claiming and / or asserting right of pre-emption have to be made to him.

6. Thus under the scheme of the Act, it would be seen that if an order is passed by the "Collector" at the original stage, it would be an order passed by the Deputy Collector Land Reforms. Such an order would be an order that would be appealable to the Collector of the District by virtue of Section 30 and thereafter would be revisable by the Board of Revenue in terms of Section 32.

7. There was no confusion and / or ambiguity in this scheme but it appears that the number of matters relating to pre-emotion started increasing and gradually

the Board of Revenue got flooded with revision applications from all over the State of Bihar. Apparently, in this view of the matter, Bihar Act 10 of 2006 was passed by the legislature and published in the Bihar Gazette (Extra Ordinary) dated 4.5.2006, which reads as follows:

To Amend the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

Be it enacted by the legislature of the State of Bihar in the Fifty Seventh Year of the Republic of India as follows:

1. Short title, extant and commencement.- This Act may be called the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2006.

2. It shall extend to the whole of State of Bihar.

(3) It shall come into force at once.

2. Amendment of Sub-section (3) of Section 16 of the said Act.- Section-16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is hereby amended to the extent given below:

The revision, against the order passed by the Collector or Additional Collector u/s - 16(3) of the Act will be before the Divisional Commissioner who after hearing the parties shall pass orders in the case filed before him.

8. It is in pursuance to the aforesaid amendment to Section 16(3) that the Board of Revenue is transferring all pending revision applications in relation to pre-emption matters to the Divisional Commissioners. The propriety and legality whereof is in challenge.

9. Having heard the parties and considered the matter, I am of the view that the amendment is prospective in nature. It is apparent from the provisions of Section 1, Sub-section (3) thereof wherein it says that the amendment shall come into force at once, i.e., from the date of its notification in the Official Gazette. Thus the amendment comes into operation with effect from 4.5.2006. This being the position, the next question is - Can it be applied to revision applications pending before the Board of Revenue? In my opinion the answer has to be in negative for the simple reason that this provision, as introduced, creates a new revisional forum from the orders of the Collector or the Additional Collector. Being a new remedy, it could apply only to orders having been passed by the Collector or the Additional Collector after the amendment has come into force. As a natural corollary it will not apply to cases which have already been filed and are pending before the Board of Revenue as revision before the amendment came into effect.

10. I may clarify one another aspect. The revision u/s 16(3), as now provided, is contemplated against order of the Collector or Additional Collector. "Collector", an expression used herein would mean "Collector of the District alone" and not "Collector" as defined u/s 2(b) of the Act. Section 2(b) of the Act is the definition

clause which itself provides that unless there is nothing repugnant in the subject or context, "Collector" would mean as defined therein. Here in Section 16(3) in the amendment, "Collector" has been used along with Additional Collector. If "Collector" had been used in isolation. Section 2(b) would apply but that not being so and it having been used in conjunction with Additional Collector, who has appellate power in terms of Section 30, the expression "Collector" used in the amendment would only mean "Collector of the District" and Collector not as generally defined.

11. In this view of the matter I hold that the amendment is prospective and will not apply to revision applications already filed and pending before the Board of Revenue in respect of orders of Collector or additional Collector, which were passed prior to 4.5.2006. Such revision applications cannot be transferred to the Divisional Commissioners. Revision applications before the Board of Revenue from orders of the Collector or the Additional Collector passed after 4.5.2006 would be controlled by the amended provision and the revision application would lie to the Divisional Commissioner in terms of Section 16(3) of the amended provision and not to the Board of Revenue in terms of Section 32 of the Act. Such revision applications, even if filed and pending before the Board of Revenue, would be transferred to respective Divisional Commissioners but not other revision applications which are against the orders of the Collector or the Additional Collector passed prior to 4.5.2006.

12. In view of the aforesaid findings, the impugned order of the Board of Revenue transferring cases relating to pre-emption to Divisional Commissioners cannot be sustained and is accordingly quashed. Any matter which has earlier been transferred and such a transfer being contrary to the scheme of the Act, as noticed hereinabove, will have to be recalled by the Board of Revenue and disposed of by it.

13. This writ application is accordingly allowed with the aforesaid directions.