

(2003) 09 JH CK 0057
In the Jharkhand High Court
Case No : CWJC No. 1956 of 1993 (R)

Rani Parvati Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 45B
Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 31

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : P.K. Prasad, T. Kabiraj and P. Kumar, for the Appellant; A.K. Mehta,
Standing Counsel No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In the present writ application, the petitioner has prayed for quashing of the order dated 7.6.2003, passed by the Deputy Commissioner, Lohardaga in L.C. Case NO. 18 R15/ 92-93 contained in Annexure-13 to this writ application, by which, in exercise of the powers u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, has passed an order for reopening the Land Ceiling case of the petitioner for hearing the matter afresh by issuing notice to both the parties.

2. For the sake of convenience, Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 shall hereinafter be called as Ceiling Act.

3. The case of the petitioner is that the lands in question, which were held by Maharaja of Ratugarh, were transferred by him to his wife Maharani Prem Manjari Devi by deed of transfer dated 2.1.1952 and, accordingly, Maharani Prem Manjari Devi came in possession thereof and got her name mutated with regard to the said lands.

4. Subsequently, by two registered sale deeds dated 9.10.1961 and 10.10.1961, the lands in question were acquired by the petitioner by purchase from Maharani Prem Manjari Devi and, accordingly, the petitioner came in possession of the same.

5. The application for mutation filed by the petitioner was not entertained by the Circle Officer as a Land Ceiling case was pending against the Maharaja of Ratugarh.

It is stated that a draft publication u/s 10(i) of the Ceiling Act, was published in the Gazette vide notification dated 30.12.1983 and the lands purchased by these petitioners were shown as the lands belonging to Maharaja of Ratugarh and, therefore, the petitioner filed an objection stating therein that the land actually belonged to her and further that the lands were situated within the municipal area and were non-agricultural land and therefore, it was beyond the purview of the Ceiling Act.

6. The Additional Collector (Land Ceiling) Ranchi by his order dated 11.6.1985 in Land Ceiling, Case No. 268/84-85 released the lands of the petitioner from the proceeding on the ground that the lands in question fell within the municipal limits and further that the lands in question were transferred by Maharaja prior to 1959, therefore, the Ceiling Act has got no application. The said order dated 11.6.1985 of the Additional Collector has been annexed as Annexure-1 to the writ application.

7. Further the case of the petitioner is that ultimately, the name of the petitioner was mutated with respect to the lands in question by State of Bihar and Lohardaga Municipality and, accordingly the correction slip was also issued.

8. It is further stated that subsequently the petitioner wanted to sell the lands in question and the deeds were presented for registration but the same was refused by the Sub-Registrar on the ground that the Deputy Commissioner (Registrar of Registration) has directed not to register these deeds because the lands in question were subject matter of the Ceiling Case.

9. Thereafter the petitioner filed CWJC No. 406 of 1990(R) before the Ranchi Bench of the Patna High Court challenging the said order of the Deputy Commissioner.

By order dated 17.7.1990 (Annexure-6 to this writ application) a Division Bench quashed the order of the Deputy Commissioner. However, it was observed in the said order of the High Court, that the State of Bihar shall be at liberty to proceed in exercise of its power conferred u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

10. After the aforesaid order of the Patna High Court, Ranchi Bench in CWJC No. 406 of 1990 (R) vide notice dated 21.9.1990, the petitioner was informed that the Ceiling Case has been reopened and the petitioner was directed to appear for hearing,

11. Further case of the petitioner is that on an application filed by the petitioner u/s 47 of the Ceiling Act, the Additional Collector Land Ceiling, vide his order dated 8.8.1991 (Annexure-9) held that the revisional survey plots which were shown in the Gazette Notification of 1986 were actually Municipal plots, which had already been released by the then Additional Collector holding, that the Ceiling Act does not apply in this case because the disputed land were within Municipal area, and thereby after affirming the said finding, ordered to rectify the Gazette Notification of 1986.

12. It is stated that the Deputy Commissioner, Lohardaga vide notice dated 30th July, 1992 informed the petitioner that from the record, it appeared to him that the lands belonging to the petitioner was released in contravention of the provisions of the Ceiling Act and, therefore, to show cause as to why the lands having an area of 17.98 acres belonging to her, be not acquired under the Ceiling Act.

13. On receipt of the said notice, the petitioner filed her show cause in the form of a written argument before the Deputy Commissioner, Lohardaga.

14. The Deputy Commissioner, Lohardaga vide his order dated 7.6.1983 contained in Annexure 13 to this writ application rejected the claim of the petitioner and decided to reopen the Ceiling Case in exercise of the power u/s 45-B of the Ceiling Act holding :--

(i) The finding that the lands in question falls within the municipal area of Lohardaga, hence, the Ceiling Act not applicable is not correct, because the same is applicable to only selected towns such as Patna, Ranchi, Dhanbad etc. Lohardaga does not figure in the said list.

(ii) The Additional collector overlooked certain facts and also that the Additional Collector did not appreciate the spirit of Section 6 of the Act and, therefore, the order of the Additional Collector was not complete. Accordingly, notice was directed to be issued to the petitioner.

15. The petitioner by filing this writ application has challenged the said order as contained in Annexure-13, reopening, the Lands Ceiling Case by the Deputy Commissioner, Lohardaga in exercise of the powers u/s 45-B of the Ceiling, Act.

16. On the other hand from the counter affidavit filed on behalf of the respondents, it appears that the main stand of the State is that the petitioner is a close relative of Maharaja of Ratu and the transfer of land was made in favour of the petitioner by Maharani Prem Manjari Devi was Ferji and Benami and that the Deputy Commissioner has the statutory power u/s 45-B of the Ceiling Act to reopen the Ceiling Case and further that the liberty was given by the High Court in CWJC No. 406 of 1990(R) that the Deputy Commissioner, Lohardaga may exercise the power u/s 45-B of the Ceiling Act.

17. Mr. RK. Prasad, learned counsel appearing for the petitioner has submitted that after 1952 i.e., after transfer of the lands by Maharaja in favour of Maharani

Prem Manjari Devi in the year 1952, she became the land holder. Therefore, the proceedings could at best would have been reopened against Maharani Prem Manjari Devi and not against the petitioner because she is the purchaser of the lands from the land holder i.e., Maharani Prem Manjari Devi, but no proceeding against Prem Manjari Devi has been initiated or reopened, therefore, the impugned order of the Deputy Commissioner is bad.

18. Mr. Prasad next submitted that so far as the petitioner is concerned, the proceeding, u/s 5(iii) of the Ceiling Act could have been initiated, but no proceeding under the said provisions of Section 5(iii) was initiated and, therefore, the exercise of the power u/s 45-B of the Ceiling Act against the petitioner was bad.

19. It was next contended on behalf of the petitioner that unless and until the sale deed transferring, the lands by Maharaja of Ratu in favour of Maharani Prem Manjari Devi made in the year 1952 was annulled, the sale deeds dated 9.10.1961 and 10.10.1961, by which Maharani Prem Manjari Devi transferred the lands to the petitioner cannot be annulled. In this regard, it was further contended that this Ceiling Act provides that the transfer of lands made prior to 1959 cannot be annulled and, therefore, when the transfer of land by Maharaja of Ratu in favour of Maharani Prem Manjari Devi made in the year 1952 cannot be annulled then consequently, the transfer of lands by Maharani Prem Manjari Devi in favour of the petitioner in the year 1961 also cannot be annulled.

20. He further contended that the foremost condition for exercising the power u/s 45-B is that there should be a new material before the authority for reopening, of a disposed of proceeding, but in the present case there was no new material before the Deputy Commissioner so as to make out a case for reopening the Ceiling Case and, therefore, the power u/s 45-B of the Ceiling Act could not have been exercised. In support of his submission, the learned counsel for the petitioner has relied on a decision in the case of Yamuna Rai and Ors. v. The State of Bihar and Ors., reported in 1984 Bihar Law Judgment 269, and also in the case of Praveen Shankar Singh and Ors. v. The State of Bihar and Ors., reported in 1987 Bihar Law Judgment 248, (Full Bench).

21. Learned counsel for the petitioner has further submitted that the power u/s 45-B of the Ceiling Act, can be exercised by the Deputy Commissioner only when he has the power to act under the Act and if he has no jurisdiction under the Act then he cannot reopen the matter by enlarging the power given under the "Act. Learned counsel for the petitioner has also submitted that the cut off date is 22.10.1959 meaning thereby that all the transfer made prior to this date cannot be annulled. In this regard he also submitted that for reopening the case in exercise of the powers u/s 45-B of the Ceiling Act is concerned, there are certain conditions to be fulfilled before exercising such power and it is not that every transfer made after 1959 can be annulled and, therefore, the said power could not have been exercised in the present case. In support of his submissions, learned counsel for the petitioner has relied on a decision in the case of Sheikh

Manir v. The State of Bihar and Ors., reported in 2002 (3) JCR 729 (Jhr) : 2003 (1) JLJR 96.

22. On the other hand, Mr. A.K. "Mehta learned Standing Counsel No. 1 has submitted that by Annexure 13, the Deputy Commissioner has only issued notice to the petitioner in exercise of the power u/s 45-B of the Ceiling Act and no adjudication of the dispute has yet taken place, rather the Collector has only found a prima facie case that there are grounds/reasons to reopen the proceeding and, therefore, it cannot be said that the order as contained in Annexure 13 is in any way illegal, arbitrary and mala fide.

23. Mr. Mehta further submitted that Section 49 of the Ceiling Act provides for exemption of the Act with regard to certain categories of land, but it does not say that the Ceiling Act shall not apply with respect to the lands falling within municipal area and, therefore, the order of the Additional Collector, releasing the land of the petitioner on the ground that the lands fell within the municipal limit and, therefore, the Ceiling Act does not apply was wholly erroneous and against the provisions of the Act and, therefore, the Deputy Commissions rightly decided to reopen the case in exercise of the powers u/s 45-B of the Ceiling, Act.

It is also submitted that the stage of examining the matter in dispute in details, is yet to come. He further submits that it has been established from the fact that the petitioner is a close relation of Maharaja and Maharani of Ratu, therefore, all these matters shall be examined by the Deputy Commissioner afresh and then he would take appropriate decision after hearing both the sides by examining the entire matter, and therefore, there is no illegality in the order impugned.

24. To appreciate the rival contention of the parties, it is necessary to examine the provisions of Section 45-B of the Ceiling Act, which is quoted herein below :--

"45-B. State Government to call for and examine records.--The State Government, may at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act.

25. From a bare perusal of the aforesaid section, it is clear that the power can be exercised at any time and any record of any proceeding, disposed of by a Collector can be reopened and can be disposed of afresh. In this regard, the Full Bench decision in the case of Pravin Shankar Singh and Ors. v. The State of Bihar and Ors., (supra) approving the decision reported in 1984 B L J 269, is important, wherein the Full Bench of the Patna High Court has held that although it is not possible to exhaustively lay down all the circumstances under which the power can be exercised, it can be safely be said that it ought not to be invoked lightly. The consequences of such exercise may led to serious civil consequences and the affected parties must, therefore, be given a chance to be heard before taking decision to reopen the proceeding. Further the length of time after which the close matter is sought to be reexamined should be taken into account, longer

the period, stronger should be the ground.

It was further held by the Full Bench in Paragraph 17 of the judgment which is relevant to be quoted herein below :

"Now the question as to whether the authority can decide to reopen the proceeding on a re-consideration of the materials which had earlier been considered. The answer should be that it is not permissible to do so and this interpretation of the section would be consistent with the age old principles mentioned above and would be reasonable, just and consistent with fair play. It will save not only the landholder but also the State from a perpetual threat of uncertainty and consequent harassment; for, it is a power which the land-holder may also invite to be exercised in his favour and not only once but repeatedly. If the section is construed in its widest amplitude implying unbridled and unlimited power, the Collector when asked by an aggrieved land-holder to exercise the same, cannot, without applying his mind, refuse to entertain the prayer as that would amount to abdication of power. Therefore, if the material on the records of a case taken into consideration by the authorities concerned and a conclusion is reached which becomes final on appeal and revision, or in absence thereof, its finality has to be respected and the proceeding cannot be reopened for giving a second thought. If however, any material or matter has been omitted from consideration which may be so substantial as to lead to a different conclusion, the power under the section may be exercised.

(underlining is mine for emphasis)

26. From the decision of the Full Bench of the Patna High Court particularly as held in paragraph 17 of the said judgment, it is clear that if the authorities come to the conclusion that if any material or matter has been omitted from consideration which is substantial so as to lead a different conclusion, the power u/s 45-B of the Ceiling Act, can be exercised.

27. On consideration of the rival contentions of the parties, I hold that the power u/s 45-B of the Ceiling Act has to be exercised sparingly and for adequate reasons and it cannot be exercised only for verifying the correctness of the previous order. This power can be exercised, if it is found that the proceeding was riot concluded in accordance with the provisions of the Act.

28. In my view, it is not possible to hold that material justifying, reopening of the case must be a new material and not available to the authority at the original stage. As a matter of fact, the power u/s 45-B can be exercised and the case can be reopened under that power, if it is found that the proceeding was not disposed of in accordance with the provisions of the Act.

29. In the present case, I find that the earlier proceeding, was disposed of by the Additional Collector, wholly on erroneous ground of non-applicability of the Ceiling Act, on the basis that the lands in question fell within the municipal limit and, therefore, the Ceiling Act did not apply to the lands situated within the

municipal limit.

There is no such bar under the Act and further that Lohardaga was not within the list of those towns in which the Act was not applicable and, therefore, in my view, the Additional Collector could not have released the lands of the petitioner from the purview of the Ceiling Act on that ground.

30. Therefore, relying on the decision of the Full Bench decision of the Patna High Court, I hold that the Deputy Commissioner was absolutely within his power and jurisdiction u/s 45-B of the Act to reopen the matter when he prima facie found that the Additional Collector wrongly applied the law and he omitted material facts to consider in his order and, therefore, I find no illegality in the order of the Deputy Commissioner as contained in Annexure 13 to this writ application, all the points raised by the petitioners, can very well be canvassed before the Deputy commissioner in the proceeding and there is no doubt in my mind that the Deputy Commissioner shall consider all the points raised by the petitioners while passing, a fresh order in the proceedings.

31. However, the points in issue in the case of Sheikh Manir v. The State of Bihar and Ors., reported in 2003 (1) JLJR 96, was quite different and the same is not applicable in the facts and circumstances of the present case, because the sale deeds transferring the lands in favour of the petitioner have not yet been annulled by any of the authority and the final decision in this regard is yet to be taken by the Deputy commissioner, Lohardaga.

32. In the result I find no merit in this application and it is, accordingly, dismissed. However, there shall be no order as to costs.