
(1992) 09 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 1483 and 1484 of 1981

Sk. Ibrahim and Bibi Zulekha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1992

Acts Referred:

Citation : (1993) 1 BLJR 630 : (1993) 1 PLJR 255

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—Both these writ applications involving common questions of fact and law were, with the consent of the parties heard together and are being disposed of by this common judgment.

2. In these application the petitioners have prayed for quashing of the order dated 26-6-1976 read with order 3-8-1976 and the order dated 28-6-1978 as contained Annexure 2 to the writ application, the notification dated 6-5-1978 as contained in Annexure-3 to the writ application, the order of the Deputy Collector Land Reforms dated 28-9-1980 as contained in Annexure-4, the order dated 16-2-1981 passed by the Collector Munger as contained in Annexure 6 as also the order of the Additional Member Board of Revenue, dated 24-8-1981 as contained in Annexures-7 and 8 to the writ applications.

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

4. The petitioners are admittedly land holders within the meaning of provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act 8) and the Rules framed thereunder.

5. Sk. Ibrahim who is petitioner in CWJC No. 1483 of 1981 and respondent No. 5 in CWJC No. 1484 of 1981 allegedly executed a registered deed of gift on 17-3-1972 which is contained in Annexure-1 to both the writ application in

favour of the petitioners of CWJC No. 1484 of 1981.

6. The petitioner Nos. 1 and 2 have also contended that they have acquired others land by sale deeds and their names had been mutated in the State of Bihar.

7. It has further been averred that Sk. Ibrahim also sold various land prior to 22nd October, 1959 and 9-9-1970 and some lands also after 9-9-1970.

8. In this case however only (he lands covered by the aforementioned deed of gift dated 17-3-1972 is in question.

Admittedly the proceeding under said Act was initiated as against Sk Ibrahim being Ceiling case No. 4 of 1975-76. Some lands were declared surplus by orders passed by the Deputy Collector Land Reforms, Munger which is contained in Annexures 2 and 3 to the writ application. The said surplus land had been distributed to the respondent Nos. 6 to 54 of the CWJC No. 1484 of 1981.

9. The petitioners filed an application purported to be u/s 15(3) of the said Act the Deputy Collector Land Reforms rejected the said application by an order dated 29-10-1980 (Annexure 4) The petitioners thereafter filed a writ petition, being CWJC No. 2766 of 1980 and by an order dated 12-11-1980 the said writ petition was disposed of with an observation that the petitioner should file an application u/s 45-B of the said Act pursuant thereto, the petitioners filed the said application which was dismissed by the Collector of District by reason of the impugned order dated 26-12-1981 (Annexure-6) the petitioners thereafter preferred an appeal before the Member Board of Revenue which was dismissed by orders dated 24-4-1981 (Annexure-7) to the writ application. It is not disputed that appeal before the member Board of Revenue was not maintainable.

10. In this case a counter affidavit has been filed on behalf of the respondent Nos. 1 to 4 wherein it has been asserted that after distribution of the surplus lands the concerned respondents are in possession of the lands in question.

11. It was further submitted that as the sons of the petitioner were minors on 9-9-1970 they were only entitled to one unit.

12. It has further been contended that in terms of Ordinance No. 113 of 1971 the deed of girt was to be executed within three months from 9-9-1970 i.e. before 9-3-1971 and as the deed of gift in question had been executed on 29-3-1972 the same cannot be taken into consideration. It was further submitted that the gift having been and in favour of his sons, daughter and wife by Sk. Ibrahim and in view of the facts all the sons and daughters at the relevant time were minors, they came under the purview of the definition of "family" and thus were entitled to allotment of one unit only.

13. Mr. S. C. Ghosh, learned Counsel appearing on behalf of the petitioner has raised a short question in support of these applications.

The learned Counsel submitted that the Collector of the District had no

jurisdiction to pass the impugned order only on the ground that the proceeding was a long drawn one and the acquisition of the lands have been completed on 11-6-1976.

14. It was further submitted that the Collector could not have rejected the said application without considering the points raised in the application for re-opening the proceeding u/s 45-B of the said Act.

15. It was also submitted that the delay is no ground for the Collector to refuse to exercise his jurisdiction particularly in view of the fact that the petitioners have not been given an opportunity of hearing, nor the petitioner has given an opportunity to exercise their options in terms of Section 9 of the said Act.

16. The learned Counsel in support of this contention strongly relied upon in *S. K. Musar v. State of Bihar and Ors.* reported in 1977 BBCJ 54

17. Mr. R. C. Sharma, the learned Counsel appearing on behalf of the private respondents, on the other hand, submitted that the petitioners approached this Court earlier and the only ground, upon which the said writ petition was filed, was violation of the principles of natural justice and as such this Court passed the aforementioned order dated 12-11-990 as contained in \\\nnexure-5 to the writ application.

18. Mr. Sharma, further submitted that the petitioners approached the Collector after expiry of 2 1/2 years and thus no case had been made out for initiation of proceeding for reopening of the case u/s 45-B of the said Act as the Collector is required to exercise his jurisdiction u/s 45-B very springly.

19. Reliance in this connection has been placed upon a decision of this Court in *Yamuna Rai and Ors. v. The State of Bihar*, reported in 1984 BLJR 269.

20. The learned Counsel further submitted that Sub-section (3) of Section 15 of the said Act stood deleted by reason of Act No. 1 of 1973.

21. Mr. Ghosh, learned Counsel appearing on behalf of the petitioner in reply submitted that in this case there has been a total non-application of mind on the part of the Collector as he had not taken into consideration the averments made in the application for re-opening of the proceeding as contained in Annexure-8/A.

22. It was further submitted that some of the petitioners had wrongly been treated to be minors.

23. The following facts are undisputed.

The petitioners are land holders. Notices had been issued to Sk. Ibrahim in the proceeding under the said Act. A draft publication of surplus land as contemplated under Sub-section (1) of Section 10 of the said Act had a so been served upon Sk. Ibrahim. The said Act was amended by Bihar Act No. 1 of 1973 with retrospective effect from 9th September, 1970.

24. Prior thereto Bihar Ordinance No. 113/1972 had been promulgated. The said

Bihar Ordinance No. 113/1971 was published in the Gazette on 27th December, 1971. A deed of gift could be executed and registered in terms of the aforementioned Ordinance within a period of three months from the date of promulgation of the said ordinance.

25. The deed of gift executed by Sk. Ibrahim was registered on 29-3-1972. The deed of gift was, therefore, not registered within a period of three months from the said date. S. K. Mussan's case (supra) the deed of gift was executed on 1st February, 1982 and thus it was held that the said gift was not affected despite coming into force of Bihar Act No. 1 of 1973 as acts done under Ordinance No. 113/1971 were saved by Section 13(2) of the said Amending Act.

26. From a perusal of Annexure 1 to the writ application that is the deed of gift dated 29th March, 1972, it is evident that except Bibi Zulekha wife of Sk. Ibrahim all the other beneficiaries thereof have been stated to be minors.

27. It is also evident that the lands in question have been distributed on 11-7-1978. The proceeding under the said Act was drawn on 11-12-1975 and the draft statement was served upon Sk. Ibrahim on 29-6-1976 but despite the same, no objection u/s 10(3) of the said Act was filed by him.

28. In this case Sk. Ibrahim is petitioner in one of the writ application and is a respondent in the other. He was a party to the said proceeding.

29. There cannot be any doubt that the Collector of District in a given case may call for examine the records and thereupon direct that the case be re-opened and disposed of afresh in accordance with the provisions of the said Act.

30. It has been held by this Court in a number of decisions that the power u/s 45-B of the Act should be exercised sparingly and for adequate reasons. Such a power should be exercised on the basis of a new materials (See Shiv Shankar Prasad Singh v. State of Bihar 1989 PLJR 331 Harihar Singh v. State of Bihar 1984 PLJR 331 and Praveen Shankar Sineh and Ors. v. The State of Bihar and Ors. 1987 PLJR 254

31. It is also now well known that where purchase have been distributed holders thereof acquire a right in relation thereto and no proceeding could be re-opened without giving them an opportunity of hearing.

32. The application u/s 45-B of the said Act has been filed in C.W.J.C. No. 1483 of 1981 in which Sk. Ibrahim himself is a party.

The said application is contained in (Annexure-10) to the supplementary

33. From a perusal of the said application it does not appear that the private respondents in whose favour the purchase have been distributed were made parties to the said proceeding.

It is also difficult to believe that the petitioners came to learn about issuance of the notification under Sub-section (1) of Section 15 of the said Act and the

distribution of the land to the landless persons was done on 22-1-1980

34. So far as the contention of the petitioners relating to attainment of majority of some of the petitioners is concerned, the same cannot be accentuated as the petitioners are bound by the statements made by Sk. Ibrahim in the deed of gift to the effect that except his wife all other donees were minors on the date of execution of the said deed of gift and thus they were minor on 9-9-1970.

35. 9-9-1970 is the "appointed day" under said Act and in this view of the matter, the right of the family to retain the lands has to be judged as on the said date. It is not for this Court to consider at this stage that some of the sons and daughters of Sk. Ibrahim were majors on that date, particularly in view of the fact that said point was not raised before the Collector.

36. It is true as has been contended by Mr. Ghosh that the delay by itself may not be the sole ground to refuse to re-open a proceeding by the Collector but the same certainly is a relevant consideration.

37. Further this Court must judge all the consequences of directing the respondents to re-open the case now. In my opinion it, will be unjust to re-open the entire matter as a result whereof respondent No. 12 to 60 of C.W.J.C. No. 1483 of 1981 may have to be dispossessed after a period of 14 years.

38. It is now well known that issuance of a writ of certiorari is a discretionary remedy. The petitioner is not entitled to obtain relief only because it will be lawful to do so. (See Pramod Kumar v. State of Bihar reported in 1988 PLJR 23 and Suku Mahto and Another Vs. State of Bihar and Others)

39. For the reasons aforementioned, I am not inclined to exercise my discretion in favour of the petitioner.

40. These applications are therefore, dismissed but in the facts and circumstances of the case, there will be no order as to costs.