
(1993) 05 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 11011 of 1992

Shiv Nandan Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-05-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 32B

Citation : (1993) 2 BLJR 1025 : (1993) 2 PLJR 311

Hon'ble Judges : S.B. Sinha, J;R.M. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 14-9-1992 passed by the Respondent No. 2 in Ceiling Appeal No. 1/92-93 and whereby and where under he hand set aside the orders dated 28-8-89 and 8-9-91 as also the order dated 24-11-1992 and transferred the records of the case to his own court.

2. The fact of the matter lies in a very narrow compass.

3. The petitioners are land-holders. A land ceiling proceeding was initiated against them. In the said land ceiling proceeding a return was filed and a verification report was submitted in accordance with the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act) and the rules framed thereunder.

4. By an order dated 22-7-1976 the Collector under the said Act held that the petitioner No. 1 possessed 153.36 acres of Class IV lands. It was further held that the petitioner No. 1 was entitled to retain 63 acres of land 90.36 acres of land were declared surplus.

5. An objection was preferred by the petitioner, No. 1 against the aforementioned draft publication and by an order dated 2nd September, 1976 a verification report was called for. The matter was heard on 30th May, 1988 and order was

passed on 28-8-1989 which is contained in Annexure-2 to the writ application wherein it was held that the petitioners do not hold any surplus land.

6. According to the petitioners, no appeal was preferred by the State as against the said order. On 8-9-1989 a notification u/s 11(1) of the Act as contained in Annexure-3 to the writ application was issued.

7. However on 24-12-1991 an order was passed by the Sub-divisional officer which is contained in Annexure-A to the counter affidavit wherein 57.13 acres of land were held to be surplus and a notification u/s 15(1) thereof was directed to be issued.

8. A final publication was made on 29-2-1992. The petitioners preferred an appeal against the said order and an order of stay was passed therein.

9. By reason of the impugned order dated 14-9-1992 as contained in Annexure-5 to the writ application, the Collector under the Act, however set aside the order dated 28-9-89 (Annexure-2) 8-9-91 (Annexure-3) as also the order dated 24-11-1992.

10. In this application the petitioners have alleged that the Sub-Divisional Officer had passed the order as contained in Annexure-A to the counter affidavit, as there was a quarrel between the bodyguard of the respondent No. 4 on the one hand and the petitioner No. 1 and his two sons on the other and thus the respondent No. 4 was biased against the petitioner and the impugned order as was passed by the Sub-Divisional Officer at the instance of the respondent No. 4.

11. It has been alleged that the respondent Nos. 2 to 4 entered into a conspiracy, took out the order-sheets dated 28-8-89 and 8-9-89 of Ceiling case No. 9/1973-74 and the Sub-divisional Officer proceeded to dispose of the ceiling case as if the said orders had not been passed.

12. Mr. Tara Kant Jha, the learned Senior Counsel appearing on behalf of the petitioner has inter alia submitted that the impugned order has been passed by the respondent No. 4 having been actuated by malice.

The learned Counsel submitted that there was absolutely no reason as to why the impugned orders as contained in Annexures-2 and 3 were set aside, although no appeal was preferred against the said order by the State of Bihar.

13. According to the learned Counsel the Deputy Commissioner and the Sub-divisional Officer, although have been impleaded as parties in this writ application in their personal capacities, they have not filed any counter affidavit to deny the allegations made against them.

14. He further submitted that from the facts as stated in the writ application it would be evident that the records of the ceiling case have also been manipulated.

15. Mr. Hemendra Prasad Singh, the learned Standing Counsel, appearing on behalf of the State, on the other hand, submitted that the ceiling proceeding was

disposed of on 28-8-89, on the basis of the records of the earlier proceedings which stood abated in terms of Section 32-B of the Act which was inserted by reason of Act No. 55 of 1982.

16. It has been submitted that it is only for that reason the order dated 24-12-1991 as contained in Annexure-A was passed.

17. It has also been submitted that the Collector of the District acting as an appellate authority must be held to have acted bona fide insofar as he has not only set aside the orders as contained in Annexures-2 and 3 but has also set aside the order as contained in Annexure-A to the counter affidavit. The learned Counsel submitted that in view of the fact that Annexures-2 and 3 had to be set aside as the same were passed in violation of the provisions of Section 32-B of the Act.

18. The learned Counsel in this connection has drawn our attention to paragraphs 9 and 10 of the impugned order as contained in Annexure-5 to the writ application.

19. The only question, which, therefore, falls for consideration is as to whether, the Collector of the district could have set aside the orders dated 28-8-89 and 8-9-89 as contained in Annexures-2 and 3 respectively, although no appeal had been preferred therefrom.

There cannot be any doubt that the appellate Court cannot exercise any suo motu jurisdiction like that of revisional authority u/s 32 of the said Act.

20. However, in this case, it has not been disputed that in terms of Section 32-B of the said Act, the Land Ceiling proceeding abated as no notification u/s 11(1) was issued prior to 9-4-1981.

21. In this situation, the orders as contained in Annexures-2 and 3 to the writ application are fit to be ignored in law.

22. The learned Sub-divisional Officer also committed a serious mistake in passing the order dated 24-12-1991 as contained in Annexure-A to the counter affidavit as prior to passing of the said order a fresh proceeding was not started from the stage of Section 10 of the Act.

23. The Collector under the said Act should have done so. In this view of the matter, in our opinion, it is not necessary to interfere with the impugned order.

It is now well known that this Court may refuse to exercise its jurisdiction where questioning of an illegal order would revive another illegal order.

24. However, it appears that the Collector of the District has transferred the records of the case to his own file. In view of the fact that the proceedings are to start afresh from the stage of Section 10 of the Act, there does not appear to be any apparent reason as to why he should have directed transfer of the records of the case to his own file.

25. In this view of the matter, we set aside that part of the order and direct that the appeal be transferred to Additional Collector (Ceiling), who is also Collector under the Act, who shall proceed with the matter from the stage of Section 10 of the said Act.

This order is being passed keeping in view the fact that some allegations have been made as against the Respondent Nos. 2 and 4 but we do not consider it necessary to deal with the same as the order passed by the learned Collector, in our opinion, has to be sustained in law.

26. However, the learned Additional Collector (Ceiling) shall make an enquiry as to whether any interpolation had been made in the records of the case or and if he finds that the allegations of the petitioners in this regard are correct, he may take suitable action or ask the Collector of the District to do so in accordance with law.

27. This application, is therefore, allowed to the extent mentioned hereinbefore but in the facts and circumstances of the case, there will be no order as to costs.

R.M. Prasad, J.

28. I agree.