

(1976) 09 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 1041 of 1974

Rajni Ranjan Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1976

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 — Section 13, 13(3), 6, 6(1), 8
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 — Section 1(2)
Bihar Land Reforms (fixation Of Ceiling Area And Acquisition of Surplus Land) (Amendment) Act, 1976 — Section 13, 19

Citation : (1977) PLJR 453

Hon'ble Judges : S. Sarwar Ali, J;Gobind Mohan Misra, J

Bench : Division Bench

Advocate : Kailash Roy, B.K. Roy and Dinesh Chandra Sinha in CWJC 1041, 1042 and 1043/74, for the Appellant; S.N. Jha, S.C. II and Sudhakar Choudhay, J.C. in C.W.J.C. 1041/74, Mr. B.P. Pandey, J.C. to S.C. II in C.W.J.C. 1042/74 and Mr. Shashi Anugrah Narain, J.C. to S.C. II in C.W.J.C. 1043/74, for the Respondent

Final Decision : Dismissed

Judgement

S. Sarwar Ali, J.—In these three cases common question of law arise and they are, therefore, being disposed of by a common judgment. In these cases proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 were started on 1.10.1970. By order dated 15.4.1971 it was held that the petitioners did not hold land in excess of the then ceiling area. It is to be observed that when the orders were passed Bihar Act 1 of 1973 had not been enacted. Consequently, the decision in these cases was on the basis of the relevant provisions of Act 12 of 1962. After the enactment of Bihar Act 1 of 1973 as amended fresh proceeding was started in these cases separately, giving rise to Ceiling Case Nos. 8 of 1973-74, 6 of 1973-74 and 5 of 1973-74. The petitioners challenged the validity of these

proceedings. Their contention is that since in the earlier proceedings the petitioners were held to possess lands within ceiling area, a fresh proceeding could not be started as the orders passed on the earlier occasion must be deemed to have been passed under the provisions of Act I of 1973 which came into force retrospectively from 9.9.1970. A fresh proceeding, it was contended under the provisions of Bihar Act I of 1973 as amended by Bihar Act IX of 1973, was barred by the principles of res judicata. Reliance was placed in this connection on the decisions in (1) C.W.J.C. 1040 of 1974 (Naliniranjan Singh & others V. State of Bihar) decided on 15.11.1976, which it was pointed out was a case on identical facts.

2. It was contended on behalf of the State that the decision in Naliniranjan Singh's case, although a Bench decision was not a correct decision and it should be reconsidered by a larger Bench. It was further contended that in any event, in view of the Section 19 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act 1976 (Bihar Act XXII of 1976) the aforesaid Bench decision of this Court was inapplicable and there could not be now any bar to initiation of a proceeding in the circumstances of the present case.

3. It is first necessary to appreciate the real decision and the basis of the decision in Naliniranjan Singh's case. Before proceeding, however, Section 13 of Act I of 1973 and the amendment brought about by Act XXII of 1976 should be quoted: Section 13 of Act I of 1973 is as follows:--

(1) The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment) Ordinance, 1972 (Bihar Ordinance no. 64 of 1972) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of power conferred by this Act as if this Act were in force on the day on which such thing was done or action taken.

(3) Nothing in this Act or the amendments affected thereby shall affect or be deemed to affect anything done or any action taken under the provisions of the said Act:

Provided that in case where the land-holder has already submitted a return in accordance with the notice issued u/s 6 or Section 8 of the said Act and has exercised the option u/s 9 of the said Act, he shall be given an opportunity to further exercise the option under the said Section in view of the provision of this Act within 15 days from the date of service of notice issued by the Collector for this purpose OF within such extended period as may be allowed by the Collector.

Section 19 of Bihar Act XXII of 1976 which amends the aforesaid Section 13 is as follows:--

In Section 13 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act I of 1973), in Sub-section

(3), the following words shall be added at the end and shall be deemed always to have been added, namely:

In so far as action is not inconsistent with the provisions of this Act and all proceedings pending before the commencement of this Act shall be continued or modified or brought in consonance with the provisions of the said Act as amended by this Act.

In Naliniranjan Singh's case it was held on the basis of proviso to Section 13(3), as also provisions of Section 6(1) of the Act as amended, that if a proceeding has been started under the provisions of the parent Act, but concluded after Act I of 1973 came into force it must be deemed that the decision of the authority on merits was under the Act as amended. It was held that since Section 1(2) of Act I of 1973 provided that the said Act will be deemed to be in force on 9.9.1970, the decision given after that date must be deemed to be under the provisions of Bihar Act I of 1973. It was thus on account of the legal fiction that, although on the date when orders were passed by competent authority they did not and could not know of the provisions of Act I of 1973, it was held that the orders of the competent authority must be deemed to be under the provisions of the parent Act as amended by Bihar Acts I and IX of 1973.

4. The position, however, is now different Section 19 of Bihar Act XXII of 1976 has added at the end of Section 13(3) of Bihar Act I of 1973 some crucial words. Those have already been quoted. The effect of the addition, which shall be deemed always to have been there, is that the legal fiction is only available in those cases where the action taken is not inconsistent with the provisions of Act I of 1973. If the order passed in a particular case is inconsistent with the provisions of Act I of 1973, the legal fiction which has been created u/s 13 is not available. In the instant cases it cannot be disputed, and it has not been disputed, that the area of land in respect of which the petitioners have been found to be land holders was in excess of the ceiling area as fixed in Act I of 1973. In our view, therefore, the orders passed in the earlier ceiling cases started in the year 1970 and concluded in 1971 cannot be deemed to be orders passed under Act I of 1973--the orders not being consistent with the provisions of the said Act.

5. Learned counsel for the petitioners placed reliance on Section 4A introduced by Bihar Act XXII of 1976 which is as follows:

Redetermination of Ceiling area. Where the ceiling area of the land for any family or any member of the family constituting the family on the appointed day has been determined by any order passed by any authority in accordance with the provisions of this Act prior to the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act I of 1973), the ceiling area of such family or member of the family shall be re-determined under this Act with reference to the appointed day in accordance with the amended provision.

Explanation--In this section authority includes the Collector, Commissioner of the Division and the Board of Revenue.

Learned counsel contended that the aforesaid section permits only redetermination of ceiling area in cases where orders have been passed prior to 9.9.1970. Section 19 of Bihar Act XXII of 1976 should, therefore, be held to be applicable to orders passed prior to 9.9.1970. If such orders were inconsistent with the provisions of the Act I of 1973, they alone could be reopened. This contention, in my view, cannot be accepted. The language of Section 19 aforesaid is clear and wide in its scope. It cannot be held that it only applies to action taken prior to 9.9.1970, when there is no indication either explicit or implicit in the aforesaid provision to justify such a restrictive interpretation. We cannot read words into the section which are not there. What the learned counsel suggests amounts to importing restrictive words in Section 19 of Act XXII of 1976. It is, therefore, not possible to accept the contention put forth on behalf of the petitioners.

6. I am consequently of the view that ceiling case nos. 5 of 1973-74, 6 of 1973-74 and 8 of 1973-74 have been legally initiated and the proceedings cannot be quashed. We, however, like to observe that the petitioners will be entitled to file further objections if they are so advised and indicate their option of the lands that they propose to retain before the competent authority. We further direct that the petitioners should appear before the competent authority on the 3rd of January; 1977 and file further objections, if any, and indicate their option. Thereafter a date of hearing should be fixed on which date the objections should be disposed of after affording the parties reasonable opportunity to substantiate their objections. In the result, but, subject to the observations made, these writ applications are dismissed, but in the circumstances without costs.

Gobind Mohan Misra, J.

I agree