

(1984) 01 PAT CK 0008
In the Patna High Court
Case No : G.W.J.G. No. 585 of 1983

Shree Rabindranath Kumar and Others APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 11-01-1984

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 45A, 45B, 5(1)(iii)

Citation : (1984) PLJR 246

Hon'ble Judges : Chaudhary Sia Satan Sinha, J;B.P. Jha, J

Bench : Division Bench

Advocate : Indushekhar Prasad Sinha and Girindra Mohan Thakur, for the Appellant; Daman Kant Jha, Government Advocate and Uday Shanker Sharan Singh, Junior Counsel to Government Advocate, for the Respondent

Judgement

Chaudhary Sia Satan Sinha, J.—The petitioners, six in number, five of them being sons of Shri Shashi Kant Kumar and the sixth his widow, have filed this writ application for quashing Annexure-1 dated 18.10.1982, the order of the Collector of the district re-opening the case, earlier disposed of, under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter referred to as "the Act", as also the notice (Annexure-4) issued to the petitioners asking them to come prepared for re-hearing of the matter. In substance, the petitioners have challenged the impugned order of the reopening, as contained in Annexure-1, on the ground that there was no fresh material before the Collector of the district to do so. It was also contended that the State Government did not move the higher authorities against the earlier orders disposing of the Land Ceiling case in favour of the petitioners on two earlier occasions, at first, on 30.11.1970 by the Additional Collector (vide Annexure 2) and subsequently on 9.10.1975 by the Collector of the district (vide Annexure-3). There is no counter affidavit on behalf of the State of Bihar though the learned counsel for the State argued the matter with some vehemence.

2. The point involved is a short one, namely, whether the Collector of the district

acted legally in re-opening the case by the impugned order as contained in Annexure-1. Section 45B of the Act, added by Act 22 of 1976, reads as follows:--

The State Government or the Collector of the district, who may be authorised in this behalf, may at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be re-opened and disposed of afresh in accordance with the provisions of the Act.

Sections 30 to 47 of the Act all appear in Chapter XII of the Act under the heading "Miscellaneous". While the earlier provisions of the Act provide for disposal of ceiling cases, for disposal of appeals and revisions arising therefrom, section 45A of the Act, occurring earlier to section 45B of the Act, authorises the State Government to give general or special directions to the Collector of the district to carry into effect the provisions of this Act. Then follows section 45B of the Act containing the provisions of reopening, extracted above. Though the powers of re-opening, as the provisions of section 45B of the Act indicate, are somewhat wide, no hard and fast rule can possibly be laid down giving an exhaustive list of cases where alone the re-opening can be ordered. Indeed, this will depend on the facts and circumstances of each case as indicated in the case of Nawal Kishore Singh and others v. State of Bihar and others 1981 PLJR 488 reported in 1981 BBCJ 62.

3. This takes us to the facts of the instant case, more or less, uncontroverted. Ceiling Case No. 1 of 1970 was started against Shashi Kant Kumar, father of the petitioner Nos. 1 to 5. He was noticed. He submitted a return. There was a verification report. The matter was considered by the Additional Collector in Annexure-2. He came to the finding that there is no scope for the operation of section 5 of the Act against the landholder. He, therefore, ordered the proceeding to be closed. Subsequently, on the 7th of December 1973, a notice in Form L.C. 3 of the Act was sent to the said Shashi Kant Kumar again for submitting return presumably under sub-section (1) of section 8 of the Act. The said landholder submitted his return on 11.2.1974. As usual, there was a second verification report. The matter was heard by the Collector of the district. He considered the matter laying emphasis on two points, namely, transfer of 18.41 acres of land by the landholder and his family members after 8.9.1970 and the question of majority of Chandranath Kumar. The Collector of the district came to a finding that though the sale deed transferring 18.41 acres of land was executed without permission of the Collector, there was no mala fide intention behind it and the transaction was a genuine one and the transferees, namely, the horizons and backward community members were in possession of the properties transferred. The other specific finding given was about all the five sons of Shashi Kant Kumar including Chandranath Kumar, being major, and entitled to one unit each. The Collector of the district, therefore, dropped the proceeding against the landholders. The matter has been re-opened on 18.10.1982 after the two stages as evidenced by Annexures 2 and 3.

4. The scope and ambit of the provisions of section 45B of the Act has come up for consideration before this Court on earlier occasions. In the case of Nawal Kishore Singh and others v. State of Bihar and others (supra), my learned Brother, sitting with me, in his judgment has indicated some of the circumstances which would justify reopening. The matter was also considered by another Division Bench of this Court in the case of Shiv Shankar Prasad Singh and Others Vs. State of Bihar and Others, reported in 1982 BBCJ 362. It was observed, inter alia, in this decision that section 45B of the Act should not be resorted to start a "fishy enquiry." The further observations were that the power u/s 45B of the Act has to be Exercised sparingly and for adequate reasons and the proceeding concluded earlier cannot be re-opened merely for verifying whether the orders were correctly passed. In the case of Harihar Singh Vs. State of Bihar and Others, another Division Bench of this Court expressed their complete agreement with the judgment in the case of Shiv Shankar Prasad Singh and ors. v. The State of Bihar and ors. (Supra).

5. The re-opening of the matter, as envisaged in section 45B of the Act, is likely to interfere with certain rights already accrued to a party to the litigation. In such a situation, the provisions have to be construed keeping in view the purpose behind it. If in a given case, like the one under consideration, the Collector of the district, re-opening the case, after having already, recorded a decision in favour of the petitioners in an earlier proceeding, wants to go back on his earlier decision, the requirement would be that he must assign reasons based on materials for re-opening the matter. A ceiling case is disposed of by a Collector. There is provision for appeal and revision. Generally the revisional authorities are very senior members of the Executive service, namely, Member or Additional Member of the Board of Revenue. The matter does not rest there and the decision of the revisional authorities are some times carried to this Court in writ jurisdiction. The re-opening u/s 45B of the Act may envisage the re-opening of a case even after the stage it has passed through the Member or Additional Member, Board of Revenue or the High Court in writ jurisdiction. This is what necessitates the assigning of reasons, based on materials by the reopening authority, namely, the State Government or the Collector of the district duly authorised.

6. Question is whether the Collector of the district having decided the point of transfer and majority of Chandranath Kumar in Annexure 3, has assigned any reason for the re-opening. I would quote the conclusive portion of the order of the Collector of the district in Annexure-1 which, inter alia, runs as follows:--

Since the age of Chandranath Kuer and transfer of lands have not been thoroughly examined earlier, the matter has to be looked into afresh.

This observation cannot be said to have furnished the reasons based on materials for the re-opening.

7. Sri Daman Kant Jha, learned counsel for the State submitted that as no

inquiry u/s 5(1)(iii) of the Act was held at the stage when the order, as contained in Annexure-3 was pasted, in respect of the transfer of 18.41 acres of land, the Collector of the district did not act legally in accepting this transaction as genuine. Sri Jha, however, did not, and in my opinion reasonably, question the finding of the Collector of the district as regards the majority of Chandranath Kumar as found in Annexure-3. There is no counter affidavit putting forward the assertions of the State Government about there being no inquiry u/s 5(1)(iii) of the Act. No such ground has been mentioned by the Collector of the district while re-opening the case.

8. Ordinarily and generally, re-opening should be resorted to on fresh materials. The impugned Annexure-1 does not show the existence of any fresh material necessitating the re-opening. The two grounds, on which re opening has been ordered, were already mooted before the Collector of the district in Annexure-3 and he gave findings on these two points in favour of the petitioners. Any change of opinion on the part of the Collector of the district and that too without any material for the same cannot justify any reopening. These are the infirmities in Annexure-1 which make it unsupportable in law and liable to be quashed by this Court. If Annexure-1 fails, as it must as a necessary corollary, the notice Annexure-4 must also fail. The result is that the application is allowed and Annexures 1 and 4 to the application are hereby quashed. In the facts and circumstances of this case, however, the parties shall bear their own costs of this application.