(2008) 01 PAT CK 0148

In the Patna High Court

Case No : CWJC No. 8543 of 2005

Smt. Shartsheela Devi and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 11(i), 15(i)

Citation : (2008) 3 PLJR 358

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard Counsel for the petitioner and the State. The petitioner is aggrieved by an interlocutory order passed on 10.6.2005 in Ceiling Case No. 17 of 1973-74 whereby and whereunder the Deputy Collector, Begusarai had rejected the objection of the landholder Smt. Kishore Devi to the extent that the proceeding could not have been continued as the Collector of the District had no longer been vested with the power of reopening of the proceedings u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act [hereinafter referred to as the "Act"]. It is not in dispute that the order dated 10.6.2005 is an interlocutory order and has decided no issue and in fact what has been done is that an objection which was sought to be raised by the landholder petitioner has been rejected fixing the case for hearing.

2. This Court is not made aware as to what has happened after 10.6.2005 and in fact it is this aspect of the matter which was sought to be explained by the State in the counter affidavit which has not been filed despite lapse of a period of two and a half years and also an order of this Court, dated 3.7.2006 on which day the Counsel for the State had himself taken time for filing counter affidavit and now an oral stand has been taken by the JC to S.C. (Ceiling) IV that no counter

affidavit is required to be filed.

3. The issue in fact as raised by the petitioners in this writ application seems to be totally misconceived. From the records, it is clear that it is a plain and simple case of remand whereby and whereunder the Additional Member, Board of Revenue in exercise of power u/s 32 of the Act had passed an order on 30.12.1991 directing the Collector of Begusarai district to proceed afresh. From the order of the Additional Member, Board of Revenue, it would be also clear that the Collector of Begusarai district on 10.8.1987 had passed his order reopening the proceedings u/s 45B of the Act and had transferred the matter to the Additional Collector, Begusarai for disposal. In that context, the Additional Member, Board of Revenue having examined this scope of Section 45B of the Act had come to a specific finding that such power was vested exclusively in the Collector of the District and not in the Additional Collector and accordingly he had by the order dated 30.12.1991 set aside the order dated 10.8.1987 transferring the case to the Additional Collector for disposal in accordance with law.

4. It also transpires from that very order that the Additional Collector on the basis of such authorization made by the Collector for reopening the proceedings u/s 45B of the Act had passed an order, dated 4.1.1991 for final publication u/s 11(i) of the Act and, therefore, in that context, the Additional Member, Board of Revenue in his order, dated 30.12.1991 had made the following observations:-

In the light of the discussions above, the orders of the Collector, Begusarai passed on 10.8.1987 transferring the ceiling proceeding for disposal by the Addl. Collector and the order passed in Ceiling Appeal Case No. 160/1990 are set aside. However, it shall be open for the District Collector to proceed afresh in accordance with law. The parties will bear their own costs.

5. Now what was done by the Additional Member, Board of Revenue in the order dated 30.12.1991 on the date when the Collector had admittedly the power to reopen the proceeding that the matter was remanded to him. It was now for the Collector of the District to examine whether the earlier proceedings were done in accordance with law or not i.e. whether a notification u/s 10(2) of the Act was made correctly or not, whether the objection u/s 10(3) of the Act was decided in accordance with taw and whether the notification u/s 11(i) of the Act or the appeal u/s 30G of the Act and/or the final publication u/s 15(i) of the Act had been made in compliance of the relevant provisions of the Act and the Rules. If all these things were not properly done as on 30.12.1991, only liberty given to the District Collector was to proceed afresh further in accordance with law.

6. In that view of the matter, the submission on behalf of the counsel for the petitioner that the power u/s 45B of the Act cannot be exercised by the Collector of the District after an amendment had in the Act in the year 1995, in my considered view has no bearing on the result of this case. The interparte order dated 30.12.1991 binds both the parties and has become final and, therefore, the parties have to proceed in accordance with law as it existed on 30.12.1991,

the day on which the direction of the Additional Member, Board of Revenue had been issued. Thus, this writ application directed against the interlocutory order, dated 10.6.2005 must be held to be premature and misconceived and liable to be dismissed in limine.

7. In view of the fact that ceiling proceeding has remained pending before the Collector of the Begusarai district for last two and a half years on account of pendency of this writ application, directs the Collector of the District to decide the matter himself and to take all possible steps to dispose of the pending ceiling proceedings against the petitioners within a period of six months from the date of receipt/production of a copy of this order. With the aforementioned observations and directions, this writ application is dismissed.

