

(1993) 05 PAT CK 0019

In the Patna High Court

Case No : C.W.J.C. No. 5248 of 1992 and 8308 of 1991

Ram Kishore Narain Singh and Others and Devi and Others APPELLANT
Vs

State of Bihar and Others RESPONDENT

Date of Decision : 21-05-1993

Acts Referred:

Citation : (1993) 05 PAT CK 0019

Judgement

S.B. Sinha, J.—Both these writ applications involving common question of law were taken up for hearing together and are being disposed of by this common judgment.

2. The petitioners are landholders.

Ceiling proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act) were initiated against them.

3. The fact of the matter involved in both the Writ applications may however, be noticed separately.

4. C.W.J.C. No. 8308 of 1991:

The petitioners objection u/s 10(3) of the said Act as also an appeal preferred there from having been dismissed, they filed a revision application before the Member Board of Revenue. The said revision application was admitted on 6-3-1991 and order of status quo was passed. The hearing of the said Revision application was concluded before Shri Abhik Ghosh, Additional Member, Board of Revenue and the order was reserved but as the learned Additional Member Board of Revenue was transferred, no order was passed therein.

5. The revision application was, thereafter placed before Shri Pancham Lal who directed re-hearing of the matter on 26-8-1991. On the aforementioned date Shri Vijay Kumar Bhagat, Advocate, who was appearing on behalf of the petitioners was not in a position to appear and as such an application for time

was filed and the same was allowed; but the respondent No. 2 directed that the order of status quo passed on 6-3-1990 shall stand vacated.

6. A notification u/s 15(1) of the Act was, thereafter published, in the District Gazette of Aurangabad on 2-11-1991, which is contained in Annexure-3 to the writ application.

7. The petitioners thereafter filed an application before Respondent No. 3 on 8-11-1991 praying therein that steps which were being taken u/s 15 of the Act were illegal and without jurisdiction as the Revision petition was pending before the Board of Revenue. The said application dated 8-11-1991 is contained in Annexure-4 to the writ application.

8. The petitioner, how ever, stated that in the meanwhile, the respondent No. 3 obtained the records of the ceiling case from the Board of Revenue and passed order on 2-11-1991 for notification u/s 15(1) of the Act.

9. By an order dated 11-11-1991 the petitioner's application dated 8-11-1991 was objected.

10. The petitioner has filed the aforementioned writ application questioning the aforementioned order dated 26-8-1991 passed by the Additional Member Board of Revenue, the notification dated 2-11-1991 u/s 15(1) of the Act as also the order dated 11-11-1991 passed by the respondent No. 3.

11. C.W. J. C. No. 5428 of 1992

A land ceiling proceeding was initiated against the petitioner No. 1. A draft publication was made in the said proceeding and an objection u/s 10(3) of the Act was filed by the petitioner No. 1. The said objection was rejected by an order dated 1-4-1985 by the Collector under the Act as contained in Annexure-1 to the writ application.

12. An appeal was preferred by the petitioners which was also dismissed by the Collector, Gaya district by an order dated 22-9-1991 as contained in Annexure-2 to the writ application.

13. The petitioners thereafter filed a revisions application against the said order before the Board of Revenue which was registered as Revision case No. 158 of 1991.

The petitioners in the said case filed an application for stay before the Additional Member Board of Revenue whereupon a report was called for from the Collector as to whether the lands had been distributed or not.

14. On 20-5-1992 as the report was not received, the case was adjourned to 9-7-1992. An oral prayer for stay was made but instead of passing any order thereupon a reminder was sent to the Collector to send his report within 15 days from the date of the receipt thereof.

15. However, the Collector, Gaya, during pendency of the revision started taking

steps for distribution of the lands of the petitioners and for that purpose a notification u/s 15(1) of the said Act which is contained in Annexure-3 was issued.

16. The petitioners again filed an application on 29-5-1992 as contained in Annexure-4 to the writ application for stay of the distribution of the lands but the Additional Member Board of Revenue on 1-6-1992 instead of granting stay advanced the hearing of the case from 9-7-1992 to 10-6-1292. The order sheet dated 1-6-1992 is contained in Annexure-5 to the writ application.

17. On 10-6-1992 the matter was not taken up. However a report dated 18th May, 1992 was received to the effect that the land have not been distributed.

In the meantime, however, the Additional, Collector Land Ceiling directed the Anchal Adhikari, Gurua to take immediate steps for distribution of the lands in terms of the notification dated 22-5-1992 (Annexure-3).

18. The questions, which, therefore, arise for consideration in these applications are :

(i) Whether any notification u/s 15(1) of the Act can be issued during pendency of an appeal or a revision application ?

(ii) Whether the authorities under the Act had any jurisdiction to take possession of the land during pendency of the application?

19. The said Act was enacted to provide the fixation of ceiling; restriction on sub-letting and resumption by certain raiyats for personal cultivation of land ; acquisition of the status of raiyat by certain under-raiyats, and acquisition of surplus land by the State in the State of Bihar and matters connected therewith.

20. In order to consider the questions involved in this application, the scheme of the Act may be noticed.

The said Act came into force with effect from 19th April, 1962.

21. The land-holder under the Act was previously the specified person ; but by reason of the Amending Act of 1972 unit for the said purpose now is the "family" as defined in Section 2(ee) thereof.. The ceiling area has to be determined keeping in view the nature of the land possessed by the family within the meaning of the provisions thereof.

22. By a general notice the land-holder is directed to submit his returns and he is required to do so within 30 days therefrom, A notice has also to be issued to the landholder if no return is filed by him.

23. The Collector under the Act is required to obtain information from the Gram Panchayat and other sources and further steps in the proceedings are to be taken irrespective of the fact as to whether any return has been filed by the landholder or not. The return filled by the landholder is required to be verified by the specified Officers. A draft statement is to be prepared in terms of Section 10(2) of the Act where in inter alia the extent of the land to be retained by the

landholder and the extent of the lands to be declared surplus by the State upon acquisition and acquired pursuant thereto, is to be specified. An objection to the draft publication may be made by the landholder which is to be disposed of after giving an opportunity of hearing to him. Thereafter a final publication is made u/s 11(1) of the Act and the copy of the said notification is required to be served upon the landholder.

24. The landholder if dissatisfied with the order passed u/s 10(3) of the Act is entitled to prefer an appeal in terms of Section 30 of the Act read with Rule 48 of the Rules; the period of limitation wherefor is 30 days.

25. If the landholder is aggrieved by any order passed by the appellate authority, he may prefer a revision application before the Board of Revenue in terms of Section 32 of the said Act.

26. The question, which, therefore, arises for consideration is as to whether the State of Bihar and/or Collector of the District is entitled to issue a notification under Sub-section (1) of Section 15 of the Act acquiring the surplus land or not?

Section 15 of the Act reads thus:

Acquisition of surplus land.--(I) The State Government or the Collector of the district specially so empowered in this behalf shall after the statement under Sub-section (1) of Section 11 has been finally published and subject to appeal or revision ; if any, acquire, the surplus land by publishing in the official Gazette of the District, a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned:

Provided that without awaiting the result of appeal or revision the State Government or the Collector of the district specially so empowered in this behalf may proceed to acquire such of the surplus land of the landholder in respect of which there is no claim or dispute or which is admitted by the landholder to be surplus:

Provided further that a copy of the notification shall also be sent to the landholder concerned by registered post with acknowledgment due.

(2) On the publication of the notification under Sub-section (1), the land specified in the notification, shall, subject to the provisions of this Act, be deemed to have been acquired for the purposes of this Act and vested in the State free from all encumbrances with effect from the date of the notification and all right, title and interest of all persons claiming interest therein shall, with effect from that date, be deemed to have been extinguished.

(3) Subject to any order made on appeal or revision, the Collector may at any time after the publication of the notification under subsection (1) take possession of any land specified in the said notification and may for that purposes use such force as may be necessary.

(4) If the mortgagor becomes entitled to recover possession of his mortgaged land u/s 12 of the Bihar Money Lenders Act, 1974, (Bihar Act XXII of 1975) and the area of such mortgaged land, together with the land, if any, held by him anywhere the State, exceed the ceiling Area, then the provision of Section 18 shall apply thereto as if such mortgaged lands were an acquisition under that section and thereafter the land which the mortgagor is not entitled to retain shall be deemed to have been acquired for the purpose of this Act and vested in accordance with Sub-section (2).

27. The said Act was amended by Ordinance No. 66 of 1981 which came into force with effect from 9-4-1991; by reason whereof Sections 2, 4, 9, 10, 11, 15, 18, 27, 30, 32, 32-A, 36, 38 and Part IV of the Schedule were amended and a new Section 5 was substituted in place of old Section 5 and Section 43-A, Section 43-B, Section 45 and Section 47 were inserted.

28. By reason of Ordinance No. 182 of 1981 which was promulgated on 12-8-1981 Ordinance No. 66 of 1981 was repealed but all the provisions therein were retained. Thereafter Ordinance No. 202 of 1981 was promulgated. The Governor of Bihar again promulgated an Ordinance on 24-1-1982 being Ordinance No. 22 of 1982 whereby the provisions of two Ordinances aforementioned viz., 66 of 1981 and 202 of 1981 were retained except the fact that Section 32-A was thereby further amended.

29. By reason of the said Ordinance No. 22 of 1982, Ordinance No. 66 of 1981 and Ordinance No. 202 of 1981 were repealed.

30. On or about 30-4-1982 the Legislature of Bihar, enacted Bihar, Act No. 55 of 1982 which was given retrospective effect and retroactive operation with effect from 9th April, 1981 in terms whereof all the provisions in Ordinance No. 22 of 1983 were retained.

31. By reason of Act No. 55 of 1982 extensive amendments have been carried out in Section 15 of the Act.

Section 15 of the Act as it stood prior to Act No. 55 of 1982 reads thus:

Section 15. Acquisition of surplus land.--(1) Subject to the provisions of Sub-section (5), the State Government shall, after the final publication of the statement under Sub-section (1) of Section 11, acquire the surplus land by publishing in the official Gazette a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned.

(2) On the publication of the notification under Sub-section (1), the land specified in the notification shall, subject to the provisions of this Act, be deemed to have been acquired for the purposes of this Act and vested in the State free from all encumbrances with effect from the date of the notification and all right, title and interest of all persons claiming interest therein shall, with effect from that date, be deemed to have been extinguished.

(3) On the publication of the notification under Sub-section (1) any person claiming interest in the land specified in the notification, may, within thirty days of such publication, file a claim before the Collector.

(4) On such claim being filed, the Collector shall, after giving the parties a reasonable opportunity of being heard and adducing evidence, decide the matter and record the reasons for the decision.

(5) (i) If any portion of the surplus land in possession of mortgagee falls within the ceiling area of the mortgagor, the mortgagor shall redeem the mortgaged land and recover possession thereof within six months from the date of publication of the notification under Sub-section (1) and if the mortgagee fails to accept the dues or if there is a dispute about the mortgage, the mortgagor shall institute a suit for redemption of the mortgage and recovery of the land before a Civil Court of competent jurisdiction within one year from such date.

(ii) If the mortgage is not redeemed or if no suit is filed within the said period of one year, the Collector shall, after giving the parties to the mortgage an opportunity of showing cause, declare the land to be surplus land, and on such declaration being made, the matter shall be dealt with in the manner, so far as may be provided u/s 25.

(6) Subject to the provisions of Sub-sections (4) and (5) and any order made on appeal or revision, the Collector may, at any time after the publication of the notification under Sub-section (1), take possession of any land specified in the said notification and may for that purpose use such force as may be necessary.

32. From a comparison of provisions of Section 15 of the Act as it stood prior to amendment with Section 15 as it now stands, it would appear that the scheme of the provisions has undergone a substantive change.

33. Sub-section (3) of Section 15 of the unamended Act contained an enabling provision, in terms whereof any person claiming interest in any land could file a claim within 30 days from the date of notification. Such a claim was required to be decided in terms of Sub-section (4) thereof.

34. Sub-section (6) of Section 15 provided that subject to the provisions of Sub-sections (4) and (5) and any order made on appeal or revision, the Collector may at any time after the publication of the notification under sub section (1) take possession of any land specified in the said notification and for that purposes use such force as may be necessary.

35. By reason of Act No. 55 of 1982 Sub-sections (3) to (5) of Section 13 of the Act were deleted and Sub-section (6) of Section 15 was amended by deleting the words "to the provisions of Sub-sections (4) and (5)" after the words subject to and the same was renumbered as Sub-section (3).

36. Interpretation of Section 15 of the Act prior to its amendment fell for considerations before Division Bench of this Court in Mahanth Daya Ram v. State

of Bihar and Ors. 1975 BBCJ 667.

S. Sarwar Ali, J. speaking for the Division Bench held that where appeal or revision has actually been filed, the Collector has to wait till the disposal of the appeal or the revision application.

37. The learned Judge, however, observed as follows:

I may however, observe that the landholders would be well advised when they file an appeal or revision to apprise the Collector of the factum of filing of the appeal or revision to avoid unnecessary complications. In view of the above discussion it necessarily follows that where the prepared draft statement has been prematurely published it is not a publication in accordance with the provision of Section 11 of the Act. Such a publication cannot bar consideration of an appeal or revision by the competent authorities.

38. The learned Judge further held that even if a draft publication is made in terms of Section 11(1) (as it then stood) the same would be subject to the appeal or revision.

39. The Division Bench in paragraph 14 of that judgment considered the Sub-section (6) of Section 15 of the Act (as it then stood) in the following terms :

Now only remains to consider Sub-section (6) of Section 15 of the Act. This Sub-section authorises a Collector at any time after publication of notification under Sub-section (1) to take possession of any land specified in the said notification. But this power has been made subject to the provision of Sub-sections (4) and (5) and any order passed on appeal or revision. It, therefore, follows that where a claim has been filed, the Collector should stay his hands in respect of taking possession of land covered by the claim, pending disposal thereof. He has also to wait for the expiry of period of appeal or revision before taking further steps. Also where appeals or revisions have been filed, the Collector has to wait till the decision in the appeal or revision. Even if some action is taken during the pendency of the appeal or revision, it would be subject to the result thereof and the right of person ultimately succeeding in his claim cannot be defeated by the mere fact that possession has been taken of the land in question. It may, however, be clarified that the pendency of the claim requires the Collector to stay his hands only in respect of the claimed portion. So far as the other lands are concerned, the Collector shall be entitled to take possession, subject to the limitation as has been explained in relation to Section 11(1) of the Act.

40. This view was reiterated by another Division Bench in *Farzan A.H. v. State of Bihar* 1986 BBCJ 819. By a short judgment, Sarwar Ali, J. held:

The main grievance of the petitioners at this stage is that during the pendency of the appeal filed by the petitioners steps are being taken for distribution of the lands which have been declared surplus.

It is well-settled that the distribution cannot take place while the appeal is

pending and in case a revision application is filed the same is not disposed of. In that view of the matter, we direct the lands, which have been declared as surplus shall not be distributed till the disposal of the appeal and the expiry of the time for filing revision or if a revision is filed till the disposal of the revision application. This application is accordingly disposed of.

41. However after amendment the provisions of Section 15 came up for consideration before a Division Bench of this Court in Ram Chandra Choudhary v. State of Bihar 1993 (1) BLJR 66, wherein the learned Judges observed as follows:

There are plethora of decisions of this Court interpreting Sections 11(1) and 15 of the Act laying down categorically that no land of any land-holder could be acquired and/or distributed during the pendency of his appeal and/or revision.

42. However, no decision was cited in support of the said statement nor any reasons therefore has been assigned.

43. After coming into force of the Act No. 55 of 1982 in terms whereof Sections 11 and 15 were amended; an appeal can be preferred only upon final publication of the statement made u/s 11(1) of the Act. Such appeal can be preferred by the landholder or any other person aggrieved or to whom notices had been issued, upon publication of the final statement and not prior thereto. In this view of the matter, the question of publication of any notification u/s 11 of the Act subject to any appeal or revision does not arise.

44. It is also now not necessary to inform the Collector about the filing of an appeal; as an appeal normally lies before the Collector who is also the authority to issue a notification u/s 15(1) of the said Act.

45. It is now well-known that the Proviso appended to a substantive provision has to be taken into consideration for the purposes of interpretation of the Statute.

In *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, the Supreme Court held that a Proviso may serve four different purposes, viz :-

- (1) qualifying or excepting certain provision from the main enactment.
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- (3) it may be so embodied in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

46. As has been noticed hereinbefore, Sub-section (1) of Section 15 of Act authorises publication of a notification there under subject to any appeal or

revision. The intention of the Legislature in using the words "subject to appeal or revision" is clear inasmuch as, that a notification should not be published during pendency of appeal or a revision and even if such a notification is published, the same shall be subject to any order that may be passed on appeal or revision.

47. The Proviso appended to Sub-section (1) of Section 15, however, makes the intention of the Legislature absolutely clear insofar as it qualifies the power of the State or the Collector to acquire lands in terms of Sub-section (1) of Section 15 thereof only in respect of which there is no claim or dispute or which is admitted by the landholder to be surplus. Thus, any land which is subject-matter of appeal or a revision cannot be acquired in terms of Sub-section (1) of Section 15 of the Act.

48. Proviso appended to Sub-section (1) of Section 15 of the Act confers a restrictive power upon the State Government or the Collector. Such a restriction imposed by the Statute to acquire a land by reason of an ex-proprietary legislation must be strictly construed and therefore, in my opinion, it is obligatory on the part of the State or the Collector to exercise its jurisdiction within the four corners of the said Proviso. In other words, the Collector during pendency of the appeal or revision may issue only a notification acquiring only such land which is not the subject-matter of any appeal or revision.

49. It, therefore, goes without saying that as soon as an appeal or revision is filed and if the same is brought to the notice of the State Government or the Collector, they are precluded from issuing any notification u/s 15 (1) of the Act in relation to subject-matter of the said appeal or revision. A fortiori, unless an acquisition of the surplus land is made by publication of a notification under subsection (i) of Section 15 of the Act, the question of taking possession of such land which have been acquired by the State or the Collector does not arise.

In that sense Sub-section (3) of" Section 15 to some extent may appear to be redundant.

50. Apparently while enacting Act No. 55 of 1982 ; in terms whereof original Sub-sections (3), (4) and (5) of Section 15 had been deleted, much attention had not been heeded to the words of the amended Sub-section (6) [which was re-numbered as Sub-section (3)] of Section 15.

51. However, Sub-section (3) of Section 15 even now as it stands has its own purpose to serve namely, that it enable the Collector to take possession of the land after publication of the notification under Sub-section (1), but such taking of possession would be subject to any appeal or revision. It, therefore, may reasonably be construed that even if in a case where inadvertently or otherwise a notification u/s 15 (1) of the said Act is issued and a possession of the surplus land is taken in terms of the said notification, the landholder or any other party aggrieved thereby would not be remediless ; as possession of such land is taken subject to any order passed in any appeal or revision either by the landholder or any other person interested in the subject-matter of the ceiling proceeding, and

in the event appeal or revision succeeds, he would be entitled to restoration of possession thereof.

52. To sum up, a notification u/s 15 (1) of the Act can only be issued during pendency of an appeal or a revision in respect of such of the surplus land of the land holder in respect of which there is no claim or dispute or which is admitted by the landholder to be surplus. Once the State Government or the Collector, as the case may be, comes to know of the fact that any appeal or revision is pending, no notification under Sub-section (1) of Section 15 of the said Act can be published acquiring surplus land of the land holders. Even if in a case where a notification under Sub-section (1) of Section 15 of the Act has been published owing to ignorance of pendency of any appeal or revision, or possession of the surplus land taken by the State or the Collector, the same would be subject to any order passed on appeal or revision.

Sub-section (3) of Section 15 takes within the sweep of all such cases where possession had been taken over in terms of a notification under subsection (1) of Section 15 either during pendency of any appeal or revision or otherwise.

53. For the reasons aforementioned, there cannot be any doubt that the revisional authorities as also the Collector in both the cases committed a serious illegality in publishing a notification under Sub-section (1) of Section 15 of the Act in view of the fact that at the relevant time revision applications were pending disposal before the revisional authority.

54. These applications are, therefore, allowed and the notification u/s 15(1) of the said Act which are contained in Annexure-3 to CWJC No. 5248 of 1992 and Annexure-3 also to CWJC No. 8308 of 1991 are quashed.

55. However, in the facts and circumstances of the case, the petitioners shall be entitled to costs which is quantified at Rs. 2,500 in each of the writ applications.

A.N. Chatturvedi, J.

56. I agree.