

(2010) 07 PAT CK 0053

In the Patna High Court

Surendra Narayan Singh and Birendra Narayan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 10, 10(3), 11, 11(1), 15
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules,
1963 — Rule 12, 12(5)

Citation : (2010) 07 PAT CK 0053

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—A ceiling proceeding was initiated against the father of the petitioner Birendra Narayan Singh, numbered as 70 of 1973-74, which was concluded and disposed of on 26.06.1976. The final publication u/s 11 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the Act) was published on 27.07.1976. The petitioner's father was granted one unit and the petitioner was given an additional unit, being a minor at the time when the ceiling proceedings commenced and was concluded.

2. By the impugned orders contained in Annexures 2, 4 and 5, the ceiling proceeding has been reopened on the ground that the petitioner Birendra Narayan Singh was not minor at the time when the ceiling proceeding was initiated and notices were published u/s 6 of the Act.

3. The facts are that the family owned and possessed 09 acres and 84 decimals of land which was partitioned between the petitioner's father and his three brothers, namely, Shashi Shekhar Prasad Sinha, Indu Shekhar Prasad Sinha and Bidhu Shekhar Prasad Sinha, so that each of the brothers were allocated 02 acres and 46 decimals of land.

4. The order contained in Annexure 2 dated 16.06.2001 indicates that after the Gazette publication of the notification u/s 11(1) of the Act, the notification and the file was forwarded to the State Government for steps to be taken u/s 15(1) of the Act. The order indicates that the State Government raised an objection that the petitioner Birendra Narayan Singh was not a minor and, therefore, the proceeding may be reopened. The Collector, by Annexure-2, ordered that notices should be issued to the petitioner. The reason as indicated above for reopening of the proceeding is contained in the order dated 28.12.2001 (Annexure-4) by which the petitioners were noticed and were asked to file their objections within a period of one week. It would be relevant to mention here that the Revenue Department noted its objections vide letter No. 384/ - 2 dated 26/04.2001 on the proposal to start 15(1) proceedings. It would be relevant to quote the reasons for reopening the proceedings.

The second son of the OP Rajendra Narayan Singh was shown minor by the A.A., Rosera. Now, I find that the A.A., Rosera had vide his endorsement, dated 30.11.1975 has stated that the second son of OP i.e. Rajendra Narayan Singh is a major. The sort of swift stand is unfortunate. However, three units are granted on the basis of report of A.A., Rosera forwarded with a letter No. 3427 dated 03.12.1976. And, therefore, 5.59 acres of Class-III lands of Rosera is declared surplus. But if it is subsequently found that the Opposite Party's second son is a minor, the case will be reviewed afresh and the responsibility of this will be on entirely by A.A., Rosera.

5. Ultimately, by order dated 23.01.2002, 22.90 acres of Class-III lands were declared to be surplus and an order was issued to take steps for publication u/s 11(1) of the Act and was ordered that steps should be taken u/s 15(1) of the Act after the publication u/s 11(1) of the Act.

6. The stand of the petitioners is that once the ceiling proceeding has been concluded and final publication is made u/s 11(1) of the Act, nothing remains to be done and the matter could only be reopened u/s 45B of the Act. It is also submitted that the reasons for reopening are based on the amendment of the definition of land holder u/s 2(g) of the Act, which would not be applicable in a case where the proceeding have culminated in the publication u/s 11(1) of the Act. It has also been urged on behalf of the petitioner that after the publication of Section 11(1) of the Act on 27.07.1976, the family has sold some of the lands and the nature of the lands have also been changed, and as such, the reopening at this stage is not in accordance with the provisions of the Act.

7. Dealing with the provisions of Section 11(1) of the Act prior to the amendment or for that matter, even after the amendment of Section 11 of the Act, it would appear that the provision envisage that once a draft statement had been made u/s 10 of the Act and objections have been disposed of u/s 10(3) of the Act by the Collector in an appeal or revision (the words appeal or revision" used prior to the 1982 amendment), the Collector will give effect to the alterations if any made or allowed and thereafter finally published, a copy of the statement certified by the

Collector in the prescribed manner shall also be given to the land holder. The rules under the Act provide that once the final publication has been made u/s 11(1) of the Act, copies of the statement which has been finally published shall be certified u/s 11(1) and authenticated on each page by the signature of the Collector and be finally published in the manner provided under Rule 12 of the Act. Rule 12 of the Act also envisages that the Collector shall send one copy of the draft statement finally published and duly authenticated by him to the Revenue and Land Reforms Department for information within a period of one month from the date of final publication of the statement under the old provision of the Act and within 7 days under sub-Rule 5 of Rule 12 of the Rules after amendment of Rule 12.

8. In the present case, the draft statement was admittedly finally published on 27.07.1976 and a copy was forwarded to the Revenue and Land Reforms Department. The purpose of sending the final draft and the records to the Revenue and Land Reforms Department is by way of information and also for the purposes of taking further steps u/s 15(1) of the Act. It is always open to the State Government to reopen a ceiling proceeding u/s 45B of the Act, however, once the publication has been made in the Official Gazette, it attains finality and the State Government cannot alter the final publication u/s 11(1) of the Act in the manner in which it has been done. As noted above, the objection was made by the Revenue and Land Reforms Department when the matter was to be considered for acquisition of the surplus land u/s 15(1) of the Act. Section 15 provides that the State Government shall after final publication of the statement u/s 11(1) of the Act acquire surplus land by publishing in the Official Gazette and notification that such land is required for public purpose which shall be a conclusive proof of the acquisition proceeding. Section 15 cannot by any stretch of imagination mean that the State Government can suo motu without starting proceeding u/s 45B of the Act, reopen the matters and alter final publication of the lands which have been declared surplus. The power u/s 15(1) of the Act does not clothe the State Government to undo judicial or quasi judicial orders passed by the authorities under the Act. As has been shown above, the notification was published u/s 11(1) of the Act and as such nothing was left to be done in this case. There is a specific provision in the Statute which provides for reopening of a ceiling proceeding which is enshrined u/s 45B of the Act, which reads as follows:

45B: State Government to call for and examine records.- The State Government may, at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act.

9. This procedure involves three steps and enjoins a duty on the State Government to examine any record which by necessary implication means application of the judicial mind. It may be done in the following manner: the State Government may call for and examine the records and if it finds that there is illegality in the proceeding, may pass an order for reopening of the ceiling

proceeding, the State Government may reopen the matter "If it thinks fit". This expression indicates that the case may be reopened for adequate reasons and it cannot be reopened for examining the correctness of previous orders or because the State Government does not agree with the judicial adjudication made in the case. It is obvious that no order has been passed for reopening the ceiling proceeding relating to the present case as envisaged u/s 45B of the Act. The Revenue and Land Reforms Department cannot reopen a proceeding or test the adjudication of final publication made in this case on the basis of a noting that the units have wrongly been granted, that too, when the publication was made in the year 1976 and notices were allegedly issued to the petitioners in the year 2001. Such orders cannot be upheld by this Court, more so after a gap of more than 20 years.

10. It would also be relevant to go into the reasons for passing the impugned orders in view of the stand taken on behalf of the State. It has been contended that the petitioners would not be entitled to a separate unit in view of the amendment of Section 2(g) of the Act. The proceeding culminated with the publication of the final statement u/s 11(1) of the Act on 27.07.1976. The amendment of the expression land holder" u/s 2(g) of the Act has been made retrospective and, therefore, it has been argued that the petitioners would not be entitled to a separate unit. It is quite obvious that on the date on which the amendment came into force, it would apply retrospectively to all proceedings pending at that time. However, since the present proceeding had already stood concluded, nothing more could have been done and the contention of the State that the reasons for passing the impugned orders is justified is unacceptable to this Court. There has to be a limitation for restarting/reopening/raising objection to a transaction or an order passed by the judicial or quasi judicial bodies. The State, or for that matter, any other authority, cannot be permitted to perpetuate threat of uncertainty and consequential harassment by acting in an arbitrary and unreasonable manner.

11. In the result, these two writ applications are allowed. The orders contained in Annexures 2, 4 and 5 and consequential orders as contained in Annexures 6, 9 and 10 are hereby quashed.