
(1993) 05 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 3809 of 1993

Thakur Shaligram Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-05-1993

Acts Referred:

Citation : (1993) 05 PAT CK 0024

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The petitioner in this application has questioned an order dated 15-3-1993 passed by the Collector, Sitamarhi as contained in Annexure-2 to the writ application.

2. The petitioner is a landlord. A draft publication was made on 28-6-1982. The Additional Collector in the proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 held that the family of the petitioner does not hold land more than the ceiling limit, except 36 decimals of class IV lands.

3. The Collector of the District, however, directed reopening of the proceeding u/s 45-S of the Act by an order dated 15-3-1993 as contained in Annexure-2 to the writ application.

4. The learned Counsel appearing on behalf of the petitioner submitted that no fresh material was brought on records by the Collector enabling him to pass the impugned order.

5. It was further submitted that one of the grounds taken in the said application that the petitioner's wife was living separately and thus he was entitled to a separate unit, is covered by a decision of this Court in *Arati Dent v. State of Bihar* reported in 1980 BBCJ 23.

The learned Counsel further submitted that the learned Additional Collector had also made proper classification of the land after getting the same verified and

thus the question of reopening of the proceeding even on the classification of the land did not arise.

6. It was further submitted that neither the petitioner's wife nor his daughters had been given a notice, although the daughters had been claiming some lands by reason of a deed of gift executed in their favour on 5-9-1962.

7. Mr. Hemendra Prasad Singh, the learned Standing Counsel appearing on behalf of the State submitted that the petitioner had also questioned the notice u/s 45-B of the Act by filing a writ petition and thus he cannot re-agitate the self-same matter, when the final order has been passed.

8. The learned Counsel further submitted that by reason of the impugned order only a proceeding has been reopened and final order in the proceeding is yet to be passed and thus it would be open to the petitioner to raise all contentions before the Collector.

9. this Court in CWJC No. 8843 of 1991 and other analogous case *Mrityunjay Narayan Mishra and Ors. v. State of Bihar* has held as follows:

From the conspectus of the decisions referred to herein before, it is evident that Section 45-B does not confer upon any arbitrary power upon the Collector of the District to re-open a proceeding on his own sweet will. All such orders must be informed by reasons. A land ceiling proceeding can be re-opened only on the availability of the new material or if it is found that the Collector under the said act had passed such order in violation of the provisions of law both substantive and procedural which was resulted in real prejudice to the State, landholder or any third party.

However, I may mention that in a given case it may also be permissible for the Collector of the District or the State of Bihar to direct re-opening of the proceeding when a fraud has been practised upon the Collector or any other party when it is found that the order has been passed on extraneous considerations.

The power u/s 45-B of the said Act, has to be exercised sparingly and the same cannot be exercised for the purpose of making a roving or fishing enquiry. While however passing such order, the object and purport of the Act should be the upper most consideration, in the mind of the Collector of the District or the State.

Although the principles of *res-judicata* are not attracted when the Collector passes an order u/s 45-B of the said Act as has been held by this Court in *Harishchandra* case (*supra*), but once a proceeding has been directed to be reopened and the same upon enquiry has been dropped, in my opinion, such a proceeding cannot be directed to be reopened again except in very exceptional cases like practising fraud upon the court. A matter which had been duly enquired into by the Collector of the District cannot ordinarily be directed to be reopened, by his successor in interest on the selfsame ground.

10. The Collector of the District has inter alia held that the Additional Collector has classified the class III lands on the basis of a purported report, although no such report is available on records.

The learned Collector further opined that in terms of Section 4(f) of the Act only those lands which remain sub-merged under water are to be classified as class VI lands but lands which are on the bed of river cannot be so classified.

He further held that so far as petitioner's wife is concerned, the lands held and possessed by her should also be clubbed along with the lands of her husband.

11. He has assigned sufficient reasons for the purpose of arriving at a conclusion that the proceeding is liable to be reopened. So far as classification of land is concerned, apart from invoking the provisions of Section 45-B of the Act, the ceiling authorities can involve the provisions of Section 5(2) thereof which reads as follows:

5(2)(1) Where the number of Members in a family on the appointed day exceeds five the family may hold in addition to the ceiling area determined u/s 4, land not exceeding one-tenth of the ceiling area for that class of land for every such additional member:

Provided that in no case the aggregate of the land held by the family shall exceed one and a half times the ceiling area.

(ii) Any land which a land-holder is allowed to hold under this section shall not be liable to be acquired by the State Government under this Act merely by reason of any subsequent improvement in the land or diminution in the number of persons referred to in Clause (i):

Provided that the ceiling area shall be redetermined, where subsequently the classification of land improves as a result of irrigation work constructed, maintained, improved or controlled by the Central or the State Government (sic) or by a body corporate constituted under any law for the time being in force whether or not the land holder actually drawn water from the source.

12. If the finding of the Collector is correct to the effect that classification of the land has been done by suppressing material facts and ignoring the mandatory provisions of law, in my opinion, has cannot be said to have committed an illegality in directing reopening of the proceeding.

13. If the Collector of the District arrives at a finding that an order has been obtained either by reason of suppression of fact or by applying working procedures of law, he is entitled to reopen the proceeding.

14. So far as the contention of the petitioner that as his wife is leaving separately since 1985 and thus his wife was entitled to a separate unit, is concerned, the same cannot be accepted.

15. this Court in various decisions has held that the decision in Arati Devi case's

(supra) does not lay down the correct law, as therein the import of definition of family as contained in Section 2(ee) of the Act had not been taken into consideration.

This aspect of the matter has also recently been dealt with by the Supreme Court in Jeet Singh and Others Vs. State of U.P. and Others, wherein it has clearly been held that a separated wife means a judicially separated wife. Thus in relation to grant of one unit to the wife of the petitioner evidently an error on the face of the record was committed.

16. It is true that a proceeding shall be reopened sparingly and inter alia on the basis of new information received or new materials brought on records. But it is also well known that if any fraud has been practised and/or if it is found that in determining the ceiling area, the mandatory procedures laid down in the law had not been followed, in our opinion, the Collector of the District, would be entitled to reopen the proceeding.

17. It does not appear that while reopening the proceeding the Collector has directed annulment of the deed of gift purported to have been executed in favour of the daughters of the petitioners and that they were not necessary parties.

18. In the reopened proceeding, it would be open to the petitioner and his wife to raise all contentions including the contentions relating to the classification of the land.

19. For the reasons aforementioned, we do not find any merit in this case, which is accordingly dismissed but without any order as to costs.

A.N. Chatturvedi, J.

20. I agree.