
(2000) 02 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No. 3014 of 1997

Smt. Lakhraj Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

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

Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 — Section 11(1), 16(3), 32A, 32B, 8<

Citation : (2000) 02 SC CK 0065

Hon'ble Judges : Saghir Ahmad, J; S.N. Phukan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Ramanand Pandey, original tenure holder, died leaving behind Appellant No. 1 as the widow, Appellant Nos. 2 to 5 as sons and Appellant No. 6 as grand-son. In proceedings initiated u/s 10 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land Act, 1961 ('the Act') a draft statement was served on the Appellants who filed their objections. While the proceedings were pending, the Act was amended by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 by which Sections 32A and 32B were, inter alia, added in the principal Act. These Sections provide as under:

32A. Abatement of appeal, revision, review or reference - An appeal, revision, review or reference other than those arising out of orders passed u/s 8 or Sub-section (3) of Section 16 pending before any authority on the date of commencement of the Bihar Land forms (Fixation of Ceiling Area and Acquisition of Surplus of Land) (Amendment) Act, 1982 shall abate:

Provided that on such abatement the Collector shall proceed with the case afresh in accordance with the provisions of Section 10:

Provided further that such appeal, revision, review or reference arising out of orders passed u/s 8 or Sub-section (3) of Section 16 as had abated u/s 13 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 shall stand automatically restored before the proper authority on the commencement of this Act.

32B. Initiation of fresh proceeding -All those proceedings other than appeal, revision, review or reference referred to in Section 32A pending on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, and in which final publication under Sub-section (1) of Section 11 of the Act as it stood before the amendment by the aforesaid Act, had not been made shall be disposed of afresh in accordance with the provisions of Section 10 of the Act.

2. Instead of abating the pending proceedings and starting the whole case afresh, an ex-parte order was passed by Respondent No. 4 on 5.1.1993, without any notice to the Appellants, determining the ceiling and surplus area as applicable to Ramanand Pandey, the original tenure-holder, as substituted by the present Appellants. A notification u/s 11(1) of the Act was issued on 18.2.1993 which was subsequently published in the Bihar Gazette on 20.2.1993. The appeal filed by the Appellants was dismissed on 11.1.1994. The revision filed thereafter was also dismissed by the Board of Revenue on 13.7.1995.

3. The writ petition filed by the Appellants in the Patna High Court was dismissed on 12.1.1996 and this decision was upheld by the Division Bench.

4. The principal contention raised by Learned Counsel for the Appellant is that in view of the amendment introduced in the Parent Act by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982, the proceedings should have been abated and as required by Section 32B, fresh proceedings ought to have been initiated in accordance with the provisions of Section 10 of the Act. This contention which was also raised before the High Court was rejected by the learned Single Judge as also the Division Bench. The learned judges distinguished the Full Bench decision of the Patna High Court in Harendra Prasad Singh v. State of Bihar, 1984 PLJR 908 which has been cited before us too. We have gone through the judgment. The learned Single Judge and the Division Bench were bound by the law laid down by the Full Bench decision of the High Court. There is hardly any ground to distinguish that judgment. In the Full Bench decision, it has been clearly mentioned that in accordance with the provisions of Section 32B, the authorities had no choice but to proceed afresh in accordance with the provision of Section 10 of the Act.

5. That being so, the judgment of the High Court cannot be sustained. The appeal is consequently allowed, judgments passed by the authorities under the Act as also by the High Court are set aside with the observation that it will be open to the authorities to proceed afresh in accordance with the provisions of Section 10 of the Act.

6. If the possession of the land in question has already been taken over by the authorities, it will be open to the Appellant to apply for restoration of the possession.