

(2007) 05 PAT CK 0037
In the Patna High Court
Case No : CWJC No. 2647 of 2007

Shankar Narayan Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 23-05-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(3), 15, 15(1)

Citation : (2007) 3 PLJR 740

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Gyanand Roy, Sheo Nandan Mishra and Pooja Choudhary in both, for the Appellant; Ajay and Rajnish Kant, for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. The two writ applications have been filed against a notification issued in terms of Section 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The facts being similar the two writ applications are taken up and being disposed of by a common order. It may be noted that initially one proceeding was there which has been split up into two proceedings giving rise to the two proceedings.

2. State has filed a counter-affidavit in both the writ applications.

3. The petitioner has challenged the notification issued in terms of Section 15 of the Act. The facts leading to the present writ application and the preliminary objection by the State is the maintainability of this application have been noticed and dealt with by order dated 19.3.2007 passed in these cases and as such, are not being noted in detail except in so far as they are relevant for the final disposal of the cases.

4. The short submission of the petitioner is that initially ceiling proceeding was decided in favour of the predecessor in interest of the petitioner in 1976. It was

sought to be reopened. this Court quashed the reopening. The matter was then reconsidered and reopened. Final orders were passed. Petitioners having right to appeal filed statutory appeals before the Divisional Commissioner. Admittedly, those statutory appeals are pending. The Collector being over jealous and extra anxiety of showing results ignoring the pendency of appeal and without enquiry about it approved and issued final notifications u/s 15(1) of the Act declaring substantial lands to the ceiling surplus and only to frustrate the appeal and cause undue harm to the petitioner and gain popularity distributed parchas all against statutory provisions This is what brought the helpless petitioners to this Court.

5. The petitioner has rightly referred to provision of Section 15 of the Act in this regard, proviso to sub-section 1 of Section 15 clearly stipulates that the Collector may proceed to acquire and distribute ceiling surplus land without waiting for the result of appeal or revision only in cases where there is no claim or dispute in respect of surplus land or those admitted to be surplus by the landholder. This provision clearly restricts the power of the Collector to deal with declared surplus land till the decision in appeal or revision. Again sub-section 3 of Section 15 of the Act provides that subject to any order made in appeal or revision, after publication of notification under sub-section 1, the Collector may take possession of surplus land even by force. This sub-section again makes the action of the Collector dependant on order passed in appeal or revision and publication of notification. The scheme of Section 15 thus, would be that not with standing final orders in terms of Section 10(3) of the Act the Collector would have to wait for the result of appeal or revision except in case as provided by the first proviso to sub-section 1 of Section 15 He cannot issue notification and/or take possession and/or starts for distribution of land without waiting for appeal or revision The reason is simple. The reason is that once a notification is published in terms of sub-section 1 of Section 15 then by operation of the provision of sub-section 2 the ceiling surplus land would automatically vests in the State investing ownership and title of the landholder. Once ownership is vested in the State then it could be restored to the landholder by a proper conveyance only or by a declaration by a Court of competent jurisdiction that the notification itself was invalid. Secondly, once the properties vests in the State the State chooses to distribute to the landless and gives possession to them then those persons would be free to utilise the land in the manner they like. They would build their houses and if by virtue of the appeal or revisional order the notification is to be set aside it would be impossible to restore the possession of the landholder, apart from compensating him for the loss for the period he was deprived of his land. Thus, keeping in view these situations the Collector has been given a limited authority to deal with ceiling surplus land only to the extent in regard to which there is no dispute as contemplated in the first proviso to sub-section 1 of Section 15. In my view, therefore the action of the Collector in immediately starting the process of taking over land and distributing without waiting for statutory appeal or revision is clearly against the statutory jurisdiction conferred on the Collector in this regard and cannot be accepted by this Court as

a valid exercise of powers.

6. The Learned Counsel for the State with reference to the counter-affidavit has stated that the district authorities have no information with regard to pendency of the statutory appeal. The plea is too spacious to be accepted much less acted upon. This shows the incompetence of the district authorities who do not even care to verify from their own superiors about appeal or revision being filed. They decide by their own act to shut their eyes and ears with only a colourable intention. The officers and statutory authorities are not expected to work and perform their statutory duties in such a manner. Before proceeding to distribute or issue notification the power to do which is dependant on appeal or revision if anything they should require landholder to the proceeding to inform them of appeal or revision filed by them or it is ascertained through their own official channel from the appellate or revisional authority. But such a thing is never done and what is done is shutting their eyes and ears and notifications are issued, lands taken over and distributed creating untold harassment to the landholders leading even at times to law and order problems.

7. In view of the aforesaid fact which is the fact in the present case I have no opinion but to quash the notification u/s 15(1) of the Act (Annexure-1 in both the cases) and restrain the Collector from taking any further action during the pendency of the statutory remedies as preferred by the petitioners in respect of the lands in question. This writ applications are allowed.