
(2003) 03 JH CK 0105
In the Jharkhand High Court
Case No : CWJC No. 3534 of 1995 (R)

Smt. Chandra Kishori Devi and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 11, 15, 15(1)

Citation : (2003) 2 JCR 562

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Vikas Kishore Prasad, for the Appellant; A. Banerjee, JC to GA, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. Vikas Kishore Prasad, learned counsel for the petitioner and Mr. A. Banerjee, JC to GA.

2. The petitioners pray for quashing the final Notification u/s 15(1) as contained at Annexure 8 issued under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to for the sake of brevity as the "Land Ceiling Act").

3. By reason of the aforementioned Notification which, according to the petitioners was published between 15.8.1995 to 31.08.1995 by Annexure 8, 102.89-1/2 Acres of land belonging to the different land-holders were sought to be acquired in various villages but the petitioners are concerned with only those lands situated in villages Saguna and Saguni with Paton Police Station: According to the petitioners, the aforesaid final Notification, as contained at Annexure 8 was made without there being a draft publication under the provisions of Section 11(1) of the said Ceiling Act and without serving a copy thereof upon the petitioners and therefore, according to the petitioners, the aforesaid final publication is contrary to law as also in violation of the principles of natural

justice. The petitioners have further prayed for quashing the order dated 17.06.1995 passed in the Land Ceiling No. 10/73 - 74 (Annexure 5) whereby and whereunder the objection filed by the petitioners was rejected. According to the petitioners, this order of rejection amounts to complete non-application of mind in as much as the statutory option that the petitioners had exercised under the provisions of Section 9 was not even considered.

4. The short facts which are necessary to be taken note of in the instant case is that a Land Ceiling Case bearing No. 10 of 1973 - 74 was initiated against the petitioner No. 2 alone namely Madan Kumar Pandey but the same was dropped on 19.12.1973 by the Deputy Collector Incharge, Land Reforms, Palamau at Daltonganj. By Annexure 2 after almost 19 years thereafter, i.e. some time in the year 1992 the same was again reopened and a draft statement u/s 10(2) of the Ceiling Act was prepared. The petitioner No. 2 filed his objection u/s 10(3) of the Act on 10.7.1992 and also filed his option as per the provisions of Section 9 of the said Land Ceiling Act indicating that he was willing to retain those lands mentioned in the said option situated in villages Saguna and Saguni. The learned counsel for the petitioners states that the aforementioned option has been made in relation to three units only in as much as by order dated 27.09.1991 as contained in Annexure 6 (relevant page 44 of the Writ Petition) the respondents themselves had allowed retention of three units and it was in that background that the petitioner No. 2 filed his objection along with the option for three units of villages Saguna and Saguni.

5. Before proceeding any further, it would be relevant to take note of some of the provisions of law in relation to the said Ceiling Act. The relevant sections are Sections 6, 9, 10, 11 and 15 in so far as this case is concerned. The said sections reads as follows :

"6. Public notice upon certain land-holders to submit returns.--(1) As soon as may be, after the commencement of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amtd.) Act, 1972, the State Government shall cause to be published a notice in the manner laid down in Sub-section (3) calling upon all the lands holders of the State who hold land in excess of the ceiling area anywhere in the State to submit to the Collector of the district where they ordinarily reside within thirty day to the date specified in the notice, a return containing the following particulars, namely :--

(i) the total area and, description of land held by the land-holder anywhere in the State;

(ii) if the land-holder is a raiyat, the names, and description of his under raiyat and the description of land held by them under him anywhere in the State;

(iii) the particulars of legal proceedings, if any, in respect of the land held by the land-holder pending on the date of submission of the return;

(iv) encumbrances on the land, if any, with their full particulars, and

(v) any other particulars that may be prescribed :

Provided that the Collector may, on an application made by the land-holder, extend the period specified in such notice for the submission of the return by a period not exceeding thirty days.

(2). If the land-holder is a minor or a person of unsound mind, the return required under Sub-section (1) shall be submitted by his guardian.

(3) The substances of the notice shall be published in the official Gazette and in not less than three issues of at least two Newspapers having circulation of Bihar.

(4) Where the land-holder or the guardian mentioned in Sub-section (2), as the case may be, fails to submit the return required under Sub-section (1) without sufficient cause, the Collector may, after giving him a reasonable Opportunity of being heard and adducing evidence, impose a fine which may extend to five hundred rupees.

9. Option of family to select its ceiling area.--(1) Where the area of land held by a family exceeds the ceiling area it shall, have, subject to the provisions of Sub-sections (2), (3) and (4) and other provisions of this Act the option to select, within the period prescribed in Sub-section (3) of Section 10 the land which it desires to retain in accordance with the provisions of Section 5.

(2) Where the land held by the landholder includes land transferred by him in accordance with or in contravention of the provisions of Clause (ii) of Sub-section (1) of Section 5, the land so transferred in accordance with or in contravention of Clause (ii) of Sub-section (1) of Section 5, shall to the extent of the ceiling area admissible to the land-holder, be deemed to have been selected by him for retention within the ceiling area, and where the total area of such land is less than the ceiling area admissible to him, the land-holders shall select the balance of ceiling area from his remaining land :

Provided that where the land so transferred in accordance with or in contravention of Clause (ii) of Sub-section (1) of Section 5 is equal to or more than the ceiling area admissible to him and if because of the selection under Sub-section (2) of land-holder's homestead cannot be retained within his ceiling area, the land-holder may be permitted to hold his homestead subject to a maximum limit of two acres only.

(3) Where the land held by the land holder includes land where transfer has been annulled under Clause (iii) of Sub-section (1) of Section 5 but does not include any land transferred in accordance with or in contravention of the provisions of Clause (ii) of Sub-section (1) of Section 5 the land-holder shall select, to the extent of fifty per cent of his ceiling area from land where transfer has been annulled under Clause (iii) of Sub-section (1) and shall select the balance of the ceiling area from other lands held by him.

(4) Where, however, the land held by the land-holder includes land transferred

by him in accordance with or in contravention of the provisions of Clause (ii) of Sub-section (1) of Section 5 as well as land whose transfer has been annulled under Clause (iii) thereof, the land transferred in accordance with or in contravention of Clause (ii) of Sub-section, (1) of Section 5 shall, to the extent not exceeding the ceiling area, be deemed to have been selected by him within his ceiling area first and if this land is less than ceiling area admissible to him, he will select the remaining land to be retained by him within the ceiling area firstly from the land whose transfer has been annulled under Clause (iii) of Sub-section (1) of Section 5 to the extent of fifty percent of the remaining ceiling area only and the balance will be selected by him from, out of the remaining lands :

Provided further that where the landholder fails to select land within the stipulated time, it shall be lawful for the Collector to allot to the land-holder land equal to the ceiling area to be retained by him u/s 5 keeping in accordance with this section.

10. Preparation of draft statement.--(1) On the basis of the information given by or on behalf of the land-holder under Sections 6, 8, 9 or the information obtained by the Collector u/s 7, checked in the prescribed manner, the Collector shall cause a draft statement to be prepared showing the following particulars :

(a) the area and description of-

(i) each class of land held by the land-holder and the land selected by him which he desires to be included within his ceiling area;

(ii) orchards held by him and the orchards in compact blocks which he desires to retain:

(iii) homestead land and the pucca structures including land necessary for the use and enjoyment of such structures, held by him on the date of commencement of this Act; and such land, pucca structures including land necessary for the use and enjoyment of pucca structures which he desires to retain;

(b) area and description of land of each of the categories in Clause (a) which is allowed by the Collector to be held and retained by the land-holder u/s 5;

(c) the area and description of the land which is in excess of the limit permissible u/s 5 and which the land-holder is not entitled to hold or retain under this Act (hereinafter to be called "surplus land");

(c-1) the area and description of land transferred by the land-holder in accordance with or in contravention of the provisions of Clause (ii) of Sub-section (1) of Section 5;

(c-2) the substance of findings of the Collector under Clause (iii) of Sub-section (1) of Section 5;

(c-3) the substance of the recommendation and order regarding exemption u/s

29, and

(d) any other particular which may be prescribed.

(2) The draft statement shall be published in the official Gazette of the district and at such places, and in such manner, as may be prescribed :

Provided that a copy of the draft statements shall be served on the landholder or land-holders concerned or on their guardians, as the case may be by registered post with acknowledgment due which shall be conclusive evidence of the service of such notice.

(3) Any objection to the draft statement in respect of the matters specified in Clauses (a), (b), (c) and (d) of Sub-section (1) received within 30 days of publication of the draft statement of service thereof under Sub-section (2), whichever is later, preferred by any person having any claim or interest in said matter shall be considered by the Collector who shall, after giving the parties a reasonable opportunity heard and adducing evidence, pass such order as he thinks fit :

Provided that the Collector may on an application made by the land-holder or the person having any claim or interest in the land, extend the period of filing objection by another fifteen days.

11. Final publication of draft statement--(1) When the objection or claim, if any, preferred under Sub-section 3) of Section 10 has been disposed of, the Collector shall, whether there is any surplus land or not, make such alteration in the draft statement as may be necessary to give effect to any order passed on the objection or claim and shall cause the said statement with the alteration, if any, to be finally published in the official Gazette of the district and in such place and in such manners as may be prescribed and a copy thereof duly certified by the Collector in the prescribed manner, shall be sent to the land-holder by registered post with acknowledgement due.

(2) Copies of such statement duly authenticated in the prescribed manner shall be sent by the Collector within such period to such authority or authorities, as may be prescribed.

15. Acquisition of surplus land.--(1) The State Government or the Collector of the district specially so empowered in this behalf shall after the statement under Sub-section (1) of Section 11 has been finally published and subject of appeal or revision, if any, acquire, the surplus land by publishing in the official Gazette of the District, a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the notice of the acquisition to the person or persons concerned :

Provided that without awaiting the result of appeal or revision the State Government or the Collector of the district specially so empowered in this behalf may proceed to acquire such of the surplus land of the land-holder in respect of

which there is no claim or dispute or which is admitted by the land-holder to be surplus :

Provided further that a copy of the notification shall also be sent to the land-holder concerned by registered post with acknowledgement due.

(2) On the publication of the notification under Sub-section (1), the land specified in the notification shall, subject to the provisions of this Act, be deemed to have been acquired for the purposes of this Act and vested in the State free from all encumbrances, with effect from the date of the notification and all right, title and interest of all persons claiming interest therein shall, with effect from that date, be deemed to have been extinguished.

(3) Subject to * * * * any order on appeal or revision, the Collector may at any time after the publication of the notification under Sub-section (1) take possession of any land specified in the said notification and may for that purposes use such force as may be necessary.

(4) If the mortgagor becomes entitled to recover possession of his mortgaged land u/s 12 of the Bihar Money Lenders Act, 1974 (Bihar Act XXII of 1975) and the area of such mortgaged land, together with the land, if any held by him anywhere in the State, exceeds the ceiling area, then the provisions of Section 18 shall apply thereto as if such mortgaged lands were an acquisition under that section and thereafter the land which the mortgagor is not entitled to retain shall be deemed to have been acquired for the purposes of this Act and vested in the State in accordance with Sub-section (2).]"

6. From a perusal of Section 9, it appears that the Law provides that where the area of the land held by a family exceeds the Ceiling Area, it shall have the option (subject to the provisions of Sub-sections (2), (3) and (4) to select the land which it desires to retain in accordance with the provisions of Section 5. Section 5 on the other hand lays down that it shall not be lawful for any family to hold, except otherwise provided under the said Ceiling Act, the land in excess of the Ceiling Order. Section 10(2) refers to publication in the official Gazette of the draft statement and furnishing a copy thereof on the landholders on their guardian by registered post with Acknowledgment Due (AD) Section 10(3) refers to dealing with objections received against the draft statement and Section 11(1) relates to final publication of the draft statement. Section 15(1) refers to the power of the State Government to acquire surplus land after final publication of the draft statement by publication through notification in the official Gazette of the district notifying the such land is being acquired for public purposes.

7. In the instant case and as per the statements made by the writ petitioners, at paragraph 6 on 26.12.1993, the respondent No. 5 proceeded to prepare the final draft statement under the provisions of Section 11(1) of the Land Ceiling Act without considering the option exercised by the petitioners u/s 9 and without serving a copy thereof upon the petitioners as was mandatorily required to be done under the proviso of Section 10(2).

8. Being aggrieved by the aforementioned action, the petitioners filed a writ petition before the then Ranchi Bench of the Patna High Court vide CWJC No. 2160 of 1994 (R) and by order dated 23.09.1994 (Annexure 3), the matter, on account of procedural lapses, was remanded after quashing the order dated 26.12.1993 and also after quashing the Ceiling Procedures and all other actions taken under the said Act to the Collector to consider the objection filed by the land-holders on 12.07.1992 after giving of hearing to the party concerned.

9. The learned counsel for the petitioners state's that the option, was actually exercised on 10.07.1992 and not on 12.07.1992. He further states that the option u/s 9 was a part of the objection and from Annexure 2 itself (relevant page 24), it would be relevant that it was dated 10.07.1992. The learned counsel further points out that the third line of the order of the High Court dated 23.09.1994 also refers to the objection having been filed on 10.07.1992 and therefore, according to the learned counsel for the petitioner the date i.e. 12.07.1992 recorded in the order dated 23.09.1994 is a typographical error. However, after remand, the land-holders appeared before the concerned authority on 05.10.1994 and thereafter on 17.06.1995 the Land Reforms Deputy, Collector Sadar at Daltonganj passed an order rejecting the objection filed on 10.07.1992. According to the learned counsel for the petitioner, the objection that was filed on 10.07.1992 and which is contained at Annexure 2 gave specified details but those were neither considered nor noticed and the only reason assigned was that the petitioner had not been able to furnish evidence.

10. The learned counsel for the petitioner further submits that the authorities acted mechanically in not dealing with all the grievances raised by the petitioners and also acted illegally in not passing any orders in relation to the option exercised and which was filed pursuant to the order passed by the respondents themselves as early as on 27.09.1991 allowing retention of three units.

11. There appears to be sufficient substance in what the learned counsel for the petitioners has submitted. If by reason of an order dated 27.09.1991 the respondents themselves had allowed the retention of three units, then at least at the time of dealing with the objection, it was the bounden duty of the said authority to have dealt with the said issue also. Having not done so, the authority must not only be said to have acted mechanically but also to have acted not in accordance with law. Additionally, if the respondents concerned had dealt with the objection filed by the petitioner including the option exercised, then the next stage would have been to follow the procedure engrafted under Sections 10, 11 and 15. The order of the High Court passed earlier remanded the case for purposes of considering the objections filed on 10.07.1992. In other words, the High Court remanded the matter for purposes of starting the proceedings afresh from that stage. In other words, after that stage the respondents were again therefore required to make a draft publication, call for objection and then make the final publication. Annexure 8 which begins from 15.08.1995 has been passed obviously after the order of the High Court Le.

23.09.1994. The reason assigned in Annexure 8 is that since draft publication had already been made u/s 11(1) therefore, final notification u/s 15 was being made. The reasoning given in Annexure 8 is absolutely non est as Section 11(1) comes only, after consideration of objections or claims filed u/s 10(3). Since the respondents did not consider the options exercised by the petitioners, which was filed on 10.07.1992, it was wrong on their part to say that publication had already been made u/s 11(1).

12. For the reasons aforesaid, the impugned order in so far as it relates to the petitioners are quashed and the matter is once again remanded to the respondent No. 5 who shall deal with the objections filed on 10.07.1992 along with the options exercised by the petitioners which was given pursuant to the order dated 27.09.1991. Only after such consideration, the respondents will be entitled to proceed under the provisions of Sections 11 and 15 of the said Land Ceiling Act. Consequently, the final publication u/s 15 is also hereby quashed.

The writ petition is allowed. There shall however be no order as to costs.