

(1993) 02 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10198 of 1992

Rupchand Baid

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 2(6), 6, 8

Citation : (1993) 2 PLJR 205

Hon'ble Judges : S.B. Sinha, J; R.M. Prasad, J

Bench : Division Bench

Advocate : Abhimanyu Sharma, Praveen Kumar and Rajiv Kumar Sharma, for the Appellant; B.P. Verma for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 15.6.1992 passed by the District Magistrate, Araria whereby and whereunder he reopened Land Ceiling case No. 1/87-88 in exercise of his power u/s 45(B) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act). A Land Ceiling proceeding was initiated against the petitioner on 9.9.1987 and he was asked to submit the details of the land in terms of Section 8 of the said Act. Simultaneously the Anchal Adhikari Forbesganj as also the Anchal Adhikari Narpatganj were asked to submit a verification report with regard to the land held by the family of the petitioner.

2. By an order dated 31.12.1988 the Collector under the said Act having found that the lands held by the family of the petitioner being Class IV land, dropped the said proceeding, as the petitioner allegedly did not hold any surplus land.

3. However, by an order dated 15.6.1992 the District Magistrate, Araria reopened the said proceeding and transferred the same to the Additional Collector, Araria.

4. Mr. Abhimanyu Sharma, the Learned Counsel appearing on behalf of the petitioner has raised two contentions in support of this application.

The Learned Counsel submitted that as there was no fresh material available on records, the Collector of the District had no jurisdiction to exercise his power u/s 45B of the said Act.

5. The Learned Counsel next contended that the Collector of the District has no jurisdiction to transfer the case to the Court of Additional Collector inasmuch as in terms of Section 45B of the said Act, it is only the Collector of the District who can dispose of a proceeding which has been reopened.

6. Mr. B. P. Verma, learned standing Counsel appearing on behalf of the State, on the other hand, submitted that from a perusal of the impugned order it would appear that the Collector under the said Act found that the Collector of the District disposed of the said proceeding without following the mandatory provisions of law.

It has next been contended that in view of a Full Bench decision of this Court in Mahanth Siyaram Das & Anr. Vs. the State of Bihar reported in 1985 BBCJ 66: 1985 PLJR 101 (F.B.) the Collector of the District may direct disposal of a proceeding by some other authority under the Act after reopening of the same.

7. From a perusal of the order-sheet dated 9.9.1987 as contained in Annexure-1 to the writ application, it appears that the Anchal Adhikari, Kuskatta in his letter dated 20th August, 1980 reported that the landholder has 115.63 acres of land which is in excess of the ceiling area. He in his report further stated that the landholder has lands within the Forbesganj and Narpatganj Anchals. By reason, of the said order therefore the Anchal Adhikari, Forbesganj and Narpatganj were directed to submit their reports in relation to the lands held by the land-holder in those Anchals. The case was adjourned on several dates awaiting receipt of the aforementioned reports by the Collector.

8. From the order-sheet dated 21.6.1988, it appears that the Anchal Adhikari Forbesganj has submitted his report. On the next date fixed namely 2.7.1988 the Collector under the said Act directed preparation of a draft statement u/s 10(2) of the said Act, only on the basis of the said report, although no report from the Anchal Adhikari Narpatganj had been received. Thereafter a final order appears to have been passed on 31.12.1988.

9. The Collector of the District in his impugned order as contained in Annexure-2 to the writ application inter-alia held that although the report of the Anchal Adhikari Narpatganj was not received a final order was passed by the Collector. He further found that prima facie the Collector under the said Act has committed an illegality with regard to the classification of the land as in relation thereto, the Anchal Adhikari Kuskatta was not given an opportunity of hearing.

It has further been pointed out that the Land Reforms Deputy Collector has also not held any enquiry with regard to the age of the family members of the land-

holder.

10. The scope and purport of Section 45B of the said Act has recently come up for consideration before us in *Mrityunjay Narayan Mishra and others vs. State of Bihar & Ors* in CWJC No. 8843 of 1991 and other analogous cases disposed of on 23.2.1993 wherein this bench upon taking into consideration a large number of decisions held as follows :

From the conspectus of the decisions referred to hereinbefore, it is evident that Section 45B does not confer upon any arbitrary power upon the Collector of the District to reopen a proceeding on his own sweet will. All such orders must be informed by reasons. A land Ceiling Proceeding can be reopened only on the availability of the new material or if it is found that the Collector under the said Act had passed such orders in violation of the provisions of law both substantive and procedural which was resulted in real prejudice to the State, land-holder or any third party. However, I may mention that in a given case it may also be permissible for the Collector of the District or the State of Bihar to direct reopening of the proceeding when a fraud has been practised upon the Collector or any other party or when it is found that the order has been passed on extraneous considerations.

The power u/s 45B of the said Act, has to be exercised sparingly and the same cannot be exercised for the purpose of making a roving or fishing enquiry. While however passing such order, the object and purport of the Act should be the uppermost consideration, in the mind of the Collector of District or the State.

11. In this case, admittedly on receipt of the report of the Anchal Adhikari, Kuskatta, the petitioner was directed to file return in terms of Section 8 of the said Act.

12. Rule 8 of the Bihar Land Ceiling Rules 1963 enjoins the Collector receiving the original returns under Sections 6 or 8 of the Act with a mandatory duty to call upon Anchal Adhikari/Circle Officer/Block Development Officer/Project Executive Officer of the area concerned, in whose jurisdiction the lands are situate, to make verification and to send to him their reports, after verification. Upon receipt of the said report, the contents thereof are to be further checked and verified by the Collector having jurisdiction of the area concerned with reference to the up-to-date rent receipt and other relevant records including records of right maintained by the Collector.

13. In this case admittedly the report of the Anchal Adhikari, Narpaganj was not received although the same was called for. He was the only authority to submit a verification report in relation to the lands of the landholder situated within the jurisdiction.

It has also been found by the Collector that in the matter of classification of the lands the Anchal Adhikari of Kuskatta was not given an opportunity of hearing. It has further been found that the respondent No. 2 did not make an enquiry with

regard to age of the family members of the petitioner.

14. In this situation we have no other option but to hold that the respondent No. 3 while passing a final order did not follow the mandatory provisions of law. In this view of the matter it cannot be said that the impugned order suffers from any legal infirmity.

So far as second contention raised by the Learned Counsel for the petitioner, the same has also no substance.

15. 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.

16. It is true that a division Bench of this Court in Kesara Devi and another Vs. the State of Bihar reported in 1984 PLJR 209 has held that after reopening of the case, the State Government or the District Collector must dispose of the matter afresh in accordance with law. It was held :

It is, therefore, clear that after reopening of the case either the State Government or the District Collector himself is entitled to dispose of the matter in accordance with law. The District Collector has no Jurisdiction to refer the matter for disposal to any subordinate authority.

17. However, this aspect of the matter has also been considered by a Full Bench of this Court in Siya Ram Das Vs. State of Bihar & Ors. reported in 1985 BBCJ 66: 1985 PLJR 101 wherein the decision of the Division Bench in Kesara Devi's case was expressly overruled by the Full Bench holding : To conclude, the answer to the question posed at the very outset is rendered in the negative, and it is held that Section 45B of the Act does not necessarily mandate the decisions afresh must inflexibly be made by the State Government or by the authorised Collector of the District alone.

For the reasons aforementioned, there is no merit in this application which is accordingly dismissed, but in the facts and circumstances of the case, there will be no order as to costs.

R.M. Prasad, J.

I agree.