
(2015) 10 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10056 of 1993

Surendra Roy and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(3), 11, 15, 5(1)(3)
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 10 PAT CK 0071

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Rajendra Narain, Senior Advocate, for the Appellant; Raju Giri, G.P. 30 and Nikhil Kr. Agrawal, A. to G.P. 30, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—The petitioners, who were originally 96 in number, have preferred this application, under Articles 226 & 227 of the Constitution of India, seeking quashing of an order, dated 25.06.1993, passed by the Additional Collector, West Champaran, Bettiah, in Rev. Misc. Case No. 19/1992-1993 (Annexure-12), whereby, final draft publication of land, declared surplus, under the Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act"), in Mauza-Bariarwa, in the district of West Champaran, Bettiah, has been amended. They have also sought for quashing of an order, dated 07.12.1988, passed by the Collector, in Rev. Misc. Case No. 46/1985-86, whereby, certain land of the land-holder (respondent No. 9), under the Act, earlier declared surplus, have been included in the land retained by him. An order, dated 02.02.1992, passed by the Collector, West Champaran, Bettiah, in Rev. Misc. Case No. 18/1991-92, is also under challenge, whereby, he had referred the said matter to the Additional Collector, Bettiah, for review of an order, earlier passed by him, in a proceeding under Section 45(B) of the Act. The petitioners seek a direction to the respondent-Collector, West

Champan, Bettiah, not to give effect to Gazette Notifications, dated 12.07.1993 and 13.07.1993, to the extent it relates to Mauza-Bariarwa.

2. During the pendency of the writ application, some of the petitioners died and have been substituted by their legal heirs.

3. I have heard Mr. Rajendra Narain, learned senior counsel, appearing on behalf of the petitioners and Mr. Nikhil Kumar Agrawal, learned A.C. to G.P. 30, appearing on behalf of the State. Ms. Aditi Hansaria, learned counsel, on the request made by this Court, has extended valuable assistance to this Court in this matter, as an amicus-curiae.

4. Before referring to the facts of the case, purpose of the Act needs to be noticed in brief. The Act, inter alia, provides for fixation of ceiling area of land for a family as a unit and acquisition by the State of surplus land beyond ceiling limit for the purpose of its use, as prescribed under Chapter-IX of the Act, i.e., for distribution of such lands to land-less persons, belonging to Scheduled Castes/ Scheduled Tribes or Backward Class, other weaker sections of the society and personnel, serving in the arms forces etc.

5. The petitioners in the present case claimed to be belonging to Scheduled Castes and claim to be land-less. It is their case that in a ceiling proceeding, held against land-holder, namely, Kapil Deo Narain Singh (hereinafter referred to as "land-holder"), certain lands were declared to be surplus and duly notified in accordance with the provisions of the Act. It is their further case that they were issued Parchas by the competent authority, under the Act, with respect to the lands of the said Mauza-Bariarwa, which were declared to be surplus in a land ceiling proceeding. By the impugned action, however, the lands with respect to which the Parchas were issued in their favour and on the strength of which they were in possession over the lands, have been deleted and thus not to be treated as surplus land of the land-holder. This action of the respondents apparently has resulted into the Parchas, issued in their favour, becoming ineffective. They have, accordingly, approached this Court, seeking relief, as noted at the very outset.

6. From the facts, pleaded in the writ application and counter affidavit, it transpires that the land ceiling proceeding was initiated against the land-holder, under the Act, vide Land Ceiling Surplus Proceeding No. 1/1982-1983. Draft statement was prepared and published in the official Gazette of the district, as required under Section 10 of the Act, on 22.03.1982. The said land-holder had filed objections, under Section 10(3) of the Act. The Collector, East Champaran, Motihari, disposed of the objections of the land-holder, vide order, dated 04.09.1984, declaring 224.31 & 1/2 acres of the land, belonging to him, as surplus, including 61.26 acres of Class-I land of Mauza-Bariarwa, P.S.-Bagha, vide order, dated 04.09.1984. Finally, draft statement, under Section 11 of the Act, came to be published on 26.12.1984.

7. A writ application, thereafter, came to be filed before this Court by one Dhrub Mahto & Others (respondent Nos. 13 to 19), giving rise to C.W.J.C. No. 2570 of

1985, with a plea that in the said Land Ceiling Surplus Proceeding No. 1/1982-1983, in the district of East Champaran, Motihari, initiated against a third party, Kapil Deo Narayan Singh (respondent No. 9), their lands have been declared as surplus and were being sought to be taken away, for the purpose of distribution. They took specific stand before this Court that they had absolutely no knowledge and notice of any proceeding in respect of the lands with which they were concerned and yet their lands have been declared as surplus in a proceeding started against a third party. This Court observed, in that case, that it would have been more expedient for the petitioners to have approached the Collector of the district or the Additional Collector, raising their objection to the effect that the lands, belonging to them, should not have been declared as surplus without any notice to them. This Court disposed of the said writ application with an observation that if any such application was filed under Section 45(B) of the Act, the respondents would be required to look into the grievance of the petitioners by passing appropriate order. The Court further observed that if it was true that the lands declared as surplus were their, the same shall not be distributed if they had not already been distributed in the meantime. It is evident from an order, dated 06.09.1985, passed in C.W.J.C. No. 2570 of 1985, that a Division Bench of this Court had directed, by way of an interim measure, not to distribute the lands in question. Consequent upon the direction of the Division Bench of this Court, the said Dhrub Mahto and Others filed an application, under Section 45(B) of the Act, which came to be registered as Rev. Misc. Case No. 46/1985-1986. The Collector, East Champaran, Motihari, on 07.12.1988, passed an order to the effect that the land in question should be included in the land retained by the land-holder. Therefore, notification, dated 05.09.1991, came to be published in the official Gazette of the district, under Section 15 of the Act, as the acquired land under the Act. The said Dhrub Mahto again filed an application, under Section 47 of the Act, for modification of the said notification, giving rise to Misc. Case No. 18/1991-1992.

8. It is the case of the petitioners that the Additional Collector, East Champaran, Motihari, vide its letter, dated 09.09.1991, had directed the Circle Officer, Bagha-2, to take steps to distribute the land of Mauza-Bariarwa, in terms of Section 27 of the Act, amongst suitable persons. The Circle Officer, Bagha-2, in turn, asked the Halka-Karamchari, through letter, dated 13.09.1991, to submit proposal, giving description of the land and the map, for the purpose of distribution, through Circle Inspector. On 28.09.1991, the Circle Officer, Bagha-2, is said to have submitted a report to the Deputy Collector Land Reforms, Bagha-2, stating therein that out of 61.26 acres of land, declared surplus, 9.45 acres have already been distributed and, accordingly, 47.12 acres were required to be settled in favour of land-less persons. The application, which Dhrub Mahto and Others had filed, under Section 47 of the Act, for correction in records, came to be admitted by the Collector, East Champaran, Motihari, vide his order, dated 30.09.1991.

9. On the proposal, submitted by the Circle Officer, for settlement of lands in

favour of land-less persons, the Deputy Collector Land Reforms, directed certain corrections to be made in the said proposal, vide his order, dated 04.10.1991.

10. Significant developments took place at this juncture. The said Dhrub Mahto and Others preferred a writ application before this Court, giving rise to C.W.J.C. No. 7010 of 1991, raising grievance against proposed distribution of the lands, which, according to them, in fact, belonged to them. On 08.10.1991, in compliance of the direction of the Deputy Collector, dated 04.10.1991, as referred to above, the Circle Officer submitted a corrected report, mentioning therein that 12.50 acres of land were settled with 26 land-less persons and remaining 47.2 acres of land were left to be settled. It appears that the Circle Officer has proposed settlement of remaining land, in favour of 76 land-less persons. On 09.10.1991, two more developments took place. By way of an interim measure, this Court passed an order, in C.W.J.C. No. 7010 of 1991, to the following effect:--

"..... Pending disposal of the writ petition the lands mentioned in the Schedule of the notification, Annexure, 3, namely, Khata No. 8/3, Plot No. 132, Area 0.19D, Plot No. 133, Area 0-09 D, Khata No. 32/5, Plot 134, Area 39.12, D, Khata 3, Plot 397, Area 1.85 D, Khata 5/5, Plot 197, Area 1.53D, Khata 34, Plot 209, Area 0.96D, Khata 5/5, Plot No. 50/374, Area 1.14D, Plot No. 199/414, Area 5.080, of village Bariarwa, shall not be distributed and if the petitioners are in possession thereof, their possession shall not be disturbed."

11. On the same date, as alleged by the petitioners, the Deputy Collector Land Reforms and Sub-Divisional Officer had approved the distribution of the proposal for distribution of the land amongst 76 persons. The interim order of this Court, dated 09.10.1991, has been brought to the notice of this Court, by way of Annexure-D to the counter affidavit, filed on behalf of the private respondents. It is the case of the petitioners that on 12.10.1991, the Circle Officer, Bagha-2, had directed the Halka-Karmchari to prepare the Parwana, in the name of 76 persons, and further to submit a report after distribution of Parcha and giving delivery of possession. It is the case of the petitioners that on 13.10.1991, the Circle Officer, Bagha-2, closed the proceedings, communicating that the settlees had been given possession over the land in the presence of important persons of the area and the concerned Mukhiya.

12. It is the further case of the petitioners that neither the petitioners nor the official respondents were aware of the interim order passed by this Court, dated 09.10.1991, which was, for the first time, brought to the notice of the Collector, on 28.10.1991, by said Dhrub Mahto and Others, applicants of Rev. Misc. Case No. 18/1991-1992, in the concerned proceeding. It is, accordingly, the case of the petitioners that before the interim order could be brought to their notice or to the notice of the official respondents; they had already entered into possession over their respective lands settled in their favour. This Court finally disposed of the writ application, being C.W.J.C. No. 7010 of 1991, by an order, dated 26.11.1991, with the following direction:--

"..... On these facts and circumstances, we dispose of this application with a direction that the lands mentioned in our order dated 9.10.91 shall not be distributed till Revenue Misc. No. 18/91-92 pending before the Collector is disposed of by him in accordance with law."

13. This Court's order, dated 26.11.1991, passed in C.W.J.C. No. 7010 of 1991, was produced before the Collector, East Champaran, Motihari, in Rev. Misc. Case No. 18/1991-1992, on 31.03.1992, whereafter, he passed an order that this Court's order, dated 26.11.1991, should be communicated to all concerned for compliance. The Collector, East Champaran, Motihari, vide order, dated 20.07.1992, issued notices to the parties to show-cause as to why the case be not re-opened and disposed of afresh in accordance with the provision of the Act. Dhrub Mahto and Others again approached this Court, invoking writ jurisdiction, giving rise to institution of C.W.J.C. No. 10071 of 1992. They claimed that despite this Court's order, dated 26.11.1991, the Collector was not disposing of their application, preferred under Section 47 of the Act. They took stand before this Court that by virtue of the order, dated 07.12.1988, the lands, which belonged to them, were directed to be excluded from the lands of the land-holder, but the same is now again being clubbed with the lands of the land-holder. This Court found that the order, dated 20.07.1992, passed by the Collector, East Champaran, Motihari, for re-opening the matter, could not be sustained. This Court while disposing of C.W.J.C. No. 10071 of 1992, by an order, dated 20.04.1993, had directed the Collector to comply with this Court's order, dated 26.11.1991, passed in C.W.J.C. No. 7010 of 1991. The Court, however, made it clear that in the event it was found that any case for re-opening of the proceedings had been made out, the Collector might proceed in accordance with law, but before doing so, he must comply with the order of this Court, dated 26.11.1991.

14. Subsequently, upon transfer of the records of Rev. Misc. Case No. 18/1991-1992 to the Additional Collector, West Champaran, Bettiah, Rev. Misc. Case No. 19/1992-1993 came to be registered. The Additional Collector passed final order, dated 25.06.1993, in the said case, whereby he directed to include 12 Bighas of land, said to have been transferred after 09.09.1970 by the land-holder, in units of land-holder and the lands, said to have been transferred prior to 22.10.1959, by the land-holder, were directed to be excluded from the proceedings of the Act. The effect of the said order, dated 25.06.1993, passed by the Additional Collector, is that the lands of the said Mauza-Bariarwa, which belonged to the land-holder and transferred prior to 22.10.1959, were declared to be excluded from the Lands Ceiling Surplus Proceeding Case No. 1/1982-1983, whereas, the lands, transferred by the land-holder after 09.09.1970, were to be included in the units of the land-holder. In the light of the order, dated 25.06.1993, amended notification, under Section 15 of the Act, came to be published in the official Gazette of the District, which has been brought on record by way of Annexure-7 to the writ application. From the said notification, it appears that 26.3 acres of land, which were declared to be surplus

land in the earlier notification, were deleted. These are the lands over which said Dhrub Mahto and Others had claimed title, on the basis of the purchases they had made. 23.15 acres of land of Mauza-Bariarwa, Thana-Bagha, were included in the unit of the land-holder. Inclusion of this area of the land, in the unit of the land-holder, resulted into declaration of equivalent land, held by the land-holder as surplus land.

15. The said land-holder filed a writ application before this Court, giving rise to C.W.J.C. No. 7759 of 1993, which came to be dismissed by an order, dated 05.11.1993. From the said order, it appears that the plea, which the land-holder had taken before this Court with respect to the sale of lands, on or after 09.09.1970, by their sons, was that in the land ceiling proceeding, the sons were not parties and, therefore, those lands ought not to have been treated to be the units held by the family. This Court dismissed the said writ application, on the ground that the said land-holder had duly represented the joint family in course of the land ceiling proceeding and the lands, held by the co-sharer, must be deemed to have been opted to be retained by the land-holder, in terms of Section 9(2) of the Act.

16. Counter affidavit, in the present case, has been filed on behalf of the respondent Nos. 13 to 19. For the reasons not known to this Court, they have not been represented by any counsel in course of final hearing of this case. However, it is their case that the land-holder had transferred 12 Bighas, 5 Kathas and 3 & 1/2 Dhurs of land, at Mauza-Bariarwa, to one Dwarika Sahi, through registered-deed, bearing No. 3533, dated 08.09.1959. On 11.07.1971, the two sons of the land-holder had transferred certain land to one Rajiv Ranjan Verma, through registered-deed, dated 30.11.1971. Subsequently, by two separate registered sale-deeds, dated 30.11.1971, the said two sons of the land-holder had transferred certain land in favour of one Ashok Narain Sahi and Jay Prakash Sahi. Respondent Nos. 13 to 19 are said to have purchased the lands, transferred by the land-holder to different persons, through sale-deeds, as noted above, by him, through various registered sale-deeds, on 13.01.1975, and their names were, accordingly, mutated. Whereas, the lands, transferred by the land-holder (12 Bighas, 5 Kathas and 3 & 1/2 Dhurs), prior to 22.10.1959, the Additional Collector treated them to be permissible under Section 5(1)(3) of the Act. But as regards, the transfers made by the sons of the land-holder, subsequent to 09.09.1970, the Additional Collector recorded that such transfers should be adjusted against admissible units of the land-holder. It was in this background that the initial notification, declaring lands of the land-holder to be surplus, came to be modified by subsequent notification.

17. Mr. Rajendra Narain, learned senior counsel, appearing on behalf of the petitioners, has submitted that all the transactions made by the land-holder right from the year 1959, which finally resulted into transfer of the lands in favour of the respondent Nos. 13 to 19, were, in fact, Benami transactions and lands, in fact, were in possession of the land-holder till the lands were distributed amongst

the petitioners, after acquisition of the surplus lands. He has submitted that the petitioners were already put in possession before the interim order of this Court, dated 09.10.1991, passed in C.W.J.C. No. 7010 of 1991, could be communicated to the authorities. He has submitted that it was, as a matter of fact, the land-holder, who was fighting the cases before Revenue Courts and this Court, from behind, through said Dhrub Mahto and Others. He has further submitted that the land-holder, in course of the Land Ceiling Surplus Proceeding No. 1/1982-1983, never asserted that he had transferred the lands in favour of Dwarika Sahi, through registered sale-deed, dated 08.09.1959.

18. I have perused the order, passed in Land Ceiling Surplus Proceeding No. 1/1982-1983, from which it appears that the land-holder had asserted that on 08.09.1959, he had transferred the certain lands to "Tapeshwar Singh and Others". It was the specific case of respondent Nos. 13 to 19 before the Revenue Courts that the lands, which the land-holder had sold, on 08.09.1959, was purchased by them through registered sale-deed, dated 13.01.1975. He also took specific plea that the lands, which the sons of the land-holder had sold, on 30.11.1971, were subsequently purchased by him on 13.01.1975. It was, therefore, their specific case that the said respondent Nos. 13 to 19 were the owners of the land and the same could not have been declared surplus, in a land ceiling proceeding, initiated against the land-holder, namely, Kapil Deo Narain Singh.

19. Mr. Rajendra Narain, learned senior counsel, has placed reliance upon Supreme Court decision, in case of *Mulraj Vs. Murti Raghonathji Maharaj*, , and has submitted that the interim order of this Court, dated 09.10.1991, passed in C.W.J.C. No. 7010 of 1991, had lost its force because prior to its actual communication to the officials/respondents, the petitioners had already come in possession over the lands after Purchas were issued in their favour. He has also placed reliance upon another Supreme Court decision, in case of *Bunna Prasad and Others Vs. The State of U.P. and Another*, . These two decisions, aforementioned, are not relevant for adjudication of the present matter for the simple reason that the entire case of the petitioners is based on declaration of surplus lands of the land-holders beyond the ceiling area. The respondent Nos. 13 to 19 claimed before this Court and also before the Revenue Courts, successfully, that the lands declared to be surplus, held by the land-holder, were, in fact, not held by the land-holder rather by them. The question of distribution of lands, to the petitioners, would arise only if the lands are declared to be surplus of a land-holder by the Revenue Authorities, in accordance with the Act. The petitioners do not have any right to hold the land, on the basis of the Parchas, issued by the State, on the basis of an order, which itself has been subsequently modified.

20. Ms. Aditi Hansaria, learned counsel, who has appeared in this case, as an amicus-curiae, on this Court's request, is right in her contention that the Parcha-holders did not have any right to hold the land unless the State had acquired the

land, under the provisions of the Act. The competent authority, under the Act, upon an objection, raised by respondent Nos. 13 to 19, and under the orders of this Court, decided to amend the earlier notification, invoking jurisdiction under Section 45(B) of the Act.

21. In view of the discussion, as above, I am of the considered view that Parcha-holders cannot have better right over the land than the jurisdiction of the State Government to acquire surplus land, under the provisions of the Act. Their claim may depend upon acquisition of land by the State. In the present case, when the Revenue Authorities, under the Act, themselves have decided to delete the land, in question, from being declared surplus and have further decided to declare other lands of the land-holder to be surplus, the Parchas, issued in favour of the petitioners, have no meaning. It goes without saying that the State-respondents are free to settle the land of the land-holder, which has been declared surplus pursuant to the amended notification, published in the official Gazette of the district, on 13.07.1993, brought on record by way of Annexure-7 to the writ application.

22. I, accordingly, do not find any merit in this writ application. This application is, accordingly, dismissed, but without any cost.

23. Before I part with this judgment, I must record my appreciation for the valuable assistance extended by Ms. Hansaria at the Court's request, as an *amicus-curiae*.