
(2016) 04 PAT CK 0161

In the Patna High Court

Case No : Letters Patent Appeal No. 1155 of 2010 in Civil Writ Jurisdiction Case No. 7569 of 1999

Smt. Dilrani Devi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 6

Citation : (2016) 2 BLJud 314 : (2016) 3 PLJR 972

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Baxi SRP Sinha, Sr Advocate with Mr. Mrigendra Pratap Singh, Advocates, for the Appellants; Ms. Kumari Amrita, GP X with Mr. Mirtunjay Kumar, AC to GP X, for the Respondents

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral)—The present intra-Court appeal is against the judgment and order dated 20th of April, 2010 passed by a learned Single Judge of this Court in CWJC No 7569 of 1999, whereby the writ petitioners/appellants? challenge to the agriculture land ceiling proceedings and the orders passed therein by the authorities thereunder, were not interfered by the Writ Court except granting the writ petitioners opportunity to exercise their right of option under Section 9 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for brevity, the Act).

2. It appears that an Agriculture Land Ceiling Proceeding Case No 95 of 1975-1976 was started by the Additional Collector, Munger against the writ petitioners/appellants under the provisions of the Act. As is usual, the proceeding prolonged. Draft publication having been made in terms of Section 10 of the Act, objections were invited. Various objections were taken by the writ petitioners/appellants significant being that at the time and in the lifetime of their father prior to this agriculture land ceiling enactment, in the year 1947, there had been

a partition in the family through Court in which lands were allotted to lady members in the family. Thereafter, the father gifted certain lands by registered deeds to his grandsons. Various claims were made as per the law then existing. It may be noticed here that in 1970, the Ceiling Act underwent drastic changes. From the concept of individual landholders, it now became family as a unit. Petitioners/appellants had a right to make certain claims as per entitlement under Sections 4 and 6 of the Act. The matter was finally adjudicated and final orders were passed by the Additional Collector on 08.11.1982 accepting certain points and not agreeing with other points, and, substantial agricultural lands were declared surplus. It appears that thereafter, on 16.11.1982, notification under Section 11 (1) of the Act was issued and presumably Section 15 notifications also issued thereafter. Being aggrieved by the order dated 08.11.1982, as passed by the Additional Collector, petitioners/appellants filed Appeal No 68 of 1982-1983 before the District Collector, Munger which was dismissed by order dated 03.09.1984. Being aggrieved by the appellate order, a revision, as prescribed under Section 32, was filed before the Board of Revenue which was registered as Revision Case No 29 of 1985. The learned Member, Board of Revenue set aside the orders and, by his order dated 15.04.1986, remanded the matter to the first Court that is the Additional Collector for redetermination. Thereafter, on 19.03.1988, the Additional Collector redetermined the matter upon remand giving certain reliefs but not all the reliefs, as sought for by the writ petitioners/appellants. Being aggrieved by this order, as passed by the Additional Collector on 19.03.1988, an appeal was filed being Appeal No 2 of 1988 before the District Collector, Munger which was dismissed on 20.01.1997. Again being aggrieved, a revision was filed being Revision Case No 63 of 1997 before the Board of Revenue which was heard and dismissed on 17.05.1999. Challenging that order, the writ petition was filed being CWJC No 7569 of 1999 which was dismissed on 20.04.2010 with a liberty granted to the writ petitioners to exercise fresh option with regard to retaining agricultural land in their holding. Being aggrieved by the said judgment and order of the Writ Court, this intra-Court Appeal has been filed.

3. As before the Writ Court so before us in appeal, Shri Baxi SRP Sinha, learned Senior Counsel has urged that in view of Section 32B of the Act, as brought in by the 1981 amendment ordinance with effect from 09.04.1981 which ordinance was then replaced by Amendment Act on 30.04.1982, the authorities were in fact obliged to restart the proceedings afresh. In other words, the proceedings, that had been initiated in the year 1975-1976, and in which draft notification under Section 10 having been issued, objections were being considered, all that exercise had to be done afresh after the ordinance had come. The only exception was where prior to the amending ordinance being promulgated, if notifications declaring surplus land under Section 11 (1) of the Act had already been passed, those proceedings would not be effected by the amendment. The learned Single Judge, though noted the submissions, did not decide the same, in view of the fact that as per the learned Single Judge, facts were not clearly pleaded in this

regard. We have gone through the records and all the facts, as we have noted above, are available on the Writ Court record itself. All these dates are there in the Writ Court records itself. Only thing that was needed is patience to peruse the records.

4. To us, the submission is well made and the point well taken. What is the scope of the amendment of the ordinance, which was later confirmed as the Act, the first ordinance being enforced with effect from 09.04.1981 and ultimately the Act, repealing and replacing the ordinance being dated 30.04.1982, has been elaborately discussed by Full Bench of this Court in the case of Harendra Prasad Singh v. State of Bihar & Another, 1984 PLJR 908 (AIR 1985 Patna 38). The Full Bench has exhaustively dealt with the entire scope of the amendments as made by the 1981 Ordinance/1982 Amendment Act. It has noted that major amendments were made right from Section 4 of the Act onwards. These amendments and the schemes are noticed in paragraph 5 of the reports. Ultimately, in paragraph 11, their Lordships have emphatically held that once the Ordinance came with effect from 09.04.1981, then with the exception of those proceedings wherein notifications under Section 11 (1) of the Act had already been issued after final adjudicatory orders under Section 10 (3) of the Act, all proceedings would be wiped clean, and fresh proceedings would have to be started. All notifications including notification under Section 11 (1) of the Act, without resorting to fresh proceedings issued after 09.04.1981, would be void and in words of the Full Bench per incuriam. If this be the law, then we have to see what follows in the present case. As we have noticed, the ceiling proceedings were started being Ceiling Proceeding Case No 95 of 1975-1976 naturally in the year 1975-1976. The final order, that was passed, was passed on 08.11.1982 and notification under Section 11 of the Act was issued on 16.11.1982. In view of the judgment of the Full Bench and the legislative mandate, all this has to be wiped out clean inasmuch as the proceedings had to be re-initiated after 09.04.1981, that is fresh draft publication had to be made, fresh opportunity granted to file objections to the draft publication and fresh adjudication under the new provisions had to be undertaken. There is no dispute that none of this was done to a proceeding which was initiated in the year 1975-1976, which was carried on to its logical end ignoring 1981 amendment ordinance which came into effect on 09.04.1981 and the Amendment Act which came into effect on 30.04.1982 or for that matter, the 1982 Amendment Act which repealed the ordinance and replaced it by the Act with effect from 30.04.1982.

5. The result would be that all the proceedings based upon this final order dated 08.11.1982 including the final order itself would clearly stand vitiated as is legislatively amended by Section 32B of the Act. Once the final order dated 08.11.1982 falls, all that followed would also fall.

6. We may, at this stage, consider the objection, as raised by the learned counsel for the State. She submitted that this point was not raised by the writ petitioners/appellants before any of the authorities. We have noticed this contention only to

reject it. It is well established principle of law that when an Act provides a procedure for doing a thing then the Act has to be performed in that manner and all other modes are expressly prohibited. Reliance may be placed on the case of *Hukam Chand Shyam Lal v. Union of India & Others*, (1976) 2 Supreme Court Cases 128 and in particular, paragraph 18 thereof which is as under:

"18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. Now, in the present case, if the telephones of the appellants were to be disconnected on the ground of misuse, then they had to give, in consonance with the principles of natural justice, opportunity to the appellants to explain their conduct before taking action under Rule 427 read with Rules 416 and 421. Resort to the wrong and more drastic course provided in Rule 422, on a ground which was not germane to an action under that rule, vitiates the impugned order, particularly when it is manifest that in making the impugned order, the General Manager was influenced more by this ground and less, if at all, by the existence of "public emergency" certified by the Delhi Administration."

7. Next we would refer is that, there is no estoppel against law. A pure question of law can be raised at any stage. When the legislature mandated re-initiation of proceedings by fresh draft publication, fresh objection and fresh adjudication and the authorities proceed per incurium, the order cannot get any validity as the authority has no jurisdiction to continue. The authorities lacked the jurisdiction to continue with that proceeding as was legislatively mandated.

8. Thus, we have no option but to hold that the final orders passed by the Additional Collector being orders dated 08.11.1982 and, on remand, 19.03.1988, as passed in Agriculture Land Ceiling Case No 95 of 1975-1976 by the Additional Collector, Munger would have to be set aside as also all the orders from the same including the order of the Board of Revenue and the writ petition will have to be allowed. The authorities would be now required to start afresh, and following the procedure established by law, dispose of the proceedings in accordance with law at the earliest.

9. In the result, the Letters Patent Appeal is allowed.