
(2005) 03 PAT CK 0070
In the Patna High Court
Case No : CWJC No. 4512 of 2002

Ram Sumari Devi (Smt.)	Vs	APPELLANT
State of Bihar		RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45B, 5

Citation : (2005) 2 BLJR 977 : (2005) 3 PLJR 60

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Jaynandan Singh, Harendra Tiwary and Braj Kishore, for the Appellant; Harendra Pd. Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the counsel appearing for the State.

2. This application has been filed by the petitioner for quashing the notice dated 19.1.1999 issued under the signature of the Addl. Collector (Land Ceiling), Gaya in Ceiling Case No. 101 of 1981 -82 (Annexure 3) whereby the petitioner has been directed to produce record and evidence before respondent No. 3 on 3.2.1999 as Ceiling Case No. 101 of 1981 -82 has been transferred by the Collector Gaya to respondent No. 3 of conducting enquiry u/s 5(i)(iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Ceiling Act). Further prayer of the petitioner is for quashing the order dated 21.8.1999, passed by the Additional Collector in the aforesaid ceiling case (Annexure 8) whereby 31 acres 72 1/2 decimal of land situated in village Kamaldah, Anchal Paraiya, District Gaya have been declared ferzi belonging to the Bodhgaya Math. Petitioner's prayer is also for restraining the respondents for dispossessing her from the land in dispute.

3. Petitioner claims to have purchased the land in dispute in the year 1965 from

Goswami Kashi Giri and Goswami Basant Giri. In the year 1959 the vendors of the petitioner had purchased these lands from one Akbar Khan on 4.7.1959. The vendors of the petitioner were neither the Mahanth nor they had purchased these lands from the then Mahanth Sri Harihar Giri. Ceiling case No. 101 of 1981-82 was initiated against Goswami Jairam Giri, the Chairman of the Bodhgaya Trust Committee in respect of 1484.66 1/4 acres of land treating entire lands to be that of Bodh Gaya Math. In the said proceeding, objection was filed by the land holder stating that various lands belonging to the Math had been transferred to different purchasers and the Math was not in possession of these lands, already transferred. On the basis of such objection, notices were issued to various purchasers including the petitioner as to why he should not be declared Ferjidar or Benamidar of the Math and Mahanth. The show cause filed by the petitioner was rejected. Thereafter Rev. Case No. 315 of 1984 was filed by the petitioner. The Member Board of Revenue remanded the matter back to the Collector for noticing all the parties concerned and disposing of the matter in accordance with law. On remand the Collector by his order dated 19.10.1991 dismissed the appeal holding that the Mahanth Bodh Gaya had transferred the lands in violation of the trust deed of the year 1932. Against this order revision was preferred by the petitioner which was also dismissed. Thereafter the petitioner preferred CWJC No. 4997 of 1993. In this writ application it was stated by the counsel for the petitioner that the lands with regard to which the notice was issued to the petitioner was also the subject matter of another land ceiling proceeding which was started against the husband of the petitioner. In that proceeding this land has been allotted in the unit of the land holder i.e. the husband of the petitioner. Now going against that finding the revenue authorities can not hold that the petitioner is Farzidar of Mahanth and the sale deed which was executed in favour of the petitioner by Goswami Kasi Giri and Goswami Basant Giri. it was also contended that the vendors of the petitioner had purchased this land from one Akbar Khan on 4.7.1959 i.e. prior to 22.10.1959. In this view the revenue authority have no jurisdiction to come to a finding that it was a farji transaction as the transaction held in the year 1959 can not be annulled the sale deed executed in favour of the petitioner in the year 1965 could not have been treated as farzi and annulled. This Hon"ble Court in paragraph 10 of the judgment passed in CWJC No. 4997/93 it was held that "in view of the fact that a land ceiling proceeding against the husband of the petitioner had been initiated, the petitioner could not have been deprived of the said land again without reopening the aforesaid land ceiling proceeding in relation whereof an order has already been passed. For the reasons aforementioned, this application is allowed and the impugned orders as contained in Annexures 3, 5 and 6 are quashed."

4. On account of the order passed in the earlier writ application the matter was finally closed. It was not open for the Collector or the Additional Collector to reopen this matter as the finding recorded in the earlier writ application was that the lands in question has been allotted in the ceiling unit of the husband of the petitioner in a land ceiling proceeding initiated against him as such, unless that

ceiling proceeding would have been reopened no order could be passed with respect to these lands.

5. The Collector, Gaya misinterpreted the order and directed the Additional Collector to reopen the matter. The Additional Collector issued a notice dated 19.1.1999 directing the petitioner to appear before him, produce evidence for deciding whether he is farjidar of the Mahanth or not. This notice has been challenged by the petitioner on the ground that (i) it is in violation of the order passed in the writ application by this Hon"ble Court (2) issuance of notice will amount to reopening the ceiling proceeding u/s 45-B of the Ceiling Act for which the Collector was not vested with any jurisdiction subsequent to the dak 9.9.1995 i.e. the date when by notification only the State was authorised to exercise jurisdiction u/s 45-B of the Ceiling Act. Vide Ordinance No. 20 of 1995 the word "Collector" was omitted. This ordinance was made an act by amendment act of 1997 and since the date of the notification i.e., 9.9.1995 the Collector was devoid of powers u/s 45-B of the Ceiling Act.

6. The notice (Annexure 3) was challenged by the petitioner before the Additional Collector, but by the impugned order dated 21.8.1999 the objection filed by the petitioner has been rejected holding that the lands were purchased by Goswami Kashi Giri and Goswami Basant Giri on 4.7.1959 from the income of the Math. They were farzidar as such the transfer made in favour of the petitioner is also deemed to be a farzi transaction.

7. A counter affidavit has been filed by the State in which the preliminary objection has been raised that once the petitioner after receiving the notice has submitted himself before the jurisdiction of the Additional Collector, he cannot challenge the notice in this writ application. So far the notice is concerned it was only for an enquiry u/s 5(i)(iii) of the Act in compliance of the direction of this Court in CWJC No. 4997 of 1993. It was not re-opening of ceiling case u/s 45-B of the Act. It has also been stated by State respondent that though petitioner has derived title to the land on the basis of a deed registered prior to 20.10.1959, even then it is in the teeth of the earlier order of the Hon"ble Court passed in CWJC No. 4997 of 1993 whereby the Collector was directed to proceed and decide the matter again. As per the trust deed of 1932 the Bodh Gaya Math had no power to transfer any land which has been accepted by the Mahanth before the Saxena Committee.

8. The petitioner has annexed the order passed in CWJC No. 4393 of 1986 (Annexure 5) which also relates to the same ceiling case No. 101 of 1981-82. In this writ application a detailed discussion has been made and it has been held that on the basis of compromise decree in Title Suit No. 93 of 1950 it has been adjudicated that there are some property which are personal property of Mahanth and they are not the property of the Math. In case of the purchases made by the petitioners there is no reason for holding that the property either belonged to the Math or the Mahanth because it was the property of one Akbar Khan which was purchased by Goswami Kashi Giri and Basant Giri on 4.7.1959,

prior to 20.10.1959. This property was not the subject matter of any agreement or any suit, there is no finding of any court that this property belonged to the Math. The respondent state has not brought any document on record to show that the property belonged to Mahanth or Math. In this view it cannot be held that vendors of the petitioners had purchased these from the income of Math, and actually it belonged to Math. Petitioners vendors were only name lenders. Even if it is purchased in that case also since purchase was of 4.7.1959 prior to 22.10.1959 it was beyond the jurisdiction of the revenue authority to declare it farzi or raise question regarding the genuineness of the transfer. No enquiry regarding genuineness of such transfer can be made by Revenue authority.

9. Counsel for the State has misinterpreted the earlier judgment and order passed by this Court in CWJC No. 4997 of 1993. In paragraph 10 of this judgment it has clearly been mentioned that since this land was the subject matter of other land ceiling proceeding initiated against the husband of the petitioner, as such the petitioner could not have been deprived of the said land again without reopening the aforesaid land ceiling proceeding in relation whereof an order has already been passed. Here the reopening was not mentioned with respect to ceiling case No. 101 of 1981-82, rather it was with regard to the re-opening of the land ceiling proceeding which was initiated against the husband of the petitioner and in which this land was allotted in the unit of the husband of the petitioner. On wrong interpretation of these finding recorded in CWJC No. 4997 of 1993 the Collector has assumed power which is nothing but going beyond the jurisdiction.

10. Further it has rightly been pointed out by the petitioner's counsel that the reopening of the ceiling proceeding which has reached its finality is possible only under the provisions of Section 45-B of the Ceiling Act. There is no other provision for re-opening in the entire Ceiling Act. So far Section 45-B is concerned, the Collector was not vested with the power in the year 1999 to reopen the case in exercise of jurisdiction u/s 45-B of the Ceiling Act by the Ordinance 20 of 1995 the power of the Collector was omitted from Section 45-B of the Ceiling Act. This Ordinance law came in effect by notification dated 9.9.1995 was enacted by amendment Act, 1997, since the date of notification in the year 1995 the Collector was devoid of any power for exercising jurisdiction u/s 45-B of the Ceiling Act. Since at the instance of the Collector, the Additional Collector has reopened the matter subsequent to the amendment u/s 45-B of the Ceiling Act, the entire exercise of the respondents is illegal and without jurisdiction. Counsel appearing for the State has tried to make out a case that the notice was not issued in exercise of the jurisdiction u/s 45-B of the Ceiling Act, rather it was in compliance of the direction of this Court in CWJC No.4997 of 1993. I do not find that there was any such direction in the judgment and order dated 19.8.1993 passed in CWJC No.4997 of 1993. Since there was no such direction it will be presumed that the Collector, Gaya issued direction to re-open the ceiling case in exercise of jurisdiction u/s 45-B of the Ceiling Act though he was devoid of any such power subsequent to the amendment in the Act by the

Ordinance No. 20 of 1995 u/s 45-B of the Ceiling Act.

11. On consideration of the facts and circumstances I find that the order impugned dated 21.8.1999 as contained in Annexure 6 as well as the notice dated 19.1.1999 Annexure 3 are patently illegal and without jurisdiction as such they are quashed. This application is accordingly allowed.