
(2008) 07 PAT CK 0103
In the Patna High Court
Case No : LPA No. 681 of 1997

Ritoo Mahto and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(1), 11, 15(1), 2(6), 2(b)

Citation : (2008) 4 PLJR 749

Hon'ble Judges : Ravi Ranjan, J; Chandramauli Kr. Prasad, J

Bench : Division Bench

Advocate : R.K.P. Singh, for the Appellant; Arun Kumar Pandey for the State and Mr. Uma Kant Shukla for Respondent Nos. 5 to 11, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad & Dr. Ravi Ranjan, JJ.—Writ petitioners-appellants, aggrieved by the order dated 15.4.1997 passed in C.W.J.C. No. 292 of 1995 dismissing the writ application, have preferred this appeal under Clause 10 of the Letters Patent. Shorn of unnecessary details, facts giving rise to the present appeal are that a land ceiling proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the "Act") was initiated against the landholder Ashik Tiwari. In the said proceeding the landholder at the first instance was not found to be in possession of land in excess of the ceiling area. However, later on, notice was given to him and he was found entitled for two units of land. A draft statement as contemplated u/s 10(1) of the Act was published. Thereafter the draft statement was finally published in accordance with Section 11 of the Act. Ultimately by notification dated 28.12.1982 as published in the district gazette dated 21.1.1983, 34.18 acres land was declared as surplus. Steps were taken for distribution of surplus land and that led to registration of a separate proceeding i.e. Land Settlement Case No. 2 of 1982-83. Part of the land declared surplus was settled and parwana issued in favour of the appellants on 23.3.1983. The

purchasers from the landholder assailed the aforesaid notification declaring the land surplus by filing writ application before this Court, which was registered as C.W.J.C. No. 1463 of 1983 (Birendra Mishra and Others vs. The State of Bihar and Others). The landholder, aggrieved by the declaration of surplus land, also preferred writ application before this Court, which was registered as C.W.J.C. No. 1092 of 1983 (Asik Tiwari vs. The State of Bihar and Others). In the writ application filed by the purchasers, namely, C.W.J.C. No. 1463 of 1983, the validity of the notification declaring the land to be surplus u/s 15(1) of the Act was in question.

2. A learned Single Judge of this Court (S.B. Sinha, J. as he then was) by order dated 4th of February, 1993 allowed the writ application, quashed the notification issued u/s 15(1) of the Act and while doing so, it observed as follows:-

In view of order as contained in Annexure-3 to the writ application, the notification issued u/s 15(1) of the said Act has lost its force.

3. Writ application filed by the landholder Ashik Tiwari was disposed of by order dated 22.2.1983 giving liberty to him to prefer appeal before the appropriate authority with a prayer for condonation of delay in filing the appeal. While disposing of the aforesaid writ application, this Court further directed that lands declared surplus shall not be distributed, if already not distributed.

4. In view of the liberty given, the landholder preferred the appeal and the Collector remanded the matter to the Additional Collector. After remand, the landholders, daughter-in-law and his three sons claimed further units. The Additional Collector allowed three units to the landholder and further excluded from the land of the landholder, 5.89 acres of land having been acquired under the Land Acquisition Act. In sum and substance, the Additional Collector did not find land in excess of the ceiling area.

5. State aggrieved by the order of the Additional Collector preferred appeal, which was registered as Appeal No. 39 of 1986-87.

6. During the pendency of the appeal, landholder died in the year 1987 and in his place, his heirs were substituted. By order dated 22.7.1988, State's appeal was allowed and the order of the Additional Collector dated 24.1.1986 was set aside. The substituted heirs filed Revision Case No. 88 of 1988 before the Board of Revenue and the Additional Member, Board of Revenue by its order dated 8.8.1989 set aside the order of the Additional Collector dated 21.4.1986 and that of the appellate order of the Collector dated 22.6.1988 and remanded the matter to the Collector. After the remand, the Collector reopened the proceeding u/s 45B of the Act and the matter transferred to the Additional Collector for decision. Ultimately the Additional Collector by order dated 11.4.1994 found that the landholder is entitled to one unit. While holding that the landholder shall be entitled to one unit, the Additional Collector had directed that the land transferred shall be deemed to have been opted by the landholder.

7. So far as the claim of the appellants, the Parcha holders, is concerned, the Additional Collector observed that as the notification u/s 15(1) of the Act declaring the land to be surplus having been rescinded, there does not exist any claim so far as the Parcha holders are concerned. Aggrieved by the same, appellants, the Parcha holders, preferred Revision Case No. 41 of 1994 before the Board of Revenue. The Additional Member, Board of Revenue by order dated 21.12.1994 dismissed the revision application. While doing so, the Board of Revenue observed as follows:-

However, in the present revision we are only concerned with the transfer of 1971 about which the Additional Collector has passed a legally correct order. The Additional Collector has also rightly pointed out that the allotment made earlier had been quashed by the Hon'ble High Court and therefore these allottees cannot claim any right on the basis of the said old allotment.

8. It also observed that if any other land declared surplus is available, Parcha holders can lay claim over the same and the Collector shall consider their request for allotment in accordance with law. Appellants assailed, the aforesaid order before this Court, which has led to passing of the impugned order. This Court observed that the authorities have been found that there is no surplus land, no relief can be granted to the writ petitioners-appellants.

9. It is common ground that during the pendency of the writ application and this appeal, several orders have been passed by the Revenue authorities.

10. Mr. R.K.P. Singh, appearing on behalf of the appellants submits that the Board of Revenue had directed the Collector for reopening of the case u/s 45B of the Act and hence the order passed by the Additional Collector dated 11.4.1994 is bad in law. In support of his submission, he has placed reliance on a judgment of the learned Single Judge of this Court in the case of Dhrub Narayan Singh and Another Vs. The State of Bihar and Others, and our attention has been drawn to paragraph 8 of the judgment, same reads as follows:-

It is well settled that the State Government or the Deputy Commissioner before reopening the proceeding is required to give notice to the landholder and to hear him and then to pass order for reopening the proceeding by recording reasons. The State Government or the Collector is further required to hear the matter itself after reopening the proceeding and not to transfer the case to any subordinate authority for disposal.

(Underlining ours)

11. Another decision, on which reliance has been placed, is the decision of a learned Single Judge in the case of Jai Prakash Narain Mahto and Others Vs. The State of Bihar and Others, and our attention has been drawn to paragraphs 10 and 11 of the judgment, which read as follows:-

10. In view of amendment made in the provision of Section 45B, specific guidelines issued on 1st May, 1989 in this respect; and the order of State

Government dated 8th April, 1997, the law laid down by Full Bench in the case of Mahanth Siya Ram Das and Another (supra), cannot be made applicable in the present case, on changed circumstances.

11. Accordingly, I hold that the common impugned order dated 3rd November, 1997 passed by the Additional Collector (Ceiling), Bhagalpur is without jurisdiction and thereby illegal. The same is, accordingly, set aside.

12. Mr. Shukla, appearing on behalf of respondent nos. 5 to 11, however, submits that the Collector had exercised power u/s 45B of the Act and thereafter directed the matter to be decided by the Additional Collector and that is in conformity with the provisions of Section 45B of the Act.

13. Neither on principle nor on precedent, we are inclined to accept the submission of Mr. Singh. Section 45B of the Act, as it stood before its amendment by Act 8 of 1997 read as follows:-

45B. State Government to call for and examine records.-The State Government or the Collector of the district, who may be authorized in this behalf made, 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.

14. From a plain reading of the aforesaid provision it is evident that the Collector of the district has been authorized to call for and examine any record of any proceeding and "direct that the case be reopened" and "disposed of afresh" in accordance with the provisions of the Act. The very fact that the legislature has used two expression reopen and dispose of afresh clearly indicate that it is possible to be done by two persons. The word Collector has been defined u/s 2(b) of the Act which includes an Additional Collector, appointed by the State Government to discharge all or any of the functions of a Collector under this Act. Had the legislature intended that the order to reopen and disposal of the proceeding after reopening is to be done by the Collector of the district it ought not to have used the expression "and dispose of afresh in accordance with the provisions of the Act".

15. The contention that the Collector can only dispose of the proceeding, if accepted, the word used by legislature "dispose of afresh in accordance with the provisions of the Act" shall become redundant. It is well settled that legislature does not waste its word and a construction which leads to rejection of words used by legislature has to be avoided. Accordingly on first principle we are of the opinion that the order of reopening has to be passed by the Collector of the district or the State Government as the case may be and thereafter the proceeding can be disposed of afresh in accordance with the provisions of the Act, meaning thereby that it could be done by an Additional Collector in terms of Section 2(b) of the Act.

16. A Division Bench of this Court in the case of Rupchand Baid Vs. The State of

Bihar and others, had the occasion to consider this question and this Court speaking through Justice S.B. Sinha, J. (as he then was) held as follows:-

From a bare perusal of the provisions of Section 45B of the said Act it becomes manifestly clear that the State Government or the Collector of the District may direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act. Thus the Collector of the District upon directing reopening of the proceeding has to make a further direction that the case be disposed of afresh in accordance with the provisions of the Act which necessarily means that the same has to be done by the authorities prescribed under the Act meaning thereby the Collector defined in Section 2(6) thereof.

(Underlining ours)

17. Therefore on principle as also on precedent we are of the opinion that the Collector of the district may direct that the case be reopened and disposed of in accordance with the provisions of the Ad which necessary mean that same is possible to be done by the authorities mentioned in Section 2(b) of the Act. As observed earlier, the Additional Collector is one of the authorities mentioned in sub-section 2(b) of the Act.

18. Having given our most conscious consideration we are unable to persuade ourselves to accept the view expressed by a learned Single Judge in the case of Dhrub Narayan Singh (supra). In the said case the learned Single Judge assumed a proposition of law as well settled which in fact is not that Collector after reopening of the case cannot direct transfer of the proceeding to the subordinate authority for disposal. The aforesaid conclusion has been arrived by the learned Single Judge without referring to any of the decided case. It is unfortunate that an earlier Division Bench judgment of this Court, apt on the point, in the case of Rupchand Baid (supra) was not brought to his notice.

19. In fairness to the Counsel for the appellants he is right in contending that the decision of the learned Single Judge in the case of the Jai Prakash Narayan Mahto (supra) takes a view that it is the Collector of the district who can hear and dispose of the proceeding on its reopening. It is relevant here to state that the learned Single Judge while coming to the aforesaid conclusion has referred to a letter dated 1.5.1989 of the State Government wherein it was decided that hearing of the case which has been reopened u/s 45B of the Act shall be done by the Collector himself and not the Additional Collector. It is well settled that a non-statutory notification issued by the Government shall not deprive the authority conferred with power under law to adjudicate on a particular issue. Here from the reading of Section 45B of the Act we have come to the conclusion that though order of reopening has to be passed by the Collector of the district but thereafter he could transfer the proceeding to Additional Collector under the provisions of the Ant In the fane of the same the derision of the State Government shall not hold the field. It is worth mentioning that the points in issue has been decided by the Full Bench of this Court in the case of Mahanth-

Siyararh Das and Another vs. The State of Bihar and Others [1985 PLJR 101] but the same has been distinguished by the learned Single Judge in Jai Prakash Mahto (supra) on the ground of certain amendment which deleted the power conferred on the Collector to reopen the case under Bihar Act 8 of 1977. We are of the opinion that deletion the power of Collector u/s 45B of the Act shall have no bearing on the interpretation of Section 45B of the Act. It is worth mentioning that the attention of the learned Single Judge was not brought to earlier Division Bench judgment of this Court in the case of Rupchahd Baid (supra) while deciding the case of Jai Prakash Narayan Mahto (supra). In that view of the matter we are constrained to hold that decision of the learned Single Judge in Dhrub Narayan Singh (supra) and Jai Prakash Narayan Mahto do not correctly lay down the law and they are accordingly overruled.

20. There is no dispute that the appellants claim settlement of land which has been declared surplus by virtue of notification dated 28.12.1982 published on 21.1.1983. It is further not in dispute that the said notification declaring the land to be surplus has been quashed by this Court. Therefore, the very foundation of settlement goes and as such the appellants are not entitled to any relief.

21. Mr. Singh contends that during the pendency of the writ petition and the appeal several orders have been passed adjudicating upon the right of the landholder. He submits that this Court has power to go into validity of those orders.

22. We are of the opinion that the present proceeding is not an appropriate proceeding, to go into the validity of those orders touching upon the right of the landholder. Remedy has been provided under the scheme of the Act. In the face of it, it shall not be sound exercise of discretion to go into its validity. However it shall open to the appellants to assail the same in accordance with law. It is made clear that we have expressed no opinion in regard to the merit of those orders. In the result, we do not find any merit in the appeal and it is dismissed accordingly, but no order as to costs.