

(2003) 02 JH CK 0082

In the Jharkhand High Court

Case No : CWJC No. 802 of 1995 (R)

Shaheen Co-operative House Construction Society Ltd. and
Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4

Citation : (2003) 2 JCR 386

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Debi Prasad and Lalit Kumar Lal, for the Appellant; R.S. Mazumdar, G.A., A. Banerjee and P.N. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. Debi Prasad, learned Sr. Advocate assisted by Mr. Lalit Kr. Lal and Mr. R.S. Mazumdar learned Government Advocate, assisted by Shri A. Banerjee and Shri P.N, Mishra, Advocates.

2. The writ petitioners pray for quashing of the entire proceedings in case No. 18 of 1986-87 u/s 4(h) of the Bihar Land Reforms Act, 1950, the proceedings whereof are contained at Annexure 30. By reason of the aforementioned proceedings, the respondents passed an order for annulment of settlement in respect of 33.00 acres of land out of Revisional Survey Plot No. 758 appertaining to Khata No. 189 and situated at Village - Soparan, P.S. Ratu, District - Ranchi. By reason of the same order the Jamabandi which was opened in the name of Petitioner No. 1 (Society) was also ordered to be cancelled and direction was made for taking possession of the lands in question.

3. Mr. Debi Prasad, learned Sr. Advocate has made a very short argument and he has submitted that proceedings u/s 4(h) had already been dropped earlier by the competent authority (Land Reforms Deputy Collector) on 22.6.1989 (vide

Annexure 27) and the State did not prefer any appeal against the said order. Consequently the order dropping the proceedings on 22.6.1989 attained finality where after the State Respondents had absolutely no authority or jurisdiction to proceed with the matter.

4. According to him, in view of the proceedings having attained finality, the same could not have been re-opened.

5. Mr. R.S. Mazumdar, learned G.A. has submitted that there was no illegality in passing the impugned order inasmuch as the L.R.D.C. had firstly made a report on 24.1.1988 (Annexure-D to the Counter Affidavit) by which he recommended that Jamabandi should be cancelled under the provisions of Section 4(h). Subsequently he again passed an order dropping the proceedings and therefore, being placed with two different contradictory reports, the Additional Collector had no option but to make an independent inquiry. Having so conducted an independent inquiry, the authorities came to a conclusion that there were violation in the matter relating to settlement of the lands and therefore the impugned order was correctly passed. He therefore submits that the order dropping the proceedings by the L.R.D.C. did not end the matter as it was merely interlocutory in nature which required further processing and therefore whatever was done at the level of the Additional Collector was proper and justified.

6. In the backdrop of the aforesaid submissions, this Court looked into various documents cited and referred to by the parties. Annexure-D is the order dated 24.1.1988 and it is an order by which the Land Reforms Deputy Collector recommends proceedings u/s 4(h) for purposes of cancellation of settlement. From a perusal of the said recommendation, it appears that on the same day he directed that the matter be placed before the Additional Collector for necessary action. The relevant portion of the order is quoted below :--

^^vr% mDr rF;ksa ds vkyksd esa ,sls ekeyksa esa Hkwfe lq/kkj vf/kfu;e dh /
kkjk 4@,p@dh dkjZokbZ dj cUnksLrh jn~n dh tk ldrh gS A ekStk lksikje dk
iqjkuk iath] [kfr;ku ,oa yxkrkj [kfr;ku esjs ikl lqjf{kr gS] ftls ekaxus ij Hkstk
tk;sxk A izfrosnu vij lekgrkZ] jkWph dks vko";d dkjZokbZ gsrq Hksth tk; A**

7. It appears that after the matter was placed before the Additional Collector on 2.6.1988, the said Officer directed the Halka Karmchari to look into the same and make necessary report. That order is contained on the reverse of running page 221 of the writ application (page 54 of the Counter Affidavit) and which is dated 2.6.1988 which reads as follows :--

^^vfHkys[k mi lekgrkZ Hkwfe lq/kkj lnj jkaph ls 989 fnukad 28-5-1988 ds lkFk
izkIr gqv k A

vfHkys[k esa vkfn"kkuqlkj fcgkj Hkwfe lq/kkj vf/kfu;e dh /kkjk 4@,p@ds vUrxZr
cUnksLrh jn~n gsrq funsZ"k fn;k x;k gS A

gYdk deZpkjh ls mDr lEcU/k esa izLrko dk ekax gsrq dgk tk; A**

8. After the aforementioned order was passed on 2.6.1988, the Circle Officer gave his report on 19.12.1988 (running page 132 of the Writ Application) (Annexure 26). The said report takes into consideration various aspects of the settlements and finally comes to a conclusion at running page 138 that this was not a fit case for taking action u/s 4(h) of the Bihar Land Reforms Act, 1950. The relevant portion of the report of the Circle Officer is quoted below :--

^^mijksDr rF;ksa ds vkyksd esa ;g ekeyk fcgkj Hkwfe lq/kkj vf/kfu;e dh /kkjk 4p@ ds vUrxZr dkjokbZ fd;s tkus yk;d izhrh ugh gksrk gS A vfHkys[k Hkwfe lq/kkj mi lekgrkZ jkaph Inj ds ikl Hkstk tk; rkfd muds Lrj ls Hkh bl lacU/k esa iw.kZ Nkuchu dj vkxs dh dkjokbZ dh tk ldsa A

gLrk{kj gLrk{kj vapy

vapy vf/kdkjh vf/kdkjh

9. After the aforementioned report had been submitted on 19.12.1988, the Land Reforms Deputy Collector applied his mind and by order dated 22.6.1989 (Annexure 27) [running page 139], passed an order dropping the proceedings u/s 4(h). The relevant portion of the order is at running page 144 of the Writ Application and it reads as follows :--

^^vr% mijksDr rF;ksa ds vkyksd esa 4@,p@ dh dkjokbZ lekIr dh tkrh gS A bl vkns" k dh izfr ljdkjh vf/koDrk ,oa vij lekgrkZ jkaph dks Hksth tk; A ys[kkfir ,oa la"kksf/kr**

10. The aforementioned order dated 22.6.1989 attained finality. The State respondents did not prefer any appeal against that order. Surprisingly, however, after about one year thereafter on 6.7.1990, the Land Reforms Deputy Collector again initiated the matter and doubted the finding of adverse possession. The relevant portion of the said order can be found at pages 149 to 150 of the Writ Application and it reads as follows :--

^^vpy inkf/kdkjh ds mDr izfrosnu ij iqu% rRdkyhu milekgrkZ] Hkwfe lq[kkj us fnukad 12-6-1989 dks 4@,p@ dh dk;Zokgh lekIr dj fn;k tcfD muds }kj k iwoZ esa Hkh ;g fy[kk x;k gS fd >xM+kyw tehu ijrh dnhe gS vkSj eksje gS A vfHkys[k esa miyC/k dkxtkr ftlesa ljdkjh jlhn] fjVuZ dh izfr] ikVhZ"ku lwV dk udy oxSjg dk Hkh xgu Nkuchu yxrk gS lgh <ax ls ugh fd;k x;k gS A rRdkyhu milekgrkZ Hkwfe lq/kkj us adverse Possession dh ckr Hkh fy[kk gS ysfdu ijrh vkSj eksje ls Hkjk iM+k tehu ij ;g ykxw gksxk ;k ughaa bl ij Hkh vuqeaMy inkkf/kdkjh fu.kZ; ysuk pkgxsA A

mi;qZDr rF;ksa ds vkyksd esa vij lekgrkZ ds }kj iwNs x;s fcUnqvksa ij vuqeaMy inkf/kdkjh fu.kZ; ysuk ?i;k pkgxsA A

vfHkys[k vuqeaMy inkf/kdkjh ds le{k j[ksa A

11. The aforementioned order dated 6.7.1990 appears to have been initiated upon orders received from the Sub Divisional Officer who seems to have raised certain points. Thereafter the file moved from one table to the other and just one

day prior to 1.9.1994, the matter was placed before the Deputy Commissioner and the Additional Collector for obtaining approval of the Government. Thereafter the order sheet dated 1.9.1994 shows that the State Government also gave its approval.

12. The short point that therefore falls for consideration by this Court, is as to whether the proceedings u/s 4(h) having terminated in favour of the Petitioners by reason of the order dated 22.6.1989 and the State Government having not preferred any appeal against the said order can the matter be allowed to be reviewed/re-opened by officers of the Government?

13. The answer clearly should be in the negative. In other words, the proceedings u/s 4(h) having been dropped and the State having not preferred any Appeal, the matter could not have been re-opened by the authorities because there is no provision in the statute which empowers the authorities to take recourse to such a procedure. Reference in this context may be made to a Division Bench Judgment of the Patna High Court in the case of Bidyut Kumar Ganguly v. State of Bihar and Ors., reported in 1980 BBCJ 476. Paragraph 8 of the said Judgment is worth re-producing and it reads as follows :--

"After hearing the learned counsel for the petitioner and the learned Government Pleader, I think that the contention raised on behalf of the petitioner is well-founded and must be accepted. From the facts mentioned above and on a perusal of the various orders passed by the authorities from time to time, it is absolutely clear that all proceedings u/s 4(h) of the Act had terminated in favour of the petitioner. These orders passed u/s 4(h) are appealable u/s 8 of the Act, but no appeal was preferred by the State and, therefore, the order became final, which applies equally to a private individual and the State. Now, the State is not competent to re-open the matter when various authorities have decided the question more than once after fully applying their mind to the facts of the case and without any fresh material whatsoever. The aforesaid orders bind also the State, and it cannot be said that they can reopen the matter whenever they like. Respondent No. 3, who is a public servant, may have acted in a bona fide manner in the interest of the State, but, at the same time, it is the duty of a public servant to see that persons are not unnecessarily harassed and dragged in the Court of law. The matter was being investigated by the authorities since 1965, and even after it had become final, again a fresh notice (Annexure-7) has been issued to the petitioner, wrongly stating therein that the proceeding u/s 4(h) was still pending and had not been decided, which is an error apparent on the face of the record, before issuing such notice, it was the duty of respondent No. 3 to acquaint himself with the previous orders passed by his superior officers from time to time which were all in favour of the petitioner, and I am constrained to hold that respondent No. 3 has not acted in a diligent manner. The authorities under the Act have been discharging quasi-Judicial functions and, therefore, it is their utmost duty to see that citizens are not unnecessarily harassed and dragged into litigation. Instead of moving against the orders passed u/s 4(h), the

matter is raked up again and again, which, in my opinion, amounts to mala fide exercise of power and causing harassment not only to the petitioner but also to other and also waste of time and public money. The proceeding is sought to be reopened against a citizen who has always been co-operating in the proceedings and placing all materials before the authorities whenever asked for."

14. From the aforementioned Judgment of the Division Bench, it is therefore, apparent that proceedings having been dropped u/s 4(h) and an Appeal not having been filed, fresh proceedings were clearly barred. In this context the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950 is also worth taking note of and which reads as follows :

(h) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, *** and if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard *** annul such transfer, disposes the person claiming it and take possession of such property on such terms as may appear to the Collector to be fair and equitable;

Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall He to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure;

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

15. From a perusal of the aforesaid statutory provisions, it appears that the State Government did have the option to file an Appeal but it chose not to do so. Having chosen not to file an Appeal they could not have been allowed to achieve something indirectly by a process which is impermissible i.e. by either reviewing or by re-opening the proceedings. The filing of an Appeal was the only remedy before the State but the State chose not to do so. Having, therefore, not chosen to file an Appeal, the State, therefore, cannot be allowed to take recourse to a provision which virtually amounted to review of the earlier order.

16. The State is not competent to reopen the matter. Similar view has been taken by yet another Division Bench in the case of Sharda Prasad Rai and others v. State of Bihar and Ors., reported in AIR 1984 Pat 65, where the Division Bench, apart from holding the same view, has also held that principle of res judicata applies to revenue matters.

17. In that view of the matter, therefore, this Court has no option but to hold that the re-opening of the proceedings was wholly without jurisdiction. Consequently the Writ Application is allowed and all proceedings in case No. 18/1986-87 which were initiated after 22.6.1989 (i.e., after Annexure 27) are held to be wholly without jurisdiction and consequently quashed. The Writ Application is accordingly allowed. There shall however be no order as to costs.