(1997) 01 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No''s. 2976 of 1985, 1436, 2198, 2201, 2218, 2600, 2701, 2857, 3002, 3006, 3208, 3549, 3594, 3634 and 3807 of 1986 and 7556 of 1988 & Civil Writ Jurisdiction Case No. 2976 of 1985

Shree Hanuman Sugar and Industries APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 — Section 10(1), 30, 32A, 32B, 5
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(1), 10(2), 11, 11(1)

Citation : (1997) 1 PLJR 497

Hon'ble Judges : N. Pandey, J;A.K. Ganguly, J

Bench : Division Bench

Advocate : Prakash Srivastava and Sharanghar Upadhyay, in C.W.J.C. 2976 of 1985, Tarakant Jha, Ajay Prasad, Rana Pratap Singh and Geeta Luthra, for the Appellant; S.J. Rahman, Harendra Pd. Singh, Raghib Ahsan, B.P. Verma, Raj Kumar, S.K. Sinha, K.A. Siddi, M.M. Rab, Abu Haider, N.N. Singh, Arbind Kumar and V.S. Ambastha, for the Respondent

Judgement

N. Pandey, J.—The first writ petition has been filed on behalf of Sri Hanuman Sugar & Industries Limited, whereas other petitions are preferred by different transferees from the original land holders with respect to some of the lands involved in land ceiling case No. 3 of 1983-84.

2. All the Petitioners have challenged the validity of the order passed by the Additional Collector, Ceiling, Motihari (East Champaran), dated 15th January, 1983, u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, (in short ''Act'') and the order on appeal of the District Collector, dated, 17th June, 1985 as also the order of the Additional Member, Board of Revenue, dated 6th July, 1985.

A prayer has also been made to quash the orders of the Additional Collector, passed u/s 5(i)(iii) and Section 29 of the Act since neither proper enquiry was carried out nor Petitioners were allowed to sail the statutory right of appeals against such orders. By virtue of amendment of different provisions of the Act by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (Bihar Act 55 of 1982) (In short ''Amending Act''), particularly Sections 32A and 32B, their appeals had abated as per the order of the District Collector, dated 2nd March, 1982.

3. Facts giving rise to these cases are undisputedly, in a narrow compass. The Petitioner Sri Hanuman Sugar & Industries Limited is the land holder of the total lands measuring 1467 acres and 25 decimals of different category. The proceeding in question was started sometime in the year 1973-74 and returns were filed by the Land holder before the authorities on 13th March, 1974. The purported verification under the provisions of Section 8 of the Act was carried out. Unfortunately, such a verification was without notice to the parties. Therefore, this Court upon appreciating the grievance of the land holder, quashed the recommendation of the Additional Collector as also the consequential orders by the order dated 13th September, 1976 in C.W.J.C. No. 1312 of 1985 with a direction to the authorities for fresh verification in presence of the Petitioners as also after giving them reasonable opportunity of hearing and adducing evidence in support of their claim for exemption etc. as required u/s 9 of the Act.

4. It appears from the counter affidavit of the Respondents that after verification in terms of the order of the High Court, the Additional Collector also conducted inquiry u/s 5(1)(iii) of the Act and declared different sale deeds executed by the original landholder as illegal and farzi, copies of such orders are Annexure A series to the counter affidavit of the first case. Undisputedly, against the orders passed u/s 5(1)(iii) of the Act, the original land holders and different transferees filed appeals u/s 30 of the Act before the District Collector, Motihari. But meanwhile the Amending Act was enacted and enforced by publication in the Bihar Gazette on the 30th April, 1982. This Amending Act like the earlier ordinance was to come into force retrospectively with effect from 9th April, 1981. It would reveal that apart from many significant changes in the original structure of the Act, it inter alia inserted Sections 32A and 32B in the parent Act.

5. By virtue of the amendment in Sections 2, 4, 6, 8, 9, 10 and 11 and likewise at various stages, wide ranging substantive and structural changes were brought in the ceiling law. In order to give effect to the changes, it was, therefore, laid down in unmistakable terms by virtue of Sections''32A and 32B that surplus area would be determined from the date of the enforcement of the Amending Act. Therefore, by virtue of the provisions of Section 32 of the Act, the Collector by order dated 2nd March, 1982, held, that all appeals pending on 9th April, 1981, stand abated and accordingly, he sent back the records to the original court for a fresh action in accordance with law.

6. This is not in dispute that draft statement in this case for the first time, as required u/s 10(2) of the Act was published on 20th October, 1984 nor there is

any dispute that on behalf of Hanuman Sugar Industries, an objection u/s 10(2) of the Act was filed, inter alia, that no verification of land nor due inquiry as required u/s 5(1)(iii) as per the provisions of the Amending Act was ever made after abatement of their appeals. Because in term of Section 10(1), draft statement was required to be published on the basis of information given by or on behalf of the landholder as per the requirement of Sections 6, 8, 9 or on a report obtained from the Collector u/s 7 of the Amending Act. Such a draft statement apart from the said requirement must contain various particulars enumerated in that Section. Likewise, Clauses (C1), (C2) and (C3) of Sub-section (1) of Section 10 contain various particulars and descriptions of the land, substance of the findings of the Collector under Clause (iii) Sub-section (1) of Section 5 and recommendation regarding exemption u/s 29 of the Act. Admittedly, from 9.4.1981, when Act 55 of 1982 came into force, all such information and particulars were required to be gathered by the Collector on the basis of fresh verification and inquiry. But unfortunately, the draft statement was published on the basis of materials collected in accordance with provisions of the old Act.

7. It would reveal that Additional Collector while rejecting objection of the land holders held that as per requirement of Sections 32A and/or 32B of the Amending Act, the proceeding had to commence from the stage of Section 10. In the instant case, the draft statement for the first time was published on 24.10.1984, therefore, there was no need to start the proceeding afresh. He further held that even after abatement of the appeals of the landholders or transferees u/s 32A of the Act no fresh inquiry as required u/s 5 was necessary. According to him, if the landholders or transferees were aggrieved by the findings of the Collector under Clause (iii) of Sub-section (1) of Section 5 of the old Act, they could have availed their remedy of appeal etc. Similar findings were also recorded by the Collector of the District and the learned Additional Member, Board of Revenue while rejecting appeal and revision of the landholder.

8. Learned Counsel appearing for the Petitioners, contended that from a bare reference to amended Sections 2, 4, 6, 10, 11 and substitution of Sections 5 and 9, including addition of Sections 32A and 32B of the Act, it is manifest that wide-ranging substantive and structural changes were brought in the ceiling law. Therefore, by effectuating Sections 32A and 32B, the legislature had directed redetermination of the surplus area in accordance with the new law. Accordingly, with effect from the 9th April, 1981, Respondent authorities were required to re-determine and to decide the proceeding afresh in accordance with the changes brought about in the law. In support of such a contention reliance was placed upon a Full Bench decision of this Court in the case of Harendra Prasad Singh Vs. State of Bihar and Another, .

9. It was next contended that admittedly in these cases appeals filed by the original land holders and transferee Petitioners u/s 30 of the old Act against the findings of the Collector under Clause (iii) of Sub-section (1) of Section 5 had

abated by the orders of the Collector of the district on 2.3.1982 as per the requirement of Section 32A of the Amending Act with a direction to decide the proceeding afresh. But as would appear from the draft statement as well as the impugned orders of the authorities that previous findings recorded under Clause (iii) of Sub-section (1) of Section 5 of the old Act or other verifications made under the Act remain intact and the draft statement although published under the provisions of new Act but on the basis of particulars collected under various provisions of the old Act.

10. On the other hand, on behalf of the State, it was contended that in the instant case, admittedly the draft statement was published u/s 10(2), after commencement of the Amending Act. Therefore, the question of abatement as required u/s 32A or 32B of the Act does not arise. It was stated that as per the provisions of the Amending Act, pending proceedings had to commence from the stage of Section 10. Therefore, there was nothing wrong if the draft statement was published on the basis of the information given by the landholder or Collector, showing different particulars collected as per the provisions of the old Act.

11. It was next contended that even after abatement of appeals preferred against the orders passed under Clause (iii) of Sub-section (1) of Section 5 of the Act, Petitioners can avail their right of appeal as per the second proviso of Section 30 of the Amending Act within 30 days from the date of final publication under Sub-section (1) of Section 11. That apart, no objection can be raised at the stage of draft publication u/s 10(2) with respect to any grievance with regard to the particulars disclosed under Clauses (C1), (C2) and (c3) of Section 10. Such objection can only be made by way of appeal after final publication u/s 11(1) of the Act.

12. In the background of the facts noticed above, only meaningful question which arises for consideration is whether in view of the provisions of Section 32A or 32B and abatement of Petitioners'' appeal by the order of the District Collector on 2.3.1982, the revenue authorities were required to determine the ceiling proceeding afresh in view of the law laid down by the Full Bench in the case of Harendra Prasad Singh v. State of Bihar and Anr. (supra).

13. It suffices to mention that the Bihar Ordinance No. 66 of 1981 was published in the Bihar Gazette on 9th April, 1981, followed by Bihar Ordinance No. 22 of 1982 which ultimately culminated in the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) (Amendment) Act, 1982. By the Amending Act undisputedly, drastic amendments were brought defining Section 2 and also Section 4. What is significant to note is that Section 5 and similarly Section 9 incorporated certain new provisions to the benefit of the landholders and transferees. In Section 10, Clauses (C1), (C2) and (C3) were inserted to command revenue authorities to include and disclose such particulars in the draft statement. That apart, by inserting Sections 32A and 32B, material amendments were brought under the Act to give effect to the amended law.

14. In the background of such changes, it is thus manifest that re-dermination of the surplus area in accordance with the new law necessitated. With regard to pending proceedings on 9th April, 1981, barring those which had achieved finality by publication under Sub-section (1) of Section 11 it was directed, in categoric terms that such a proceeding shall be disposed of afresh in accordance with the amended law.

15. That apart, all proceedings whether appeals, revision, review, reference pending prior to 9th April, 1981, had to abate and to be decided in accordance with the change law. In these backgrounds, it would be useful to notice that in the case of Hirendra Prasad Singh (supra), this Court after examining different provisions of the Amended Act, read Sections 32A and 32B harmoniously in these words:

When Sections 32A and 32B are read together they seem to run patently counter to the writ Petitioner''s stand. Both of them, with effect from the 9th of April, 1981, cry a halt to all the earlier proceedings and to begin on a clean slate and to have them disposed of afresh. These again have to be redetermined or decided afresh in accordance with the provisions of Section 10 of the Ceiling Act, i.e. in accordance with the changes brought about in the law. As has already been noticed, the whole thrust of the Amending Act was to bring about changes in the substantive law and to effectuate them by directing a re-determination in accordance therewith....

16. It has to be further noticed that while giving true construction and meaning of the words, that the proceeding to "be disposed of afresh", as mentioned under Sections 32A and 32B, their Lordships opined that earlier proceedings decided or pending in accordance with the old law were rendered nugatory and a fresh decision obligated on the basis of the changes under the new law. To understand the meaning of "re-determination", it would be apt to notice the relevant findings from paragraph 15 of the Full Bench in these words:

15. x x x

a true construction of the words, "be disposed of afresh", is itself a mandate that the earlier disposal of the cases is virtually nullified. To put it in a metaphor, it wipes off the writing on the slate leaving it clean to be written afresh. Viewed from another angle, Section 32B is itself a statutory setting aside of the previous determination. The submission that even though the final publication of draft statement under the unamended Section 11(1) after the 9th of April, 1981 would be contrary to the Statute, it should be allowed to hold the field till it is set aside by way of appeal, revision or quashing, appears to me as contrary to the very grist of this law. It would be sanctifying a multiplicity of proceedings by way of individual challenge and setting aside of a determination wholly without jurisdiction when the Section itself says that the earlier proceedings are obliterated and the matter is to be decided afresh.

17. Similar view, what was taken by the Full Bench in the case of Harendra

Prasad Singh v. The State of Bihar and Anr. (supra), a Division Bench of this Court had taken in the case of Chandrajot Kuer and many Ors. v. State of Bihar and Ors. 1984 PLJR 90 : 1983 BBCJ 197, which can be noticed hereunder:

9. The above provision shows that all proceedings pending on the date of commencement of the. Ordinance of 1981 and in which final publication u/s 11(1) has not been made shall be disposed of afresh in accordance with the provision of Section 10 of the Act. The combined effect of Sections 32A and 32B, therefore, is that the entire procedure from beginning to end must be carried out afresh. Since the proceedings have got to be decided afresh, all findings arrived at earlier stages of the proceedings must be considered to have been wiped off whether the findings of fact were in favour of the landholder or were in favour of the Revenue.

18. In the case of Smt. Kunti Sharma and Others Vs. State of Bihar and Others, , a learned Single Judge of this Court after examining the scope and prospect of various provisions of the Amending Act and the effect of Sections 32A and 32B, held that with effect from 9th April, 1981 the revenue authorities were required to proceed afresh in accordance with the amended provisions of Section 10, barring those proceedings which had achieved finality by publication under amended Sub-section (1) of Section 11. It would be apt to notice a relevant passage from the report:

4. However, all such proceedings subsequent to the said date were thereafter to be decided in accordance with the changed law and consequently, it was mandated that these shall be disposed of afresh in accordance therewith. In sum, substantive changes in the law, which had been enacted, were sought to be procedurally enforced by directing a re-determination of the surplus area in accordance therewith with effect from the date of the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, i.e. on the 9th of April, 1981 aforesaid.

Yet while holding similar views, what was taken by the Full Bench or the Division Bench, recently a Division Bench of which one of us was a member, answered a similar question in favour of the Revenue authorities and held that amending provisions of the new Act would be applicable with respect to all pending proceedings, irrespective of the stages. Relevant paragraph of the said report from the case of Prakash Kumar Jha and Others Vs. State of Bihar and Others is reproduced:

16. It provides that all appeals, revisions, reviews or reference, pending before any authority on 9th of April, 1981, would abate and the Collector shall proceed with the case afresh in accordance with the amended provisions from the stage of Sections 10 of the Act. Similarly, with regard to all proceedings, pending on 9th April, 1981. barring those which had achieved finality by publication under unamended Sub-section (1) of Section 11, are to be disposed of afresh in accordance with the amended law.

19. Apart from re-determination of the proceedings afresh as indicated by the abovementioned pronouncements, it has to be noticed that in terms of requirement of Section 32A, appeals of the Petitioners, pending on 9th April, 1981, had abated by the orders of the District Collector, dated 2.3.1982. There is no dispute that as per plain reading of Section 32A, appeals, revisions, reviews, reference other than those arising out of order passed u/s 8 or Sub-section (3) of Section 16, pending with any Revenue authority on such date had to abate.

20. As per proviso to Section 30 substituted vide Act 55 of 1982, it would appear that no appeal would lie against orders passed u/s 5 or 29 before final publication under Sub-section (1) of Section 11. In other words, such appeals can only be available after final publication under Sub-section (1) of Section 11.

21. Undisputedly, as per the provisions of Section 30 of the unamended Act, Petitioners had statutory right of appeal against orders passed under Clause (iii) of Sub-section (1) of Section 5 or Section 29 of the Act. It is well known that a right of appeal is not a matter of procedure, but is a substantive right. Such a right to approach a superior court accrues to the litigant and so exists on and from the date the lis commences. There is no doubt that vested right of appeal can be taken away by way of subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. Reference in this regard can be usefully made to a decision of the apex Court in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, .

22. Admittedly, by virtue of new amendment of the ceiling law, right of appeal conferred on a Jandholder or his successor or transferees from such land holder with respect to the lands involved in a celling proceeding has not been taken away retrospectively or adversely. This is well known that pendency of an appeal maintains continuity of the original proceeding. In other words, appeals are nothing else but steps in a series of proceedings. Therefore, the moment District Collector passed orders for abatement of the appeals for a fresh proceeding, the revenue authorities had no option but to take steps to start fresh inquiry as per the requirements of the amended Section 5.

23. In the instant case, as noticed above, the draft statement was published on the basis of verification and information received by the Collector under the provisions of the old Act as well his findings under Clause (iii) Sub-section (1) of Section 5. The requirement of Clauses (C1), (C2) and (C3) of Section 10 in the draft was not complied with as would appear from the draft statement or even orders of the revenue authorities.

24. Mr. Verma, learned Counsel for the State, however, placed reliance on two different decisions of this Court in the case of Motipur Sugar Factory Ltd. and Anr. v. The State of Bihar and Anr. 1978 BLJ 642 and Bishun Rai and Anr. v. The State of Bihar and Ors. 1993(2) BLJ 276 in support of his contention that even after abatement of the appeals, Collector was justified while publishing the draft statement on the basis of his findings which were previously recorded under Sub-

clause (iii) of Sub-section (1) of Section 5 for the verification made under the old Act.

In my view, the facts of the first case are completely different. It was a case where writ perition was dismissed because of an alternative remedy of appeal being available at that stage against the order passed under Clause (iii) of Sub-section (1) of Section 5. Therefore, in the instant case, reference of such a judgment has no relevancy.

25. So far as the case of Bishun Rai and Anr. v. The State of Bihar and Ors. (supra), as relied upon by the State, there is no doubt that use of materials collected under the provisions of unamended Act in the draft statement published under Sub-section (1) of Section 10 of the Amended Act was approved. But a plain reading of the said judgment would reveal that effect of various changes under the new Act and the ratio laid down by the full Bench in the case of Harendra Prasad Singh v. The State of Bihar and Anr. (supra), or the case of Chandrajot Kuer (supra), particularly paragraph 9 regarding prospect and effect of the Amended Act, was not noticed. That apart, a reference to paragraph 48 of the judgment would show that no grievance was raised by the Petitioner that by reasons of the Amending Act, any substantial change was made for determination of the ceiling area of landholder nor any prejudice was shown by him against the draft publication u/s 10(1). Therefore, in my view, the decision in the said case cannot be an authority for the purpose of these cases.

26. There is no doubt that from the counter affidavit filed on behalf of the Respondents and the order of the Additional Collector, passed u/s 5(1)(iii) of the Act, it would appear that nearly about 1000 acres of land were disposed of by the Petitioners landholders through different transactions within a short time. The stand of the Respondents is that such transfers were made either benami or farzi with a view to defeat the object of the Act. But at the same time, this cannot be ignored that the manner in which the inquiry was carried out u/s 5(1)(iii) of the Act is quite cryptic and unsatisfactory. Undisputedly, as alleged, most of the transferees in absence of proper notices, could not even participate at the time of inquiry as carried out u/s 5(1)(iii) of the old Act. Though I am not required to discuss the case of individual Petitioners transferees or effect of such transfers, but it would appear from the averments of the parties that some of the transferees have even claimed their right and possession either through Samarparnama or different nature of dedications which had taken place long back. Therefore, in absence of a proper inquiry findings of the Collector about such transactions as benami or farzi cannot sustain. Therefore, in this background also, when the Collector passed orders for abatement of appeals, it was proper for the Additional Collector to hold a fresh inquiry after proper opportunity to the Petitioners as per the provisions of Section 5 of the amended Act.

27. In the background of the facts noticed above, it has to be remembered that the Petitioners being aggrieved by the findings of the Additional Collector u/s 5(1)

(iii) of the Act, had preferred their appeals before the Collector as per the provisions of Section 30 of the old Act. Therefore, if they had opportunity to press their appeals, naturally all the defects including merit and demerit regarding findings of the Additional Collector recorded u/s 5(1)(iii) of the Act could have been pointed out and examined by the Collector.

28. Apart from the aforesaid defects in the proceedings, even Section 10(1) of the Amended Act requires publication of draft statement on the basis of the description of the land transferred by the landholders in accordance with or contravention of the provisions of the Act, the substance of findings of the Collector u/s 5(1)(iii) of the Act and the substance of the recommendation and order regarding exemption in terms of the amended Clauses (C1), (C2) and (C3) of Sub-section (1) of Section 10 of the Act. It has already been noticed that the provisions as required under Clauses (C1), (C2) and (C3) have been inserted by the new Amended Act. In the background of the facts noticed above, unless and until, there was a fresh inquiry and findings of the Collector u/s 5 of the Amended Act, no draft statement should have been published.

29. Therefore, having regard to the peculiar facts of these cases as well as relevant statutory requirements and the command of different provisions of the Amended Act, as also having regard to the ratio laid down by the Full Bench in the case of Harendra Prasad Singh v. The State of Bihar and Ors. (supra), as well as other cases noticed above, I feel inclined to hold that after the order of the District Collector, dated 2.3.1982, for abatement of appeals and a fresh decision in accordance with law, the Additional Collector had no option but to take step''s to decide and re-determine the proceeding afresh in accordance with the provisions of Sections 5 and 10 of the Act.

30. In the result, the order of the Additional Collector dated 15.1.1985, the order of the Collector dated 17.6.1985 as well as the order of the Additional Member, Board of Revenue dated 6.7.1985 as also the findings of the Additional Collector u/s 5(1)(iii) of the Act regarding transfers of the land and the consequential notifications including u/s 11(1) or 15 of the Act are hereby quashed. The Additional Collector, Ceiling, is directed to conduct a fresh inquiry u/s 5(1)(iii) of the Amended Act and publish a fresh draft statement as required u/s 10(1) of the Act.

As these cases have been disposed of in presence of the learned Advocates, therefore, in order to avoid unnecessary delay, all the concerned parties are directed to appear in the Court of Additional Collector, Motihari, East Champaran (Respondent No. 4) or the Additional Collector, Ceiling, as the case may be, on or before 3rd of February, 1997 so that a firm date can be fixed for hearing and inquiry etc.

But until final disposal of the matter, all the parties to the proceeding are refrained from transferring or disposing of any land which was declared surplus by virtue of the impugned orders.

31. With the above observations/directions, all the writ applications are thus disposed of. But in the facts and circumstances of the case, there shall be no order as to costs.

