
(1971) 05 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 297 of 1969

Rani Prohabati Devi and Others

APPELLANT

Vs

The Addl. Collector and Others

RESPONDENT

Date of Decision : 03-05-1971

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 14, 16, 17, 18, 2(i)

Citation : (1971) PLJR 335

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : K.L. Mishra, Raghunath Jha and Padmanand Jha, for the Appellant;
K.P. Verma and Ram Nandan Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—The petitioners in this writ application have prayed for a writ of prohibition restraining the respondents from withholding ad interim payment over the entire approximate compensation payable to them and also for a writ of mandamus directing the respondents to make forthwith ad interim payment to the petitioners on 100% basis of the approximate compensation payable to them. They have further prayed that the respondents be prohibited from issuing bonds in their favour until preparation of the final compensation assessment roll and to forbear from issuing bonds to the claim-decree holder, namely, the Bihar Bank, for the full claim decreed until the finalization of the final compensation assessment roll and to make ad interim payment on the entire approximate compensation without deducting the amount covered by the claim decree in favour of the Bihar Bank and to quash the instructions contained in the circular under memo no. 4312-E.-8-P-77-61 L.R. dated the 3rd May, 1961 and Rules 25A to D of the Bihar Land Reforms Rules, 1951. The relevant facts of the case may briefly be stated. The petitioners owned and possessed -8/- share in the Zamindari estate, popularly known as "the Banaili Raj", extending over several districts of Bihar including the districts of Purnea, Monghyr, Santhal Parganas,

Saharsa, Bhagalpur and Darbhanga. Kumar Krishnanand Sinha, one of the co-sharers in the said Banaili Raj, filed a suit for partition of his -/3/6 share impleading the petitioners and others as defendants. The said suit is still pending for final disposal. However, during the pendency of that suit, substantial portion of the property in suit was amicably partitioned and separate parties were carved out for each set of the proprietors and the parties got their own nominees appointed receivers in respect of their respective patties. Accordingly, Kumar Taranand Sinha, petitioner no. 8, was appointed receiver for -/8/- patti of those petitioners in the Banaili Raj. In the year 1950, the Bihar Land Reforms Act (Bihar Act 30 of 1950), hereinafter referred to as "the Act" was passed by the State Legislature. A notification u/s 3 of the Act was published in the Bihar Gazette dated the 14th June, 1952, for vesting of a portion of the estate of the petitioners in the State of Bihar. In July 1952, the State of Bihar filed an application in the said partition suit for issue of direction to the receiver, Kumar Taranand Sinha, to hand over the charge of the notified touzies to the State of Bihar. Objections were raised on behalf of the petitioners challenging the validity and legality of the said notification. The learned Subordinate Judge upheld the objections in part. Against the order of the learned Subordinate Judge, the State of Bihar preferred an appeal before this Court which was registered as Miscellaneous Appeal No. 392 of 1952. On the 22nd January, 1953, another notification bearing No. 304 LP-ZAN dated the 16th October, 1952 was published in the Bihar Gazette (Extraordinary) in respect of a large number of touzies appertaining to -/8/- patti of the petitioners. The State of Bihar again filed an application on the 26th February, 1953, before learned Subordinate Judge for a direction to the receiver to make over the possession of the touzies so notified to the Collector of the respective districts. The petitioners filed objections, but the learned Subordinate Judge rejected the objections and directed the petitioners to obtain stay order from this Court within three weeks. The petitioners filed a civil revision application which was numbered as Civil Revision No. 457 of 1953 as also a miscellaneous appeal numbered as Miscellaneous Appeal No. 160 of 1953 against the order of the learned Subordinate Judge, Bhagalpur. Thereafter, two notifications dated the 14th August, 1954, were published on the 20th August, 1954, in the Bihar Gazette (Extraordinary) purporting to be errata of the said notifications. Thereafter the Act was amended and Section 3A was inserted by Section 5 of Bihar Act 20 of 1954. The new Section empowers the State Government to issue notification in respect of intermediary interest of all the intermediaries in the whole of the State or in respect of the intermediary interests situate in a part of the State specified in the notification. The notifications issued under this section are commonly known as "area notifications". A general notification was published on the 26th January, 1955 in the Bihar Gazette (Extraordinary) to the effect that all estates and tenures in the districts of Monghyr, Saharsa, Purnea and Darbhanga and some other districts would vest in the State of Bihar with immediate effect. Another similar notification was published on the 1st January, 1956, in the Bihar Gazette (Extraordinary) in respect of the estates and tenures in the districts of Bhagalpur,

Santhal Parganas and some other districts.

2. The aforesaid miscellaneous appeals and civil revisions were placed for final disposal before a Bench of this Court. In view of the notifications for general vesting dated the 26th January, 1955 and 1st January, 1956, without deciding the controversy between the parties as to whether the estate had vested in the year 1952 or 1953, this Court issued a direction to the receiver to hand over the possession of the estates concerned to the State of Bihar as they had undoubtedly vested in the State since after the publications of the aforesaid notifications dated the 26th January, 1955 and 1st January, 1956. A copy of the order of this Court dated the 30th January, 1958, is Annexure 2 to the writ application. It is stated in the writ application that in pursuance of the said order the receiver made over the possession of the estate of the petitioners in February, 1958. The receiver, after handing over the charge, made over all relevant papers and collection registers and further submitted a jamabandi return to the Additional Collector, Bhagalpur. It is claimed that the petitioners are entitled to receive an interim compensation u/s 33(1) of the Act at the rate 2? per cent per annum of the total approximate amount of compensation payable to the outgoing intermediary.

3. The Bank of Bihar had obtained a decree against the petitioner for a sum of Rs. 6 lacs and odd. On the 20th September, 1968, a petition was moved on behalf of the Bank of Bihar Ltd. stating that they had a claim decree u/s 14 of the Act amounting to Rs. 6,59,644/3/6 against the --/8/-- proprietors of Banaili estate recoverable from the compensation amount payable to the petitioners as per order dated the 27th January, 1954 passed by the Board constituted u/s 18 of the Act in claim appeal nos. 52 and 61 of 1957, and prayer was made for an early payment of the amount u/s 24, Clause (5) of the Act. It may be noted that the Bank had also filed a petition for payment earlier on the 9th of April, 1964, along with the aforesaid order of the Board.

4. The annual ad-interim compensation on the amount of approximate compensation of Rs. 25.94 lacs and odd was determined at Rs. 64,970-12 paise and it was being paid to the petitioners since the 14th June, 1952. The court suspended the ad-interim payment to the petitioners pending final order on Bank's petition regarding payment of its dues but the learned Additional Collector by his order dated the 11th July, 1950 allowed payment of ad interim compensation. A copy of the order is Annexure 4 to this application. The Government issued instructions under memo no. 4312 E-8-P-77-61 L.R. dated the 3rd May, 1951 directing deduction of claim amount from compensation and to make ad interim payment on the reduced amount of compensation. A copy of the relevant instructions is Annexure 5 to this application.

5. The Additional Collector stayed ad interim payment till the disposal of the Bank's application. The receiver moved the Government. The Revenue Department called for a report. The Additional Collector submitted a detailed report with office letter no. 229 RC dated the 19/20th November, 1968

(Annexure 6) in which full facts and line of action are noted. The Additional Collector heard lawyers of the petitioners, Government Pleader and lawyer of the Bank and by his order dated the 9th December, 1968, came to the following conclusions:--

- (a) to await Government instructions about the manner of calculation of ad interim compensation in view of the claim decree of Rs. 6.59 lacs and odd;
- (b) to take immediate steps for payment of claim decree to the Bank in bonds.
- (c) Dues adjustable u/s 4(c) should be adjusted from the compensation payable;
- (d) Steps to be taken for realisation of excess realisation of rent; and,
- (e) to take immediate action for preparation of 50% of the final compensation in bonds. A copy of the report no. 228 dated the 19/20th November, 1958, made by the Additional Collector, Bhagalpur, to the Deputy Secretary, Revenue Department, Government of Bihar, and a copy of order dated the 9th December, 1968 passed by the Additional Collector are Annexures 6 and 6A respectively.

6. In the counter affidavit filed on behalf of the respondents, it has been asserted that the petitioners are entitled only to the balance amount of compensation after deducting decretal amount payable to the creditor. Further, it is stated that the manner of computation of gross assets and approximate net income provided in Rules 25B and 25C of the Bihar Land Reforms Rules, 1951 (hereinafter referred to as the "Rules") is legal and valid.

7. Mr. K.L. Mishra, learned counsel appearing for the petitioners raised three contentions before us; (1) that the amount of decree of the Bank of Bihar cannot be deducted from the compensation payable u/s 32A of the Act; (2) that in estimating ad interim payment u/s 33, the decretal amount cannot be deducted from the approximate amount of compensation; and (3) that the deduction of 20 out of the approximate amount of compensation payable to the petitioners is illegal and arbitrary.

8. Before dealing with the said points, it would be convenient to state two material facts. The first material fact is that all the properties mortgaged in favour of the Bank constitute an estate u/s 2(i) of the Act and the entire mortgaged property belonging to the mortgagor has vested in the State of Bihar. The second material fact is that learned counsel for the petitioners at the hearing of the application submitted before us that the contentions raised by him may be decided without deciding the controversy between the parties as to whether the estate had vested in the year 1952 or in the years 1953, 1955, and 1956.

9. Let us then briefly refer to the relevant provisions of the Act which would enable us to construe Sections 32A and 33 and determine their scope and effect. It is well known that the Act is a benevolent legislation to eliminate intermediaries and establish direct relation between the State and the cultivators. The provisions of Section 3 provides for acquisition of estate or

tenure or individual proprietors or tenure holder. There were numerous proprietors and tenure holders in the State, hence Section 3A was incorporated in order to enable the State Government to notify that the intermediary interest of all the intermediaries in the whole of the State or part thereof has passed to and vested in the State Government. Section 4 prescribes the consequences of the vesting of an estate or tenure in the State. Broadly speaking, it makes the vesting not subject to any other provisions of the Act and free from all encumbrances. Clause (d) of Section 4 is mainly designed to facilitate acquisition by State of Bihar of interest of proprietor or tenure holder in any estate or tenure free of any prior charge or mortgage. It provides that "no suit shall lie in any civil court for the recovery of any money due from such proprietor or tenure holder the payment of which is secured by a mortgage of, or is a charge on such estate or tenure." The remedy of the mortgagee or the charge holder is to take recourse to Section 14 of the Act and other provisions of the Act for realizing such amount. On the vesting of the estate in the State u/s 3 or 3A, provision has been made in Section 14 which lays down the manner in which the amount payable to a creditor is to be determined by a Claims Officer to be appointed by the State Government of the purpose of determining the amount of debt legally and firstly payable to a creditor in respect of his claim. An appeal is provided u/s 17 of the Act against any decision of the Claims Officer made u/s 16 of the Act in the prescribed manner. Gross asset has been defined in Section 22. It means the aggregate of the rents, including all cases, which were payable in respect of the estates or tenures and raiyats. Section 23 lays down the manner in which the net income shall be calculated. Having found the net income, the Compensation Officer has to determine the total compensation amount payable and apportion the compensation amount in cases of leases, mortgage, charge holders or estates burdened with trust u/s 24 of the Act. The material portion of Clause (5) of Section 24 is important and may be quoted;

In the case where the interest of a proprietor or tenure holder is subject of a mortgage or charge, the compensation shall first be payable to the creditor balance, if any shall be payable to the proprietor or tenure holder concerned...

A draft compensation assessment roll has to be published u/s 26 of the Act; and when all objections and appeals, if any, have been disposed of, final publication of the compensation assessment roll has to be made u/s 28 of the Act. The manner of payment of compensation is provided in Section 32 of the Act. It provides that "the Compensation Officer shall proceed to make payment, in manner provided in this section" when the time for appeal has expired or where any such appeal has been made and the same has been disposed of. The payment is to be made to the proprietors, tenure-holders and other persons who are shown in such compensation assessment roll as finally published u/s 28 to be entitled to compensation payable to them in terms of the said roll after deducting from the amount of any compensation so payable any amount which has been paid u/s 32A or has been ordered under any other section of the Act to be so deducted. Where the Compensation Officer considers that delay is likely to occur

in payment of compensation u/s 32, he may pay u/s 32A in the manner so far as may be applicable provided in Section 32 to the persons entitled thereto under this Act a sum not exceeding fifty per centum of the approximate amount of compensation payable to him u/s 32 calculated in the manner prescribed in this behalf. After the date of vesting and before the date of payment of compensation, ad-interim payments are to be made six monthly u/s 33 to the outgoing intermediary whose intermediary interest has vested in the State in accordance with the table attached to that section.

10. The first branch of the argument put forward on behalf of the petitioners is that the petitioners are entitled to 50 per centum of the full approximate amount of compensation payable to them. Reference is made in this connection to the language of Section 32A which is in the following terms:

Where the Compensation Officer considers that delay is likely to occur in payment of compensation u/s 32, he may, subject to the provisions of Section 32B, pay in the manner, so far as may be applicable, provided in Section 32, to the person entitled thereto under this Act a sum not exceeding fifty per centum of the approximate amount of compensation payable to him u/s 32 calculated in the manner prescribed in his behalf.

Section 4(c) provides that all arrears of revenue and cesses remaining lawfully due in respect of the estate or tenure on the date of vesting and all other amounts recoverable by the State Government from the outgoing intermediary under any law for the time being in force may be recovered by the deduction thereof from the amount payable to such intermediary u/s 32, Section 32A or Section 33. Besides in computation of net income for the purpose of preparing compensation assessment, some deductions as provided in Section 23 are to be made. Sections 4(c) and 23 do not provide for deduction of decretal claim for the purpose of preparing compensation assessment roll. After the net income has been computed, the amount of compensation payable in respect of the transference to the State all interests of such intermediary is determined according to Section 24. The Compensation Officer designated by the State Government, thereafter has to prepare in the prescribed form and in the prescribed manner the compensation assessment roll containing the gross asset and the net income of each proprietor and tenure holder of estates and tenures and the compensation to be paid in accordance with the provisions of the Act to such proprietor or tenure holder and all other persons whose interests are transferred to the State under the Act together with such other particulars as may be prescribed. The mode of preparation of the compensation assessment roll is contained in Rule 15 of the Rules, and Form G has been prescribed by the said Rule for the preparation of the compensation assessment roll for each compensation holder. Amount payable to creditors as determined under Chapter IV is to be entered under column no. 10 of the form. The stage for payment of compensation u/s 32 has not yet reached. There was delay in preparation of the final assessment roll. The principle under which compensation has to be

determined as elaborate, and it would take a long time to be determined. In order to meet this difficulty and to give ad-interim relief to the intermediary, Section 32A was inserted in 1959 in the Act. Therefore, the Additional Collector ordered for payment of 50% of the approximate compensation payable to the petitioners. The question that arises for consideration is whether a creditor will have to wait for payment till the final assessment roll is prepared, or, he can get his claim amount at the time of the payment of 50 per cent of the approximate amount of compensation u/s 32A. It was pointed out by Mr. K.P. Verma, learned Government Advocate appearing on behalf of the respondents, that the creditor must get compensation first at any stage when it becomes payable to the proprietor or tenure holder concerned. This contention is valid and must be accepted. In my opinion, full effect must be given to the direction contained in Clause (5) of Section 24 that the compensation is first payable to the creditor holding mortgage or charge, and, the balance, if any, shall be paid to the proprietor or tenure holder concerned. This provision is for the protection of the creditor whose amount has been determined under Chapter IV of the Act. A plain reading of Section 24(5) indicates that in payment of compensation at any stage, preference must be given to the creditor; and if anything is left over, then it should be paid to the proprietor or tenure holder. After the vesting of an estate of an intermediary under the provisions of the Act, a mortgagee-decree holder has to proceed exclusively u/s 14 of the Act. Therefore, it must be inferred that the intention of the legislatures was to provide some effective remedy for realisation of the amount from the compensation. If the creditor is made to wait till the final payment, the provision may be rendered ineffective; for example, if the total approximate compensation payable to an intermediary u/s 32 amounts to Rs. 10 lacs and a sum of Rs. 8 lacs is found payable to a creditor, the creditor at the time of final payment will not get his claim money if 50 per cent of the approximate money has already been paid to the intermediary concerned excluding the claim of the creditor. In my opinion, on reading the relevant sections together, the Bank must be paid its full claim amount out of the 50 percent of the compensation payable to the petitioners.

11. It was next urged that the Bank will not in any event be entitled to get more than 50 per cent of its claim in view of the provision of Section 32A of the Act. According to learned counsel, the Bank comes within the meaning of "other persons" to whom the compensation is payable. There is no substance in this contention. The compensation is payable in respect of the transference to the State of the interest of the intermediary. Therefore, the amount payable to creditors as determined under Chapter IV is to be deducted as shown in Form G for compensation assessment roll. The plain meaning of the expression "the compensation shall first be payable to the creditor" is that the claim money shall first be payable to the creditor out of the compensation payable to the intermediary. The word "compensation" has been used, because payment is to be made out of the compensation. The creditor is not an intermediary whose estate has vested and thereby he has become entitled to the compensation.

12. The second branch of the argument is almost covered by a Bench decision of this Court in (1) *Dewan Bahadur Kedarnath Goenka and others V. The Additional Collector of Monghyr and others* (1958 B.L.J.R. 324). In this case, Khwaja Muhammad Hasan Imam had mortgaged certain zamindari interest in their favour for a consideration of Rs. 93,000/- and the creditor-petitioners obtained a mortgage decree for a sum of Rs. 1,56,000 and odd against Khwaja Muhammad Hasan Imam. There was subsequently a notification and as a result whereof the title of the zamindari interest vested in the State of Bihar. The intermediary, Khwaja Muhammad Hasan Imam was allowed by the Additional Collector to withdraw ad-interim payment u/s 33(1) of the Act. The compensation payable u/s 24 was about Rs. 37,861/-. It was argued in this Court that Khwaja Muhammad Hasan Imam was not entitled to receive the payment of ad interim compensation u/s 33(1) of the Act. It was further urged that the entire amount payable as compensation u/s 24 was payable to the creditor-petitioners and no portion of the amount was payable to the intermediary. It was pointed out that in the special circumstances of the case the compensation payable to the ex-proprietor was nil. It was held that the Legislature contemplated by enacting the provisions of Section 33 to grant some interest or damages by way of interest to the intermediary for the delay in payment of the amount of compensation payable. But if no compensation is payable under the Act to the intermediary, the ratio for making the ad interim payment u/s 33 vanishes. The Legislature never intended by enacting Section 33 that ad interim payment should be made at the rate of 3 per cent or 2? per cent, as the case may be, to ex-proprietors, even though no compensation was payable to such proprietors under the terms of Section 24 of the Act. The principle of this case is fully applicable to the facts of this case. The ad-interim payment is to be made to such ex-proprietors u/s 33(1) of the Act on the approximate amount of compensation remaining payable. According to the line of reasoning adopted in the aforesaid case, it must be held that the petitioners are entitled to ad interim payment u/s 33(1) on the approximate amount of Rs. 19 lacs which remains payable after deduction of the Bank's claim to the extent of Rs. 6 lacs and odd. Learned counsel appearing for the petitioners urged that the decision of the aforesaid case was based on peculiar circumstances as noted by their Lordships, hence it should be confined to that case alone. It was further contended that the aforesaid case has been incorrectly decided, because certain provisions of the Act including Section 33(2) were not brought to the notice of their Lordships. It was pointed out that the petitioners should not be deprived of the benefit of ad interim payment at least to the date of final determination of the claim of the Bank. The submissions made by learned counsel are not correct. I have carefully considered the arguments. The facts of both the cases may be different, but the principle of law laid down in the aforesaid case is sound and fully applicable to this case. That case had been decided on consideration of all relevant provisions of the Act and Section 33(2) was considered in these words:--

This interpretation is supported by the language of Sub-section (2) of Section 33,

which states that where any ad-interim payment has been made to any outgoing intermediary under the section, any such payment in excess of 2? per cent per annum of the amount of compensation payable u/s 32 shall be deducted from such compensation.

This Bench is bound by the aforesaid Bench decision, and there seems to be no justification for referring this case to a larger Bench.

13. Lastly, we have to consider whether the provision for deduction of 20% out of the approximate amount of compensation payable to the petitioners is illegal and arbitrary. Payment of 50 per cent and ad interim payment both are to be made with reference to approximate amount of compensation payable to an intermediary u/s 32 calculated in the manner prescribed in this behalf. The procedure for ascertaining gross assets and approximate net income are contained in Rules 25B and 25C of the Rules respectively. These Rules have been made under the rule-making power of the State Government provided u/s 43 of the Act. Therefore, the rules cannot be said to be illegal. They are also not arbitrary. Where it is not possible to verify expeditiously the details of the jamabandi filed by an outgoing intermediary, but on a preliminary scrutiny it is prima facie acceptable, the approximate gross assets are to be calculated on 80 per cent on such jama. The procedure for ascertaining approximate net income is provided in Rule 25C after making deductions from the approximate gross assets calculated in accordance with Rule 25B. Therefore, the reduction of 20 per cent from the gross assets till the final verification of the details of the jamabandi cannot be said to be arbitrary. It is common experience that jamindari accounting maintained by the quondam proprietors and tenure holders was complicated. Therefore, the reduction of 20 per cent from the gross assets of the jamabandi is reasonable and acceptable. For the reasons stated above, there is no merit in any one of the contentions raised on behalf of the petitioners. As a result, the application is dismissed but there will be no order for costs.

S.N.P. Singh, J.

I agree.