(2003) 09 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No. 2983 of 2003

Sunil Kumar @ Sunil Kumar Singh and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0001

Judgement

S.K. Katriar, J.—Heard learned Counsel for the Petitioners and learned junior counsel to Standing Counsel (Ceiling).

2. This writ petition is directed against the order dated 15.2.2003 (Annexure 11), passed by the learned Additional Member, Board of Revenue, Bihar, Patna, in Case No. 42 of 1999 Sunil Kumar v. State of Bihar and Ors. whereby he has rejected the revision application of the Petitioners u/s 32 of the Land Ceiling Act on the ground that the final order has already been passed by the Collector.

3. On a perusal of the impugned order and consideration of the submissions of learned Counsel for the parties, it appears to me that the learned Additional Member has committed errors apparent on the face of the record by assigning a restricted and narrow scope of jurisdiction u/s 32 of the Act, and, secondly, by establishing parity between Sections 32 and 45B of the Act. The scope and content of the two provisions are fundamentally different. The scope of Section 32 fell for the consideration of this Court in the case of Kamleshwar Prasad Yadav v. State of Bihar and Ors. the judgment of which has since been summarily reported in 1986 PLJR NOC (AB) 23 Kamleshwar Prasad Yadav v. State of Bihar (the full text whereof is reported in 1986 BR & LJ 1), wherein a Division Bench of this Court held that the Board of Revenue u/s 32 of the Act is not a court merely to correct errors of law or jurisdiction, or failure to exercise jurisdiction or material irregularity, but is instead a forum of unlimited appeal. Section 32 does not imply other well known limitations in the revisional jurisdiction which are with regard to only legality or propriety of the orders of the Court in the cases u/s 397 Code of Criminal Procedure. In other words, the Division Bench in substance laid

down that the limitations on the powers of the revisional courts under CPC and the Code of Criminal Procedure stand on a fundamentally different footing which are very narrow and restricted in contradistinction to the revisional powers u/s 32 of the Act which is a forum of unlimited appeal. The confusion has arisen because of the use of the expression ''revision'' in Section 115 of the Code of Civil Procedure, Section 397 of the Code of Criminal Procedure, and Section 32 of the Land Ceiling Act. The language in which the first two provisions are couched are fundamentally different from that of Section 32 of the Act which has brought about the entire difference. It is now well settled that the legislature has not intended to assign narrow and restricted jurisdiction u/s 32 of the Act which is a court of facts and is a forum of unlimited appeal. The aforesaid judgment was followed by another Division Bench in its judgment summarily reported in 1987 PLJR NOC (A) 1. Jagarnath Sah v. Pannalal Mahto and Ors. and the full text whereof is reported in 1987 Bihar Law Judgments P.500. In that view of the matter, it is incumbent on the Board of Revenue, while exercising jurisdiction u/s 32 of the Act, to act as a forum of facts, one of unlimited appeal, and has to examine all issues of facts and law.

4. As to the second error apparent on the face of the record is concerned, a revision application u/s 32 of the Act is the last forum under the Act to test the correctness of the action taken under the Act, either land ceiling proceedings or preemption applications, and are available to the aggrieved person as a matter of right and before the proceedings finally come to a close. On the other hand, the provisions of Section 45B of the Act can be invoked after the entire land ceiling proceeding under the Act has come to a close and the remedies upto the revisional stage have either been exhausted or no longer available by efflux of time, to correct manifest errors to prevent miscarriage of justice, is narrow in its sweep and scope, and is discretionary with the prescribed authority. This is an extra-ordinary power vested in the State Government to prevent miscarriage of justice. Therefore, the learned Additional Member has seriously erred in law in his effort to establish parity between Sections 32 and 45B of the Act.

5. The scope of Section 45B has been considered by this Court on innumerable occasions. Some of the leading judgments are summarised here in below:

i. It has been held in the case of Praveen Shankar Singh and Others Vs. State of Bihar and Others, that the power to reopen a case u/s 45B is not arbitrary and can be exercised only when new materials are brought to the notice of the authority.

ii. It was held in the case of Shiv Shankar Prasad Singh and Others Vs. State of Bihar and Others, that there was no fresh material in that case necessitating the reopening of the proceedings. The impugned order indicated an attempt to start a fishy enquiry which cannot be permitted u/s 45B of the Act. The power under the Section should be exercised sparingly and for adequate reasons. The proceedings concluded earlier cannot be reopened merely for verifying the correctness of the previous orders.

iii. It was held in the case of Shree Rabindranath Kumar and Others Vs. The State of Bihar and Others, that ordinarily and generally, reopening should be resorted to only on fresh materials. The authority must assign reasons based on materials for the reopening of the matter.

iv. It was held in the case of Harihar Singh Vs. State of Bihar and Others, that the power conferred u/s 45B is similar to that conferred by Section 397 Code of Criminal Procedure, upon the High Court and the Sessions Judge to call for and examine the records of any proceeding of the inferior criminal court in order to correct the miscarriage of justice arising from misconception of law, irregularity of procedure and the like. The authority cannot make a fishing enquiry to see under a fair record there lie some traces of possible error, and the purpose is to set right a patent error or defect. New material may be a ground to reopen a proceeding, which can also be reopened if it appears that the proceedings had not been conducted or concluded in accordance with the provisions of the Act. Reasons must be assigned for reopening the proceedings.

v. In the case of Harishchandra Singh and etc. Vs. State of Bihar and Others, the law was explained on similar lines as in Harihar Singh v. State of Bihar (supra).

vi. It was held in the case of Tarkeshwar Narayan Singh v. The Collector Nalanda 1992 (1) PLJR 476 that the authority should not reopen the flood-gates for fishing enquiry. There should be positive reasonings for reopening a concluded proceeding or else if such powers were permitted to be exercised frequently on frivolous grounds, it would lead to untold harassment of the land-holders.

vii. It was held in the case of Sk. Samiur Rahman and Others Vs. The State of Bihar and others, that where the authority finds that error had been committed in a concluded ceiling proceeding because of wrong verification report, the proceeding can be ordered to be reopened u/s 45B. Fraud practiced by the revenue authorities in the concluded proceedings is also a ground to reopen the same.

viii. In the case of Thakur Shaligram Singh Vs. The State of Bihar and Others the law was laid down on similar lines as in the case of Samiur Rahman v. State of Bihar (supra).

ix. It has been held in the case of Rupchand Baid Vs. The State of Bihar and others, that where the earlier order dropping the proceeding was passed without following the mandatory provisions of the Act, an order u/s 45B for reopening the ceiling proceeding may be validly passed.

x. It has been held in the case of Sk. Taslim and Others Vs. The State of Bihar and Others that the expression "if it thinks fit" occurring in Section 45B cannot be construed to mean that the Legislature u/s 45B has conferred unbridled power on the authority thereunder to reopen ceiling proceeding without sufficient cause. It should not be exercised as a matter of right or as a matter or course.

6. In that view of the matter, the impugned order dated 15.2.2003 (Annexure

11) is hereby set aside, and the matter is remitted back to the Board of Revenue for disposal in accordance with law. He shall keep in mind the scope and sweep of Section 32 of the Act explained in the aforesaid judgments of this Court. It goes without saying that the Board of Revenue shall ensure that position of the Petitioners is not rendered irreversible during the period the matter remains pending before the Board of Revenue.

7. Let a copy of this judgment be handed over to Mr. Vijay Kumar Bhagat, learned Standing Counsel (Ceiling) to be forwarded to the learned Member, Board of Revenue, for its circulation amongst the learned Additional Member of the Board.

