

**(1989) 01 PAT CK 0011**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 4560 of 1982**

Smt. Kunti Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 12-01-1989

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)  
(Amendment) Act, 1982 — Section 9  
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,  
1961 — Section 10(2), 11

**Citation :** (1989) 37 BLJR 490 : (1990) 1 PLJR 66

**Hon'ble Judges :** U.P. Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

U.P. Singh, J.—By this writ application, the petitioners have challenged the validity of the order passed by the Additional Collector contained in Annexure 5 dated 6-10-1982. The said order was passed by the Additional Collector u/s 10(2) of the Act. In other wards, a fresh proceeding u/s 10(2) of the Act was started and by the said impugned order it was held that the earlier proceeding stood abater and the petitioner's family was entitled to only one unit. By the impugned order they were found to be holding 147.04 Acres of land as surplus whereas they were entitled to only 8 Acres of Class II land.

2. The petitioners family was a joint family possessing 165.04-1/2 Acres of Class II lands in several villages in the district of East Champaran. In a proceeding u/s 10(2) of the Bihar Act XII of 1962 the Additional Collector served a notice in Form L.C. 6 in the year 1975 allowing them three units in terms of Class II lands declaring 111.04-1/2 Acres as Surplus lands. An objection was filed and it was contended that there was no surplus land belonging to the family of the land holders and, therefore, the proceeding should be dropped. A report from the Anchal Adhikari was obtained and the objection was disposed of by the Additional Collector granting partial relief. The first petitioner thereafter preferred an appeal,

which was disposed of by the Collector in the year 1979 and the case was remanded back to the Additional Collector for fresh disposal in accordance with law. On remand of the case, the petitioner No. 1 then filed a written statement before the Additional Collector claiming 8 units and it was contended that since the land was within the ceiling limits, the proceeding was fit to be dropped. Considering every matter on record the respondent No. 2 the Additional Collector, Land Reforms (Ceiling) by his order passed in April, 1981 held that the land-holders were entitled to 6 units and the land belonging to the family of the land-holders were within the ceiling limit, and thus, the proceeding was concluded in their favour. Accordingly, on the finding that there was no surplus land, no proceeding u/s 11 of the Act was necessary and the matter stood concluded on 18-4-1981 itself.

3. Meanwhile, the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendments Act, 1982 came into force and substantial amendments were made in the defining Sections 2 and 4. The computing Section 5 was all together substituted, and similarly Section 9, which gave an option to the family to select its ceiling area, was also substituted. In the material Section 10 Sub-clauses (C-1) (C-2) and (C-3) were inserted in Clause (C) of Sub-section (1) thereof. Changes were brought in the succeeding Section 11 as well. Apart from material amendments in the other provisions. Sections 32-A and 32-B were inserted in the statute.

4. By virtue of amendments in "Sections 2, 4, 10 and 11 and the actual substitution of Sections 5 and 9 (apart from amendments in other sections) wide ranging substantive and structural changes were brought about in the Ceiling Law. To give effect and content to these changes, it was, therefore, laid down in unmistakable terms by virtue of Sections 32-A and 32-B that the surplus area would be determined in accordance therewith, from the date of enforcement of the Amending Act. These two sections, therefore, were the effectuating or the executing provisions to give practical shape to the intent of the Legislature in making the statutory changes. It is with this end in view that Section 32-A provided even with regard to all appeals, reviews or references, which were pending before any authority on the 9th of April, 1961 that they would abate and the Collector shall proceed with the case afresh in accordance with the amended provisions of Section 10. Similarly, with regard to all proceedings pending on the 9th of April, 1981, barring those which had achieved finality already by the publication under the unamended Sub-section (1) of Section 11, it was directed in categorical terms that the same shall be disposed of afresh in accordance with the amended law. In the larger prospect, it is, therefore, plain that on 9th of April, 1981 Ordinance No. 66 of 1981 was enforced and retrospectivity has now been given to the Amending Act with effect from this very date All proceedings, whether by way of appeal, revision, review or reference or pending proceedings by way of publication u/s 11(1) of the Ceiling Act prior to the 9th of April, 1981 were left untouched. 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. That, plainly, is the larger legislative intendment behind Sections 32-A and 32-B. In a Full Bench decision of this Court in the case of Harendra Prasad Singh v. State 1984 BBCJ 879 these two provisions contained in Sections 32-A and 32-B came up for consideration and reading the two provisions harmoniously, it was held:

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 state and to have them disposed of afresh. These gain have to be redetermined or decided afresh in accordance with the provisions of Section 10 of the Ceiling Act, i.e., in accord 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. The legal pun that is sought to be made out on behalf of the writ petitioner on the ground that Section 32-B does not employ the word "abatement" is of no consequence. Indeed it is well-settled in legal terminology that the term "abatement" is usually employed with regard to appeals, revisions, reviews, etc. To say that the original proceeding pending before an authority would abate appears to be inapt legal phraseology. Therefore, the Legislature has employed the term of abatement with regard to appeals, revisions, reviews or reference and thereafter directed that the Collector shall proceed with the case afresh in accordance with the provisions of Section 10 by Section 32-B. However, when it came to pending proceedings (other than those covered earlier by Section 32-A), Section 32-B provided that (except those which had achieved finality already before the 9th of April, 1981 by express publication under the unamended Section 11(1) of the Ceiling Act) these pending proceedings must be disposed of afresh in accordance with the amended law. Far from the fact that nothing would have turned on the non-employment of the word "abatement" in Section 32-B, in fact, the reading of both the sections would indicate that the Legislature had in mind the identical results to follow, namely, a re-determination or disposal afresh in accordance with the amended law in either case. Indeed, it was plausible argued before us on behalf of the respondents that the categorical mandate to decide afresh is even something stronger and larger than mere abatement. The word "abatement" connotes only a ceasing or putting an end to the proceeding. The direction to decide afresh not only wipes away the earlier decisions or finding but directs a fresh application of mind and a decision thereafter and in a way would even be on a larger and stronger footing. The specious argument resting on the non-employment of the word "abatement" in Section 32-B must fail.

5. Challenging the impugned order contained in Annexure 5 in the present case

the learned Counsel appearing for the petitioner has contended that there is no afresh application of mind by the Additional Collector and the order has been passed in a mechanical manner. A bare perusal of the impugned order shows that the Additional Collector has referred to the old verification report and jumped at a conclusion that the petitioners' family was entitled to only one unit. The petitioners were admittedly not heard before the Additional Collector arrived at the said conclusion. In accordance with the Full Bench decision of this Court referred to above the Additional Collector was required in law to decide the question afresh. In other words, a fresh application of mind had to be given to the whole question in accordance with the amended Section 10 of the Act. While deciding the proceeding afresh the question whether the petitioners' family was holding lands as surplus had to be considered afresh in accordance with the various provisions of the Act contained in Sections 6, 8, 7 and 9 read with Section 5 of the Act. None of these have been considered by the Additional Collector while passing the impugned order contained in Annexure 5. There is no categorical finding as to why the petitioners are entitled to only one unit although in the earlier proceeding they were found entitled to six units. Mere reference to the old record and reliance on the earlier verification report was not sufficient. In this view, the order passed by the Additional Collector dated 6-10-1982 contained in Annexure 5 and the notice contained in Annexure 6 have to be set aside and are accordingly quashed. The matter is remanded back to the Collector, East Champaran, Motihari for considering the whole matter afresh in accordance with law. This application is, therefore, allowed but in the circumstances, however, there will be no order as to cost.