

(1982) 03 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3845 of 1981

Shiv Shankar Prasad Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-1982

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45B

Citation : AIR 1982 Patna 141 : (1982) 30 BLJR 431 : (1982) PLJR 331

Hon'ble Judges : P.S. Sahay, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Kamal Nayan Chaubey and R.P. Sinha, for the Appellant; Surendra Narain Jha, Standing Counsel No. 2 and Rajendra Jha, Jr. Counsel to Standing Counsel No. 2, for the Respondent

Final Decision : Allowed

Judgement

1. By this writ application, the petitioners have challenged the order contained in Annexure "7" passed by the Collector (Respondent No. 2) u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act").

2. A proceeding under the provisions of the Act in regard to the land belonging to the petitioners was started several years back and the Anchal Adhikari, Ramgarhwa and Anchal Adhikari, Raxaul (Respondents 4 and 5) had appended genealogical tables as in Annexures 1 and I"/A to their verification reports giving the names of the land holders. After the matter was examined by the respondent No. 3, the Additional Subdivisional Officer, Motihari, the order in Annexure-4 was passed wherein he granted six units for Shiv Shankar prasad Singh and his four sons Bishwanath Singh, Chandra Kishore Singh, Purushottam Singh and Umesh Singh, and his grandson Ajay Singh son of Bishwanath Singh. A perusal of Annexure-4 indicates that he rejected the claim of Abhoy Kumar Singh, Digvijay Kumar Singh and Sanjay Kumar Singh sons of Chandra Kishore Singh to separate

units on the ground that they were minors on due date. In this way, the petitioners were allowed to keep 150 acres of land. Since the total area of the land was more, the balance area was declared surplus. This proceeding thus concluded in 1976. There was no appeal or revision filed against this order. In 1981, the matter was attempted to be reopened for re-examination under the amended provisions of Sec. 45B of the Act and a show cause notice was served on the landholders. Thereafter, the petitioner No. 1 appeared in the proceeding. According to the petitioner, notice was served only on him. The matter was heard and by the impugned order in Annexure-7, the Collector has decided to reopen the proceeding. The petitioners have challenged the order as illegal.

3. Mr. Kamal Nayan Chaubey has contended that there was no fresh material available before the authority on the basis of which he could have considered the availability (advisability) of reopening the proceeding. The learned counsel has further said that perusal of the earlier order passed in the proceeding indicates that the question of age was pointedly considered before passing final orders concluding the proceedings. In these circumstances, the proceeding cannot be reopened. Mr. Chaubey has also relied on the statements in a rejoinder petition filed by the petitioners to which the certificates of the Bihar Secondary School Examination in regard to six adult members of the family have been attached. The said rejoinder petition appears to have been misplaced and is not available now, but the learned State counsel affirms that a copy of the said petition was served on him. Mr. Chaubey has produced before us photostat copies of the aforesaid certificates which indicate that even the youngest adult member of the family who has been allowed a unit was born on 7-4-1950, which means that he was correctly allowed a separate unit. In these circumstances, it is contended that the impugned order should be quashed.

4. Mr. Brajendra Jha, junior counsel to S. C. II, appearing on behalf of the respondents, has relied on the statements in the counter-affidavit filed on behalf of the respondents 1 to 6 and has attempted to support the order.

5. We have gone through the impugned order in extenso. It appears that the Collector did not have before him any material calling for reopening of the proceeding. He has, therefore, not been able to indicate as to whose age he wants to re-examine. It is futile to suggest that Sheo Shankar Prasad Singh grandfather of Ajay Singh or some of his sons could not be entitled to separate units as it is absurd to assume that they also were not major on the due date. Since the Collector has not indicated as to whose age he is doubting, the impugned order indicates an attempt to start a fishy enquiry which cannot be permitted under the section. The object and scope of the section has been examined by this court in several decisions including those in CWJC No. 1925 of 1979. *S. N. Ghose v. The State*, disposed of on 24-10-1979 reported in ILR (1979) Pat 989 and CWJC No. 384 of 1981 *Thakur Ram Jankiji v. State of Bihar*, disposed of on 16-4-1981. The power under the section has to be exercised sparingly and for adequate reasons and the proceeding concluded earlier cannot

be reopened merely for verifying whether the orders were correctly passed. There should be some reason present before the authority in the shape of some material justifying an action. This is completely lacking in the present case. Further, the aforesaid certificates indicate that the earlier orders must have been passed correctly.

6. For all these reasons the impugned order in Annexure-7 is quashed and the writ application is accordingly allowed, but without costs.