

(1995) 01 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 356 of 1995

Shiv Chandra Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-01-1995

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(3), 30, 30(1)(a)

Citation : (1995) 2 BLJR 1267 : (1995) 2 PLJR 127

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—What is the precise stage in a land ceiling proceeding at which the land-holder may prefer an appeal u/s 30 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act ("the Act" for short) against the rejection of his objections to the draft statement published u/s 10(2) of the Act? This is the question that falls for consideration in this case.

2. The facts are brief and simple and can be stated as follows. The petitioners objections to the draft statement were rejected by the Collector by an order, dated 30.4.93, passed u/s 10(3) of the Act. The petitioners did not prefer an appeal within thirty days from the date of this order. The draft statement was then finally published in the official gazette and its occupy was served on the petitioners, in terms of Section 11(1) of the Act on 3.11.94. On 4.11.94, the petitioners applied for the certified copy of the order dated 30.4.93 passed u/s 10(3) of the Act. They obtained the certified copy of the order on 23.11.94 and filed their appeal on 1.12.94. Along with the memo of appeal the petitioners also filed a petition for condoning the delay in filing the appeal. However, on 17.12.94 a notification u/s 15(1) of the Act was published in the gazette without disposing of the petitioners' appeal or even taking it for consideration. The petitioners are aggrieved by the action of the authorities in publishing the notification u/s 15(1) even while their appeal against the rejection of their objection to the draft statement was pending.

3. Section 15(1) of the Act provides that the publication of the notification in the official gazette shall be subject to any appeal or revision filed by the land holder. In that view the validity of the action of the Collector in making the publication u/s 15(1), disregarding the appeal filed by the petitioners, would depend upon the question regarding the competence of the petitioners appeal. If it is held that an appeal lay against the order passed u/s 10(3) of the Act and should have been filed within 30 days (the period of limitation prescribed u/s 30) from the date of that order, then, the petitioners' appeal was barred by limitation and the Collector might have been justified in disregarding it in making the publication u/s 15(1) of the Act. If, on the other hand, the appeal could be preferred only after the final publication of draft statement u/s 11(1) (and not before it) then the petitioners' appeal was perfectly competent and in that case the publication of the notification u/s 15(1) of the Act without disposing of the appeal would be clearly violative of Section 15(1) and would render the notification ultra vires Section 15(1) and liable to be quashed on that ground.

4. Mr. S.S. Dwivedi, learned Counsel for the petitioners submits that the appeal could be filed only after the final publication of draft statement u/s 11(1) (and not before that) and hence the petitioners' appeal filed within 30 days from the date of service of the final draft was perfectly competent and the Collector was legally bound to entertain and dispose of the appeal before making publication of the notification u/s 15(1) of the Act.

5. At this stage it will be useful to take a look at Section 30 of the Act which is in the following terms:

30. Appeals (1) (a): An appeal shall lie from any final order passed by any officer vested with the power of the Collector under this Act other than the Collector of the district to the Collector of the district or any other officer specially authorised in this behalf by the State Government within thirty days, of such an order.

(b) An appeal shall lie from any final order passed by the Collector of the district to the Commissioner of the Division within thirty days of such order:

Provided that no appeal shall lie against orders passed u/s 5 and Section 29 before the final publication of the draft statement under Sub-section (1) of Section 11:

Provided further that appeal against orders passed u/s 5 and Section 29 shall be filed within thirty days from the date of final publication under Sub-section (1) of Section 11.

(2) An appeal under this section shall be heard and disposed of in the prescribed manner."

The plain language of Section 30(1)(a) of the Act is capable of only one meaning and it is this that an appeal shall lie from any final order and the appeal must be within 30 days from the date of the order appealed against.

6. Now an order u/s 10(3) disposes of the land-holder's objections against the draft statement prepared u/s 10(2) and finally determines the extent of surplus land available with the land-holder for the purpose of acquisition by the State Government. By every reckoning such an order would be a final order within the meaning of Section 30(1)(a) and applying the most stringent tests, it cannot be said that an order u/s 10(3) of the Act is an interlocutory order or an order not in the nature of a final order. Prima facie, therefore, an appeal shall lie against an order passed u/s 10(3) of the Act and such an appeal must be preferred within 30 days from the date of the order.

7. It may also be noted here that the first proviso to Section 30(1) would be of no help for the contention that an appeal would lie only after the final publication of the draft statement u/s 11(1) for the reason that the proviso plainly relates to appeals against only two kinds of orders specified in the proviso, namely, an order passed u/s 5 (that is to say, relating to permission for transfers and annulment of transfers etc.) and Section 29 (relating to exemptions from the provisions of the Act).

8. Mr. S.S. Dwivedi relied upon a Division Bench decision of this Court in the case of Ram Kishore Narain Singh and Others and Devi and Others Vs. State of Bihar and Others , in support of his contention that an appeal against an order u/s 10(3) of the Act could also be filed only after the final publication of the draft statement u/s 11(1). It is indeed true that such observations have been made in para 42 of the judgment which is reproduced below:

42. After coming into force of the Act No. 56 of 1982 in terms whereof Sections 11 and 15 were amended; an appeal can be preferred only upon final publication of the statement made u/s 11(1) of the Act. Such appeal can be preferred by the land holder or any other persons aggrieved or to whom notices had been issued upon publication of the final statements and not prior that to. In this view of the matter, the question of publication of any notification u/s 11 of the Act subject to any appeal or revision does not arise.

Having gone through the judgment very carefully and having given my anxious consideration to this matter, I find myself unable to follow the aforequoted observations for more reasons than one. First, with utmost respect to their Lordships I find that the observations quoted above were wholly in the nature of obiter as the question regarding the stage at which an appeal could be filed never fell for consideration in that decision. This can be easily shown from the decision itself where after having narrated the facts of the two cases that were before the Bench, the questions which arose for consideration in those cases were formulated in para 17 of the judgment which is as follows:

17: The questions, which, therefore, arise for consideration in these application are:

(i) Whether any notification u/s 15(1) of the Act can be issued during pendency of an appeal or a revision application?

(ii) Whether the authorities under the Act had any jurisdiction to take possession of the land during pendency of the appeal or a revision application?

Thus, the question regarding the stage at which an appeal was to be filed *ex facie* did not arise in that decision and the observations made in para 42 were no more than mere passing observations.

9. Secondly, the observations in para 42 have been made without assigning reasons for taking a view other than the one which arises from a plain reading of Section 30(1)(a) of the Act.

10. And thirdly, a somewhat contrary observation to the one made in para 42 is to be found in the same judgment in para 23 which is as follows:

23: The landholder if dissatisfied with the order passed u/s 10(3) of the Act is entitled to prefer an appeal in terms of Section 30 of the Act read with Rule 48 of the Rules the period of limitation wherefor is 30 days.

For the reasons aforesaid, I am constrained to hold, with utmost respect to their Lordships of the Division Bench, that the observations made in para 42 of the judgment are not to be followed as a binding precedent laying down the law relating to the stage at which an appeal is to be preferred against an order u/s 10(3) of the Act.

11. Mr. Dwivedi then submitted that Section 30 of the Act, if read in isolation, might not support his stand regarding the stage of filing of the appeal but one would arrive at that inference if one takes into consideration the amendments brought about by Act 55 of 1982 in Sections 11 and 15 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land Act, 1961 as they stood before the amendment. Dr. Dwivedi further submitted that the Bench decision of this Court in the case of Ram Kishore Narain Singh (*supra*) had the occasion to consider the consequences of the amendments introduced in (he Land Ceiling Act by Act 55 of 1982 and in that regard the observations were made (in para 42 of the judgment) that an appeal against an order u/s 10(3) could also be filed only after the final publication of the draft statement u/s 11(1).

12. Sections 11 and 15 before their amendment by Act 55 of 1982 stood in the following terms:

11. Final publication of draft statement.-(1) When the objections under Sub-section (3) of Section 10, appeal and revision, if any, relating thereto, have been disposed of, the Collector shall make such alteration in the draft statement as may be necessary to give effect to any order passed on the objection or, on appeal or revision and shall cause the said statement with the alternation, if any, to be finally published at such places and in such manner as may be prescribed under Sub-section (2) of Section 10 and a copy thereof, duly certified by the Collector in the prescribed manner shall be given to the land-holder concerned.

(2) The statement published under Sub-section (1) shall be conclusive evidence

of the facts stated therein for the purpose of this Act and shall not be called in question in any Court.

(3) Copies of such statement duly authenticated in the prescribed manner shall be sent by the Collector within such period to such authority or authorities, as may be prescribed.

15. Acquisition of surplus land-(1) Subject to the provisions of Sub-section (5), the State Government shall, after the final publication of the statement under Sub-section (1) of Section 11, acquire the surplus land by publishing in the Official Gazette a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned.

(2) On the publication of the notification under Sub-section (1), the land specified in the notification shall, subject the provisions of this Act, be deemed to have been acquired for the purpose of this Act and vested in the State free from all encumbrances with effect from the date of the notification and all right, title and interest of all persons claiming interest therein, shall, with effect from that date, be deemed to have been extinguished.

(3) Subject to (x x x x x x) any order made on appeal or revision, the Collector may at any time after the publication of the notification under Sub-section (1) take possession of any land specified in the said notification and may for that purpose use such force as may be necessary.

(4) If the mortgagor becomes entitled to recover possession of his mortgaged land u/s Section 12 of the Bihar Money Lenders Act, 1974 (Bihar Act XXII of 1975) and the area of such mortgaged land, together with the land, if any, held by him anywhere in the State, exceeds the ceiling area, then the provision of Section 18 shall apply thereto as if such mortgaged lands were an acquisition under that Section and thereafter the land which the mortgagor is not entitled to retain shall be deemed to have been acquired for the purposes of this Act and vested in the State in accordance with Sub-section (2).

It is apparent that in terms of the aforeq-uated provisions, the land ceiling authorities were obliged to wait, after the disposal of the objection in terms of Section 10(3) of the Act, for the orders passed in appeal and revision, if any, filed by the land-holder against the order u/s 10(3) of the Act before making the final publication of the draft statement. In terms of the earlier scheme thus, any changes in the draft scheme, resulting from the appellate or the revision orders were to be taken into account and incorporated in the final publication of the draft statement u/s 11(1). This publication would, thus, be really final in the ordinary meaning of the word and would be immutable from any further changes and the statement contained there would be published as it is as the notification u/s 15(1) of the Act. The wait for the disposal of appeal and revision would, however, entail some delay at the stage of the final publication of the draft statement u/s 11(1). With a view to eliminate the delay at that stage, the

following amendments were made in the two Section by Act 55 of 1982 and after their amendments, they stand in the following terms:

11. Final publication of draft statement.-(1) When the objection of claim, if any, preferred under Sub-section (3) of Section 10 has been disposed of, the Collector shall, whether there is any surplus land or not, make such alteration in the draft statement as may be necessary to give effect to any order passed on the objection or claim and shall cause the said statement with the alteration, if any, to be finally published in the Official Gazette of the district and in such place and in such manner as may be prescribed and a copy thereof duly certified by the Collector in the prescribed manner, shall be sent to the land-holder by registered post with acknowledgment due.

(2) Copies of such statement duly authenticated in the prescribed manner shall be sent by the Collector within such period to such authority or authorities, as may be prescribed.

15. Acquisition of surplus land.-(I) The State Government or the Collector of the District specially so empowered in this behalf after the statement under Sub-section (1) of Section 11 has been finally published and subject to appeal or revision, if any, acquire, the surplus land by publishing in the Official Gazette of the District, a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned:

Provided that without awaiting the result of appeal or revision the State Government or the Collector of the district specially so empowered in this behalf may proceed to acquire such of the surplus land of the land-holder in respect of which there is no claim or dispute or which is admitted by the land-holder to be surplus:

Provided further that a copy of the notification shall also be sent to the landholder concerned by registered post with acknowledgment due.

(2) On the publication of the notification under Sub-section (1), the land specified in the notification shall, subject to the provisions of this Act, be deemed to have been acquired for the purpose of this Act and vested in the State free from all encumbrances with effect from the date of the notification and all right, title and interest of all persons claiming interest therein shall, with effect from that date, be deemed to have been extinguished.

(3) Subject to (***) any order made on appeal or revision, the Collector may at any time after the publication of the notification under Sub-section (1) take possession of any land specified in the said notification and may for that purposes use such force as may be necessary.

(4) If the mortgagor becomes entitled to recover possession of his mortgaged land u/s 12 of the Bihar Money-Lenders Act, 1974 (Bihar Act XXII of 1975) and the area of such mortgaged land, together with the land, if any held by him

anywhere in the State, exceeds the ceiling area then the provisions of Section 18 shall apply thereto as if such mortgaged lands were an acquisition under that Section and thereafter the land which the mortgagor is not entitled to retain shall be deemed to have been acquired for the purposes of this Act and vested in the State in accordance with Sub-section (2).

From the provisions as they stand after amendment, it is clear that the final publication of draft statement is to be made immediately after the order passed u/s 10(3) of the Act and the final publication is to incorporate the changes in the draft statement, if any, resulting from that order. The final publication is to no longer await the orders passed in appeal or revision, if any, preferred by the land holder against the order u/s 10(3) of the Act. This would naturally expedite the final publication but the expedition is made at the expense of the immutability of the final draft statement inasmuch as the consequent amendment in Section 15(1) makes it clear that now even though the final publication u/s 11(1) is made, the publication of the gazette notification in terms of Section 15(1) must await the result of any appeal or revision referred by the land holder and the notification must incorporate the amendments, if any, resulting from the orders passed in appeal and revision.

13. The changes that would result in actual practice on account of the amendments in Sections 11 and 15 would, therefore, be thus: under the earlier scheme the authorities, after the disposal of the objections u/s 10(3) of the Act, were obliged to wait for at least 30 days within which the land holder could prefer an appeal against the order u/s 10(3). In case no appeal was preferred, the authorities were free to make the final publication u/s 11(1); in case, however, an appeal was preferred against the order u/s 10(3), the authorities were obliged to wait further till the appeal was disposed of by the appellate authority so that any direction given in the appellate order could be taken into account before making the final publication. There would be the same position after the passing of the appellate order in respect of any revision to be filed by the land holder.

However, once a final publication was made u/s 11(1) of the Act having taken into consideration, the orders under appeal and revision, the authorities could without any delay and without any further changes therein make the publication of the notification in the gazette u/s 15(1) of the Act.

14. After the amendments, however, and in the terms of the law as it stands today, the authorities are no longer obliged to wait after the order u/s 10(3) is passed and the final publication is to be made straightaway taking into account only the directions given in the order passed u/s 10(3) of the Act. But even after the publication u/s 11(1) has been made, the authorities are no longer free to make a publication of the notification u/s 15(1) in case an appeal or revision is pending against the order u/s 10(3) of the Act. Hence, after the final publication u/s 11(1) is made, the authorities will be obliged to find out whether any appeal filed by the land-holder was pending and in that case shall have to withhold the publication u/s 15(1) until such time as the appeal was disposed of and shall

then have to follow the directions, if any, given in the appellate order and to suitably alter and amend the final publication u/s 11(1). The authorities shall similarly have to wait for the order in revision, if any, preferred by the land-holder and then only a publication of notification u/s 15(1) can be made taking into account the orders passed in appeal or revision.

15. From the above discussion it would be apparent that though the amendments introduced by Act 55 of the 1982 were quite substantial, they leave the stage at which the appeal is to be preferred-against the order u/s 10(3) of the Act quite unaffected.

16. In fact, the only amendments introduced by Act 55 of 1982 in Section 30 was the introduction of the two provisos relating to appeals against orders passed under Sections 5 and 29 and further providing that appeals against those two orders could be filed only after the publication u/s 11(1).

17. Having given my anxious consideration to the submissions made by Mr. Dwivedi and having examined the amendment brought about by Act 55 of 1982, I come to the unescapable conclusion that an appeal against an order u/s 10(3) of the Act must be filed in terms of the law as it stands at present, within 30 days from the date of the order disposing of the objections made by the land-holder, and the filing of an appeal against the order passed u/s 10(3) of the Act has got nothing to do with the final publication of the draft statement u/s 11(1) of the Act. I am, thus, unable to uphold Mr. Dwivedi's contention that the appeal filed by the petitioners in this case was within time and fully competent.

18. Having thus laid down what appears to me to be the correct legal position, I come back to the facts of this case. In this case the appeal was filed within 30 days from the date of receipt of a copy of the final draft statement. Thus though the appeal was much beyond the period of limitation as held in this decision, the observations of the Division Bench of this Court in Ram Kishore Narain Singh's case (supra) provide a perfect alibi to the petitioners for filing the appeal after such delay and there can be no better ground for condoning the delay as available to the petitioners in this case.

19. In that view, I find it appropriate to direct the Collector to condone the delay in filing the appeal by the land-holder and to dispose it of on merits after affording an opportunity of hearing to the petitioners.

20. Since the petitioners' appeal would be deemed to be pending by virtue of this order, the publication of the gazette notification dated 17.12.1994 in terms of Section 15(1) of the Act has to be set aside and it is accordingly set aside. The publication of the notification u/s 15(1) would now be made in the light of the observations and directions made earlier in this judgment taking into account the orders passed in appeal and/or revision filed by the petitioners.

21. This application is disposed of with the observations and directions given above.