

(1995) 12 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 5522 of 1984

Sahdeo Pandey and Others APPELLANT
Vs
The State of Bihar and Another RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

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

Citation : (1996) 2 PLJR 198

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Shivanandan Prasad Singh, Manoj Kumar, No. 1 and Arsinjay Kumar, for the Appellant; Raghib Ahsan and Indeshwari Pd. Mandal, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The present writ application is directed against the order passed by the Collector, Rohtas, at Sasaram passed in Ceiling case No. 36/83 under the purported exercise of Section 45B of the Bihar Land Reforms (Fixation of ceiling Area Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") reopening the aforementioned ceiling proceedings.

2. It appears that a proceeding under the Act bearing ceiling case No. 18/75-76 was started against the Petitioners, in which the Petitioners were found to be in possession of 55.40 acres of land of different classes. The Petitioners were allowed to retain 44.87 acres of land and 10.53 acres of land was declared as surplus by an order dated 26th July, 1976 passed by the Dy. Collector incharge, Land Reforms, Sasaram.

3. Being aggrieved by the said order, the Petitioners filed appeal No. 13/76-77 before the Collector, Rohtas, who by his order dated 17th September, 76 affirmed the order passed by the D.C.L.R. with only a slight modification in regard to 60 decimals of lands which was excluded from the surplus land as declared earlier. There after the Petitioners filed revision case No. 1564/76 against the

aforementioned order of the Collector. The said revision was finally heard by the Additional Member, Board of Revenue, who by his order dated 5th January, 77 held that the Collector had decided the case on a notional partition among the two brothers namely Petitioner nos. 1 and 2, which was erroneous in law. He also found that the family of the Petitioners were joint and therefore, the basis of notional partition was wrong. It was also found by him that the Petitioners were untitled for 6 units and did not hold any surplus land and accordingly, the ceiling case was dropped.

4. It appears that one Shivdara Singh filed an application before the Collector. Rohtas (Respondent No. 2) for re-opening of the said land ceiling case u/s (sic) of the Act on which the impugned order has been passed.

5. It is contended by Mr. Shivanandan Pd. Singh, learned Counsel appearing for the Petitioners that the Collector by the impugned order is trying to hold a fishing enquiry, which is not permissible once the proceeding under the Act is concluded. None of the so called grounds mentioned in impugned order has any relevance or basis for re-opening of the ceiling case, which finally stood concluded by the order of the Additional Member, Board of Revenue.

6. On the other hand, Mr. Raghiv Ahsan, learned Standing Counsel appearing for the State has not been able to justify the reasons mentioned in the order for re-opening of the case. From bare perusal of the impugned order it is evident that the Collector has passed the said order merely on some assumption and not on any concrete material, which is likely to affect the unit granted to the Petitioners.

7. This Court in a Division Bench judgment in the case of Shivshankar Pd. Singh and Ors. v. The State of Bihar and Ors. reported in 1982 BBCJ 362: 1982 PLJR 331 held that in the garb of reopening of the concluded proceeding Collector cannot start a fishing enquiry to verify whether the earlier orders were correctly passed. The Court held that the power u/s 45B of the Act is to be exercised sparingly and for adequate reasons.

8. It has rightly been pointed out by the learned Counsel for the Petitioners that the impugned order has been passed merely on the allegation made in the petition filed by Shivdara Singh without even considering the show cause filed on behalf of the Petitioners and without pointing out any illegality or irregularity in the previous proceeding touching the merit of the case.

9. It has rightly been submitted by the learned Counsel for the Petitioners that in view of the settled law that the authority under the Ceiling Act cannot proceed on an assumption of notional partition and there being no dispute about the genealogy of the Petitioners' family as mentioned in paragraph 3 of the writ petition, the Petitioners were/are entitled for 6 units as was also held by the Additional Member, Board of Revenue. The total land possessed by the Petitioners was only 55.40 acres. Thus, even if the entire land is considered to be class 1 land, the Petitioners were entitled for retaining 90 acres of class 1 land, which is much more than the land possessed by them. Thus, the impugned order of the

Collector directing for re-opening of the ceiling case against the Petitioner cannot be held to be fair and proper.

10. Accordingly, the writ application is allowed and the impugned order contained in annexure-2 is quashed. In the peculiar facts and circumstances there shall be no order as to costs.