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**(2009) 04 PAT CK 0030**  
**In the Patna High Court**  
**Case No : CWJC No. 1039 of 2008**

Sanjay Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 02-04-2009

**Acts Referred:**

**Citation :** (2009) 04 PAT CK 0030

**Final Decision :** Allowed

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## Judgement

Sudhir Kumar Katriar, J.—This writ petition is directed against the order dated 4.7.2001 (Annexure-9), passed by the learned Member, Board of Revenue, Bihar, Patna, in Revision Case No. 32 of 2000 (Sanjay Kumar Singh v. The State of Bihar and Ors.), in purported exercise of powers under Sub-section (3) of Section 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act), whereby he has rejected the revision application preferred by the present petitioner, and has refused to entertain the prayer for substitution of the heirs of the land-holder.

2. The facts are not in dispute and may be indicated to the extent needed for disposal of the present writ petition. The genealogy of the parties may be set out hereinbelow:

2.1. Land Ceiling proceedings under the Act were initiated against Debbala Singh, the petitioner's grand-mother. The chronology of events as provided in the writ petition may be reproduced hereinbelow:

S. Nos.

Date

Particulars

1.

11.10.1976

A ceiling case No. 1/76-77 was started against three land holders - Most. Debbala Singh, Sadhan Chandra Singh, and Bharat Chandra Singh. Total land 152.40 Acres was shown as surplus.

2.

9-4-1981

Ordinance No. 66/81 promulgated, followed by Act No. 55 of 1982

3.

17-08-1990

Draft statement u/s 10(2) of the Act was published. Debbala Singh was allotted 25 acres, remaining 127.40 acres (out of 152.40) was shown as surplus.

4.

15.12.1990

The three sons of Debbala Singh filed Vakalatnama and objection u/s 10(3) of the Act.

5.

28.04.1994

As per the order sheet, the lands of the other

co-sharers have also been amalgamated with the lands of Debbala Singh. Therefore, separate proceeding was ordered to be initiated against other co-sharers.

6.

05.09.1994 (Anx.-3)

Objection of the land-holder u/s 10(3) of the Act was disposed of whereby 10 Acres 78 decimals 2 Kari was declared surplus. Order also passed for publication of notification u/s 11(1) of the Act.

7.

12.01.1996

Debbala Singh, the land-holder, died in the state of jointness.

8.

13.03.1996

(Annexure -5)

Final notification u/s 11(1) of the Act published. Instead of 10.78.02 acres, 11.11.09 acres was declared surplus.

9.

01.10.1999

Dilip Kumar Singh, father of the petitioner (son of Debbala Devi) died in the state of jointness.

10.

12.05.2000

(Annexure-.6)

Notification u/s 15(1) of the Act was published. 11.11.09 acres of Class-III land was shown for acquisition.

A revision petition bearing Board Revision.

11.

07.11.2000

No. 32 of 2000, was filed by the writ petitioner and his mother, late Gauri Singh, u/s 32(3) of the Act before the Board of Revenue.

12.

Feb. 2001

Mother of the petitioner, Late Gauri Singh, died during pendency of the aforesaid revision petition.

13.

04.07.2001

The aforesaid revision petition was rejected by the, Board of Revenue, and impugned herein.

2.2. The petitioner is the grand-son of the land-holder. After publication of the notification u/s 15(1) of the Act on 12.5.2000 (Annexure-6) the petitioner preferred the aforesaid revision application under Sub-section (3) of Section 32 of the Act, praying therein that the land- holder died on 12.1.1996, leaving behind her heirs none of whom were substituted and, therefore, the notification was against a dead person. It was accordingly prayed that the land can not be taken over by the State Government. The revision application has been rejected by the impugned order wherein it has been held that the order dated 5.9.1994, passed for publication of the notice u/s 10(3) of the Act in the official gazette, has attained finality, because it was not challenged in appeal or revision. The consequent proceeding has also attained finality and the petitioner is left with the only remedy u/s 45(B) of the Act.

3. While assailing the validity of the impugned order, learned Counsel for the

petitioner submits that the ultimate burden for substitution is on the State. He relies on the judgment in the case of Braja Behera and Others Vs. Gandaram Behera and Others, . He next submits that the proceedings after 12.1.1996 were carried on against a dead person, are nullity, and void and Ab Initio. He relies on the judgment of the Supreme Court in the case of Kamal Krishan Rastogi and Ors. v. State of Bihar and Anr. reported in 2009 (1) P.L.J.R. (S.C.) 1 He next submits that the proceeding as has taken place is in complete violation of Section 10(3) of the Act. He also submits that the Act is confiscatory in nature and, therefore, in case of doubt or difficulty the courts should lean in favour of the land-holder. He relies on the judgment in the case of Gyasuddin Khan @ Md. Gyasuddin Khan Vs. The State of Bihar, . He next submits that in view of insertion of Sections 32A and 32B of the Act, enforced with effect from 9.4.1981, fresh proceedings will have to commence De-Novo. He relies on the judgment of a Full Bench of this Court in the case of Harendra Prasad Singh Vs. State of Bihar and Another, .

4. Learned Standing Counsel has submitted in opposition that in view of Rule 55 of the Rules read with form 29, the primary duty of substitution is on the legal representative(s). She next submits that the legal representatives of the land-holder had already taken steps and had indeed filed Vakalatnama along with objection on behalf of the landholder in 1990. Photo copies of some of the documents are annexed to the counter affidavit. She next submits that the notification u/s 11(1) of the Act is consequential to the order u/s 10(3) of the Act. Therefore, even if the petitioner's grievance as to non-substitution of the legal representatives of the land-holder is upheld, the notifications under Sections 11(1) and 15(1) of the Act only will have to be modified. She relies on the judgment in the case of Mohammad Raza and Anr. v. The State of Bihar and Ors. reported in 1999 (2) P.L.J.R. 241 . She next submits that the order u/s 10(3) of the Act, directing publication of the draft statement, is appealable. Therefore, the petitioner's cause of action arose on 5.9.1994. No appeal was filed against the same and the same has attained finality. She relies on the judgment in the case of Shiv Chandra Pandey and Others Vs. State of Bihar and Others, . She also submits that, in order to maintain the present writ petition, the petitioner being the grand-son of the land-holder, will have to establish that he himself was a major on 9.9.1970. In any view of the matter, his remedy lies u/s 45B of the Act. She relies on the judgment in the case of Shankar Prasad Sahi Vs. State of Bihar and Others . She also submits that, in any view of the matter, the proceeding will have to commence from the stage of Section 32B of the Act. She lastly submits that misplaced sympathy should not cloud the court's vision. She relies on the following reported judgments:

(i) Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, .

(ii) 2007 (3) BBCJ 363 , Ram Dhani Singh Vs. The State of Bihar and Others .

5. Learned Counsel for the petitioner submits in reply that the State of Bihar has

not taken the stand, as indeed it can not, that it had taken steps for substitution of the legal representatives at all. Taking some steps by one or the other legal representative in the land ceiling proceedings does not fulfill the requirement of law as to substitution. In any view of the matter, the two daughters of the land-holder were never in the picture and had never taken any step. He also submits that failure on the part of the legal representatives to bring about substitution as per Sub-rule (1) and Sub-rule (2) does not incur any penalty, the ultimate responsibility for substitution is on the Collector as per Rule 55(3) of the Rules. The same mandates that all the legal representatives have to be on record.

6. We have perused the materials on record and considered the submissions of learned Counsel for the parties. Section 45C of the Act reads as follows:

45 C. Substitution of legal representative in case of death of land-holder.- If the land-holder dies during the pendency of a proceeding, appeal or revision under this Act, the Collector or the appropriate authority, as the case may be, shall on an application made in this behalf or on his own motion substitute the name of the legal representatives in the manner prescribed in the rules, and the proceeding, appeal or revision shall thereon continue to proceed against the substituted land-holder or holders.

Rule 55 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 (hereinafter referred to as the Rules) provides as follows:

55. Procedure for substitution of legal representative in case of death of the landholder.- (1) The application for the substitution of legal representative u/s 45C shall be filed in Form L.C. 29 within thirty days of death of the land-holder by the legal representative of the deceased land-holder.

(2) On receipt of the application under Sub-rule (1), the Collector or the appropriate authority shall substitute the name of the legal representative and proceed with the case.

(3) Where no application is received within the period prescribed under Sub-rule (1), Collector or the appropriate authority shall proceed to substitute the name of the legal representative on his own motion.

(4) Where a question arises as to whether any person is or is not the legal representative of the deceased land-holder, such question shall be determined by the Collector or the appropriate authority.

It appears to me on a conjoint reading of Section 45 of the Act, and Rule 55 of the Rules, that the primary duty for substitution is on the legal representatives of the deceased land-holder. Sub-rule (1) and Sub-rule (2) of Rule 55 of the Rules has to be read with Form L.C. 29 which is the form prescribed for the legal representative(s) to file the substitution application. While interpreting the provisions of Section 45C of the Act, the Supreme Court has observed in its judgment in Balram and Others Vs. IIIrd Additional District Judge and Another, ,

that an application for bringing the legal representatives of the deceased landholder on record and an application for setting aside the abatement of appeal on account of filing applications for substitution within prescribed time will be governed by the provisions of Order XXII of the CPC and Articles 120 and 121 of the Limitation Act.

7. Order XXII Rule 10A of the CPC reads as follows:

Order XXII, Rule 10A. Duty of pleader to communicate to Court death of a party.- Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

The provision of law was considered by the Orissa High Court in the case of Braja Behera (supra). A learned Single Judge of the Court observed as follows in paragraph 9 of the judgment:

9. Mr. B.K. Nayak, learned Counsel for the appellants, submitted that under Order 22 Rule 10A, C.P.C. duty has been caste on the learned Counsel appearing for the deceased respondents to intimate the fact to the Court. It is so. However, no penalty has been provided for non-compliance of the provision. This provision is procedural. In absence of penalty for non-compliance of a procedural provision, the same is to be interpreted as directory and not mandatory. No doubt, non-compliance with such a provision would be a ground to condone the delay in case appellants satisfy the Court that the deceased having appeared, they remained assured and did not become vigilant to keep note of the whereabouts of the appearing respondent who died subsequently. This provision, however, does not absolve the appellants from taking steps for substitution non-compliance of which provides for a penalty. In this appeal, appellants did not rightly take a stand that they did not know the procedure since on earlier occasion, they had already taken steps for substitution of a deceased party. When the appellants had knowledge of the death and had been acquainted with the procedural law, non-compliance of Order 22, Rule 10A C.P.C. is not a sufficient cause either for condonation of delay or for setting aside abatement. Application for setting aside abatement has thus, no merit on the ground made out by the appellants and accordingly, petition for substitution is not entertainable.

8. Sub-rule (3) of Rule 55 of the Rules provides that if the legal representatives have not filed the substitution application within the prescribed period, then the Collector or the appropriate authority shall proceed to substitute the name of the legal representatives on his own. It is evident that no penalty is provided for non-compliance of Sub-rule (1) of Rule 55 of the Rules. Add to the same the presence of Sub-rule (3) of Rule 55 of the Rules, and Sub-rule (1) has to be held to be directory. In other words, if Sub-rule (3) were not on the statute book, the entire responsibility would have been on the legal representatives. In view of presence

of Sub-rule (3), I would prefer to hold that the ultimate responsibility is of the appropriate authority because it is the State of Bihar which shall loose on account of non-substitution. After all no order, judgment, or decree can be passed against a dead person. In the case of Kamal Krishan Rastogi (supra), which was also a case under the Act, the Supreme Court has observed in paragraph 9 of the judgment as follows:

...the order of the Additional Collector was also unsustainable for the additional reason that it was passed against a dead person.

9. I must candidly state that reconciling the provisions of Sub-rule (1) and Sub-rule (2), on the one hand, and Sub-rule (3) of Rule 55 on the other, is not free from difficulties. Learned Counsel for the petitioner has rightly relied on the judgment of this Court in the case of Mahanth Brij Narain Das (supra), wherein it has been held that the provisions of the Act are confiscatory in nature and in case of doubt or difficulty, the courts would lean in favour of the land-holder. Paragraph 12 of the judgment is reproduced hereinbelow for the facility of quick reference:

12. There is one more aspect of the matter. The prescribed authority must remind themselves of the scope and content of Section 45B of the Act before they take the decision to exercise the power. It is inherent in the provision that it is an extraordinary power which has to be seen in the background of the preceding provisions of the Act whereunder the land ceiling proceedings had been concluded and is sought to be re-opened had undergone the detailed procedure which is quite exhaustive. If such an approach is allowed to continue, the prescribed authority would be vested with arbitrary power to harass the land-holder for objects or reasons clearly beyond the scope of the provision and for mala fide reasons, as has happened in the present case. It may not be irrelevant to compare the aim, and objects of the present Act in contradistinction of those of the Bihar Land Reforms Act. In so far as the latter is concerned, the intermediary rights were taken away of the persons who had no title to the property, whereas the aim and object of the present Act is to deprive the land-holder of their title to the property. In other words, it is confiscatory in nature and, in case of doubt or difficulty, the Courts would lean in favour of the land-holder. (Emphasis added)

Learned Counsel for the petitioner has rightly relied on Part I to the schedule of the Act which prescribes the rate of compensation payable to the land-holder. It is manifest on the face of it that the schedule is a niggardly attempt to compensate the land-holder in a situation where he has valid title to the land. The schedule has to be read in contradistinction to the chart prepared by the State Government in different parts of the State to levy court fee for registration of documents. I am, therefore, of the view that the ultimate responsibility in the scheme of the Act for substitution of the legal representatives of the deceased land-holder is on the appropriate authority.

10. I must deal with the contention advanced by learned Standing Counsel that the three sons of the land-holder had already started participating in the proceedings, and had indeed filed duly executed Vakalatnama and filed objections on behalf of their mother, during her life-time. It is correct to state that Dilip Kumar Singh, Rabindra Nath Singh, and Ranbir Singh, the three sons of the landholder, had filed duly executed Vakalatnama (Annexure-B to the counter affidavit), in Land Ceiling Case No. 1 of 1976-77, on 14.12.1990, during the life-time of their mother, although they were not parties to the proceedings. They had under their joint signature filed their own objections u/s 10(3) of the Act on 14.12.1990 (Annexure-B/1 to the counter affidavit). The contention on the face of it seems to be attractive but does not survive a close scrutiny. Even if the aforesaid steps on the part of the three sons of the land-holder combined together are taken to be act of substitution, the contention clearly overlooks the fact that the land-holder had surely two daughters also who never participated in the proceedings, let alone the question of substitution. I am mindful of the legal position that, if the estate is represented by some of the legal representatives, then the same are not adversely affected on the ground of non-substitution of the remaining legal representatives, nor does the delay come in the way, provided substitution of the remaining heirs is made before the proceedings conclude. The situation here is that substitution of the legal representatives as per the prescribed procedure has never been made, particularly those of the daughters. If that were not so, the notification under 11(1) of the Act, published in the official gazette on 13.3.1996 (Annexure-5), would not have mentioned the name of Most. Debli Rani alias Debbala alone. The same does not at all mention the names of the three sons, let alone the two daughters. The same is the position with respect to the notification u/s 15(1) of the Act. In other words, the notifications u/s 11(1), as well as Section 15(1) of the Act, have been issued against a dead person.

11. I must now consider the effect of Ordinance No. 66 of 1981 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment), 1981 (Bihar ordinance No. 66 of 1981), published in the Official Gazette on 9.4.1981. In other words, the provisions of the ordinance were enforced with effect from 9.4.1981. It is further relevant to state here that the same was transformed into an Act of the legislature, namely, Act 55 of 1982, retrospectively with effect from 9.4.1981. Section 32A and Section 32B were inserted in the Act, and are reproduced hereinbelow:

32A. Abatement of appeal, revision, review or reference.- An appeal, revision, review or reference other than those arising out of orders passed u/s 8 or Sub-section (3) of Section 16 pending before any authority on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, shall abate:

Provided further that such appeal, review or reference arising out of orders passed u/s 8 or Sub-section (3) of Section 16 as has abated u/s 13 of the Bihar



Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) (Ordinance, 1981 (Bihar Ordinance No. 66 of 1981), shall stand automatically restored before the proper authority on the commencement of this Act.

"32B. Initiation of fresh proceeding.- All those proceedings other than appeal, revision, review or reference referred to in Section 32A pending on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land (Amendment) Act, 1982, and in which final publication under Sub-section (1) of Section 11 of the Act as it stood before the amendment by aforesaid Act, had not been made, shall be disposed of afresh in accordance with the provisions of Section 10 of the Act."

12. Section 32B of the Act is relevant in the present context and must receive our attention, inter alia, for the reason that elaborate submissions have been advanced by the learned Counsel for the parties. Learned Counsel for the petitioner has contended that in view of the provisions of Section 32B of the Act enforced with effect from 9.4.1981, the proceedings will have to commence De Novo. Learned Standing Counsel has opposed the submission. It appears to me that Section 32B of the Act was enforced with effect from 9.4.1981, before which only one event had taken place, namely, land ceiling proceeding had commenced on 11.10.1976. It is evident from a perusal of the chronology of events that the entire verification including publication of draft statement and the rest had taken place after 9.4.1981. The objections u/s 10(3) of the Act was disposed of by order dated 5.9.1994, in the presence of the land-holder. It thus appears to me that, even if the provisions of Section 32B of the Act were attracted in the present case, there is no need to reopen the proceedings. To conclude this aspect of the matter the proceedings shall not commence De Novo in the present proceedings.

13. Learned Standing Counsel is right in her submission that the order disposing of the objections u/s 10(3) of the Act is appealable, and the appeal has to be preferred within a period of thirty days. It is evident that the same was passed in the presence of the landholder on 5.9.1994, and she died on 12.1.1996. No appeal having been preferred against the order dated 5.9.1994, the same attained finality. Learned Standing Counsel has rightly relied on the judgment of a learned Single judge in the case of Shiv Chandra Panday (supra) It, therefore, automatically follows that the notification dated 13.3.1996 (Annexure-5), in terms of Section 11(1) of the Act, and the notification dated 12.5.2000 (Annexure-6), in terms of Section 15(1) of the Act, having been issued in the name of a dead person, has to be set aside. In view of our conclusion that the order dated 5.9.1994 has attained finality, it has to commence afresh thereafter.

14. The writ petition is accordingly allowed. The notification dated 13.3.1996 (Annexure-5), and the notification dated 12.5.2000 (Annexure-6), are set aside. The impugned order dated 4.7.2001 (Annexure-9), passed by the Board of Revenue, is also set aside.