

(1999) 05 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No's. 7243 of 1990

Ram Ratan Roy and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(1), 10(2), 10(3), 11
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 3 PLJR 218

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Shiva Nandan Ray, Sidheshwari Pd. Singh, Bhupendra Narain Singh, Krishna Kishore Sinha, Shailendra Kumar, Rajendra Prasad Singh, Jayanand, Masood Ahsan and Pravina Kumar, for the Appellant; Raghib Ahasan, H.P. Singh, Arbind Kumar, K.A. Siddiqui and Matloob Rab, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—In these applications under Articles 226 and 227 of the Constitution of India, the Petitioners have prayed for quashing of the order of the Member, Board of Revenue, dated 24.10.1990, as also the order of the Collector, Begusarai, dated 28.6.1989, affirming the order of the Subdivisional Officer, Begusarai, dated 28.12.1985 in Ceiling case No. 40 of 1973-74. Since all the abovementioned cases were heard together, therefore, they are being disposed of by a common judgment.

2, Initially, the land ceiling proceeding was started against Upendra Narain Singh son of late Gonu Singh in the year 1973. Ultimately, after observing necessary formalities, the land holder was allowed to retain 2 units and 256.16 acres of land were declared surplus. The land holder having lost before the Collector, and the Member, Board of Revenue, filed CWJC 2707 of 1976 which was disposed of on 23.3.1977 with a direction to the Subdivisional Officer for hearing and redetermination of the issue relating to grant of unit to the married sisters of the

land holder as also the objection with regard to the classification of the land. Four other writ petitions bearing CWJC No. 1636 of 1977 and its analogous cases were also filed on behalf of different raiyats alleging that their lands were wrongly included in the ceiling case which was started against Upendra Narain Singh. The abovementioned cases were allowed by another judgment dated 12.7.1979 with a direction to the Additional Collector to hear and dispose of the appeal of the Petitioner in accordance with law. The Court also indicated the manner in which the authorities were required to examine various aspects including the claim of the raiyats regarding benami settlement/purchases in the name of the landholder.

3. But before the matter could be disposed of in terms of the direction of this Court, the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "the Act") (Amendment Ordinance, 1981) (Bihar Ordinance No. 66 of 1981), which was later on repealed and replaced by Bihar Act No. 55 of 1982 came into force and in terms of Sections 32A and 32B, as inserted thereby, the proceeding in question abated to the stage of Section 10 of the aforementioned Act. Thereafter, a fresh draft statement was published u/s 10(2) of the Act in the official gazette. Objections were filed by the landholder and other raiyats whose lands were included in the abovementioned cases. Ultimately, the SDO by his order dated 28.12.1985 rejected the objections allotting only 2 units to the landholder. Though different appeals and revisions were filed but no further relief was granted.

4. One of the grievances of the Petitioners is that although, after abatement of the proceeding, the matter had to start on a clean state wiping off the effect of the previous steps, as held by a Full Bench of this Court in the case of Harendra Prasad Singh v. The State of Bihar and Ors. 1984 PLJR 908, but in the instant case, the Respondents published the draft statement under sub- Section (1) of Section 10 of the Act purely on the basis of the materials collected at the initial stage of the previous proceeding.

5. In my view, having regard to different decisions of this Court, in the case of Harendra Prasad Singh v. The State of Bihar and Ors. (supra) 1984 PLJR 908, Smt. Kunti Sharma and Others Vs. State of Bihar and Others, and a recent decision in the case of Mukhlal Ram v. The State of Bihar and Ors. 1997 (1) PLJR 487, the question raised above is no longer res-integra undisputedly, in view of Act 66 of 1982, a fresh draft statement, as required under Sub-section (1) of Section 10 of the Act on the basis of information given by or on behalf of the landholder, under Sections 6, 8 and 9 of the Act or the information obtained by the Collector u/s 7, checked and verified in the prescribed manner, shall be published in the official gazette under Sub-section (2) of Section 10 of the Act.

6. It has to be noticed that by reason of the Bihar Act 55 of 1982, amendments were brought at various stages under Sections 2, 4, 6, 8, 9, 10 and 11 etc. of the Act in order to give effect of such changes. Therefore, in unmistakable terms by virtue of Sections 32A and 32B of the Act, surplus area of the land has to be

determined afresh. Therefore, unless and until the necessary formalities are observed, /particularly, when basic changes were brought under Sections 5 and 9 etc. of the Act, no draft statement u/s 10(2) of the Act can be held valid. As I have already noticed, the publication of draft statement u/s 10(2) of the Act would be on the basis of the information collected under Sections 6, 8, and 9 or the information obtained by the Collector u/s 7. Therefore, it would not be open to the State authorities to rely upon the same information and the materials with respect to which the amendments were brought by the instant Act. In this regard, it would be useful to refer to a Bench decision of this Court, in the case of Mukhlal Ram v. State of Bihar and Ors. (supra)

7. But in the instant case, no information in terms of Sections 5, 6, 7 8 and 9 of the Act was brought to my notice which the authorities were required to check and verify in terms of the amended provisions. There is no objection of the landholder that any land transferred by a registered instrument or otherwise after 22nd day of October, 1959, was included in the ceiling proceeding. Because unless and until any information is brought to the notice of the authorities, regarding registered instruments or otherwise, executed after the cut off date, no inquiry as required under Sections 5(1)(iii) of the Act may be necessary. Therefore, unless any prejudice is caused to the Petitioners on that account, no interference would be necessary.

8. It was next contended that from a bare reference to the judgments of this Court in the previous cases, it would appear that the authorities were directed to ascertain the claim of other landholder for grant of separate unit to his sister Ram Nagina Devi. Yet by virtue of another decision in CWJC No. 1636 of 1977 and analogous cases, filed on behalf of different raiyats, the Respondents were further required to examine their claim of benami settlements in the name of landholder Upendra Narain Singh in different years like 1950, 1951 and 1959 and basic guidelines were framed to be followed by the Respondent at the time of such determination. But. under the garb of abatement of the proceeding the Respondents completely overlooked such aspects, when the objections of the Petitioners were brought for consideration u/s 10(3) of the Act.

9. So far as the claim of the landholder regarding separate units to his sister Ram Nagina Devi is concerned, it would be relevant to notice that originally the land in dispute belonged to Dhuna Singh, the father of Petitioner Upendra Narain Singh, who died sometime in 1966 after the commencement of the Hindu Succession Act. Therefore, in view of the Hindu Succession Act, after the death of Dhuna Singh, his daughter Ramdulari Devi also became entitled for a share in the properties left by him. The Respondents authorities have rejected her claim purely on a wrong assumption that on the appointed day she was married and aged about 37 years, therefore, not entitled to any share in the property left by her father unless it was determined by a civil court. Therefore, I conclude this issue with a direction to the Respondent Additional Collector to allot a separate unit in favour of Ram Nagina Devi, sister of the landholder.

10. Coming to the claim of different raiyats Petitioners in C.W.J.C. Nos 7843, 7435, 7485 and 7694 of 1990, regarding benami settlement and transactions in the name of landholder in the years 1950, 1951 and 1959, it would appear from the judgment in C.W.J.C. No. 1636 of 1977 and analogous cases that this Court had directed the Additional Collector to examine the relevant question to determine their claim regarding benami settlement/purchases. In support of their case, the Petitioners, apart from the statement of the witnesses, also referred to various documents to prove that they were the real raiyats and the landholders was in fact benamidars. One of the relevant document is the order of the Agricultural Income Tax Officer in relation to an assessment proceeding under the Agricultural Income Tax dated 1.4.1961. Reference was also made to the revenue records like survey entry, rent receipts, judgment in title partition suit to show that these raiyats are the actual landholders and have been dealing with the property since the date of settlement.

11. According to the Member, Board of Revenue or the findings recorded by the Collector, these objectors are the close relations of the landholders and some of them even family members and further they also failed to explain satisfactorily the purpose of benami transaction in the name of Upendra Narain Singh or his father nor any document relating to these lands were produced by the respective claimant whereas the previous report produced on behalf of the State confirmed landlord's possession over such lands. In my view, such a finding cannot sustain since from a bare reference to the order of the S.D.O. u/s 10(3) of the Act, it would appear that on behalf of objectors, different documents and the judgments passed in title suit or that of the income tax authority were filed. Therefore, it was wrong on the part of the Member, Board of Revenue, to hold that documents were not filed on behalf of the objectors in support of their claim. True it is that the S.D.O. as well as the appellate authority had certainly noticed the documents and other supporting materials produced by the objectors to establish that Upendra Narain Singh was not the real landholder rather a benamidar, but none of other aspects in terms of the direction of this Court in C.W.J.C. No. 1636 of 1977 were followed. It is well known that there are numerous decisions of this Court emphasising requirements to decide the benami claim like: a) motive for benami transaction, b) relationship between the parties, c) possession over the property in question d) custody of the documents regarding title and possession and e) payment of consideration money was actually made by whom.

12. In the case of Shiv Narain Khawaray and Ors. v. The State of Bihar and Ors. 1977 BBCJ 452, this Court had emphasised that in a case of this nature, the question of actual possession will have special importance. But these aspects were not considered in its true spirit.

13. So far as the findings of the authorities that since some of the Petitioners are close relations and family members of the landholders therefore the claim of benami was not to be accepted. In my view, as held by this Court in the case of Sahdeo Karan Singh and Others Vs. Usman Ali Khan and Others, or another

judgment in the case of (Firm) Zinda Ram Madan Lal Vs. Ramrup Das and others , benami transactions at the relevant time were common in the country for which there may not be any apparent reasons. Lack of proof of motive of such transactions would not be sufficient to reject the plea outright. There cannot be any fixed formula to test the benami transaction or settlement.

14. As regards the others grievance of the landholder for exclusion of 28.85 acres of and belonging to the heirs of Ram Balak Singh or with regard to the a classificational find no reason to interfere a with the impugned orders. Because from a bare reference to the orders of Members, Board of Revenue or the Collector, it would appear that out of 28.85 acres, 16.44 acres have already been excluded. Similar is the position with regard to classification. Because barring 12.22 acres almost all the lands have been reclassified as class IV after the order of remand by this Court.

15. In the premises of the facts Noticed above these writ petitions are allowed with respect to the grievance of the Petitioners for allotment of one unit in favour of the sister of the landholder as also regarding benami claim. But so far the other grievances, there appears no justification to interfere with the impugned orders.

16. In the result, therefore, the impugned orders are quashed to the extent the aforesaid grievances are concerned. The Additional Collector is directed to allot one unit to the sister of the landholder and to reconsider the case of the Petitioners regarding benami purchase or settlement. I further direct that until a fresh disposal in terms of the above directions, the interim order of this Court dated 12.4.1991 shall continue. But there shall be no order as to costs.