
(2002) 05 PAT CK 0099
In the Patna High Court
Case No : C.W.J.C. No 1357 of 2002

Upendra Paswan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Citation : (2002) 05 PAT CK 0099

Final Decision : Dismissed

Judgement

S.N. Jha and T.P. Singh, JJ.—This writ petition has been filed for quashing the order of the Additional Member, Board of Revenue, dated 10.6.93 in Case No. 23/93 upholding the claim of the land holders, Respondents 2 to 7 herein, for additional four units under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter called "the Act").

2. The short facts of the case are that a proceeding bearing Land Ceiling Case No. 2/1973-74 was initiated under the Act against Respondents 3 to 7 which was disposed of by the Collector, Aurangabad on 21.12.83. The Respondents filed appeal before the Commissioner, Magadh Division, Gaya vide Ceiling Appeal No. 14(sic) and not satisfied with the order dated 15.6.89 passed therein took the matter to the Board of Revenue in revision. The Board of Revenue by its order dated 20.8.91 (sic) remitted the matter back to the Collector for consideration on the point of majority of some of the Respondents i.e. grant of additional units to them. The Collector on 25.9.92 rejected the claim of the Respondents. On 9.10.92 notification was published u/s 15 of the Act. On the same day the surplus lands were distributed. The Petitioner herein is one of the settlees. In the meantime Respondents preferred appeal before the Divisional Commissioner which was rejected on 7.1.93. They again went to the Board of Revenue in Case No. 23/93. The Additional Member by the impugned order dated 10.6.93 upheld the Respondents claim to the extent of four additional units, as indicated above, and directed the authorities to accordingly proceed with the case after allowing seven units to the Respondents.

3. The case of the Petitioner is that he was not aware of the above said order of the Additional Member, Board of Revenue, until 10.5.2,001 when notice was issued to him by the Circle Officer, Goh, as to why purchase issued in token of settlement be not cancelled. According to the Petitioner, being settlee of the land to the extent of 0.62 acre, a right had accrued to him which stands violated by the above said order. He was necessary party to the proceeding and without notice the order could not be passed against him. In support of the contention reliance is placed on a decision of the Apex Court in *Ram Swarup and Others Vs. S.N. Maira and Others*, in particular, the observation

By such allotment and delivery of possession in their favour, rights have been conferred on such allottees and, therefore, any order without impleading them as parties could not have been passed which has the effect of taking away their rights.

4. The above observation prima facie would seem to support the case of the Petitioner that being settlee of the land to the extent of 0.62 acre he should have been added as party in Revision Case No. 23/93 and that having not been done, the impugned order passed behind his back should be held to be illegal. From perusal of the judgment however it would appear that the observations were made in a somewhat different context which we shall notice soon hereinafter. At this stage the case of the Respondents may be noticed as under.

5. It has been submitted on behalf of the Respondents that in terms of Section 15 of the Act acquisition of land is subject to the result of appeal or revision and therefore the order declaring the land settled with the Petitioner among others, as surplus having been set aside by the superior authority the order no more exists and the settlement made as consequence of the order therefore must be treated as nullity. In support of the contention reliance is placed on a Bench decision of this Court in *Dharnidhar Thakur Vs. The State of Bihar and Others*, and *Akhileshwar Mishra Vs. State of Bihar and Others* : *Akhileshwar Mishra Vs. The State of Bihar and others*, In the instant case, publication was made within 14 days of the Collector's order and on the same day the alleged surplus lands were also distributed contrary to the law laid down by this Court in the case of *Mahanth Daya Ram Das and Ors. v. The State of Bihar and Ors.* 1975 BBCJ 667.

6. As would appear from a reference to the above said decision the submission of the counsel for the Respondents is well founded. But before we refer to that decision it would be appropriate to quote the relevant provisions of Section 15 of the Act as under:

15. Acquisition of surplus land.-

(1) The State Government or the Collector of the district specially so empowered in this behalf shall after the settlement under Sub-section (1) of Section 11 has been finally published and subject to appeal or revision, if any, acquire, the surplus land by publishing in the Official Gazette of the District, a notification to the effect that such land is required for a public purpose and such publication

shall be conclusive evidence of the notice of the acquisition to the person or persons concerned:

Provided that without awaiting the result of appeal or revision the State Government or the Collector of the district specially so empowered in this behalf may proceed to acquire such of the surplus land of the land-holder in respect of which there is no claim or dispute or which is admitted by the land holder to be surplus:

Provided further that a copy of the notification shall also be sent to the land-holder concerned by registered post with acknowledgement due.

(2)...

(3) Subject to any order made on appeal or revision the Collector may at any time after the publication of the notification under Sub-section (1) take possession of any land specified in the said notification and may for that purpose use such force as may be necessary.

(4)...

While considering the provisions of Sub-section (3), which was Sub-section (6) prior to 1982 amendment by Act 55 of 1982, a Division Bench of this Court in Mahanth Daya Ram Das and Ors. (supra) observed as under:

Now only remains to consider Sub-section (6) of Section 15 of the Act. This Sub-section authorised a Collector at any time after publication of notification under Sub-section (1) to take possession of any land specified in the said notification. But this power has been made subject to the provision of Subsections (4) and (5) and any order passed on appeal or revision. It, therefore, follows that where a claim has been filed, the Collector should stay his hands in respect of taking possession of land covered by the claim, pending disposal thereof. He has also to wait for the expiry of the period of appeal or revision before taking further steps. Also where appeals or revisions have been filed, the Collector has to wait till the decision in the appeal or revision. Even if some action is taken during pendency of the appeal or revision, it would be subject to the result thereof and the right of person ultimately succeeding in his claim cannot be defeated by the mere fact that possession has been taken of the land in question.

7. The above categorical interpretation of Sub-section (6) of Section 15, now Sub-section (3), leaves no room for doubt that the acquisition of surplus land and any consequential distribution thereof was subject to the result of the appeal or revision as the case may be. In fact the authorities were required to wait until the expiry of the period of limitation for filing revision. However they hurriedly went ahead to not only publish the notification u/s 15 but also distribute the alleged surplus lands within 14 days of the order, it is clear that taking possession of the land and its distribution cannot defeat the right of the landholders depending on the outcome of the appeal or revision as the case may be. In the case of Dharnidhar Thakur (supra) a Division Bench has observed:

The settlees acquire right by virtue of vesting of land with the State Since vesting of the land with the State, as observed earlier, was set aside, the allotment automatically came to an end. This being so, the allottees do not get any right to retain the lands by virtue (sic) earlier order whereby the land was declared surplus which is not in existence having been set aside or quashed by the revenue authorities or by this Court in earlier writ petition.

In the case of Akhileshwar Mishra (supra) the action of the authorities in completing the process of publication of the notification and distribution of lands within 11 days of the order was held to be mala fide on the part of the authorities.

8. We have not gone into the question of latches on the part of the Petitioner in challenging the order of the Board of Revenue passed about 9 years ago but we find it relevant to mention that the impugned Order was earlier challenged by the State of Bihar before this Court in CWJC No. 2816/2002 which was dismissed by the learned Single Judge on 13.3.2002. The Letters Patent Appeal, being LPA No. 475/2002, also met the same fate on 15.4.2002.

9. Coming to the decision of the Supreme Court in the case of Ram Swarup v. S.N. Maira (supra) it would appear that the dispute had reached the Apex Court in a somewhat different context. On 8.6.60 the Collector determined the surplus land of the land-holder in terms of the provisions of Punjab Security of Land Tenures Act, 1953. The order was challenged before the Divisional Commissioner but without any success. The appellate order was challenged before the Finance Commissioner and a plea was taken that the landholder having died on 6.1.76 and in the meantime another enactment in the State of Haryana, titled Haryana Ceiling on Land Holdings Act, 1972 having come into existence, the question of existence of surplus land should be determined under the provisions of Haryana Act and so determined, there was no surplus land. The revisional authority dismissed the revision on the ground that the surplus land had been determined by the Collector on 21.4.61 under the Punjab Act which could not be upset after 21 years, also, that Section 12(3) of the Haryana Act having come into force retrospectively with effect from 21.3.72, the land must be deemed vested in the State prior to the death of the surplus land-holder and therefore, there was no question of any heritance to be considered upon his death. The matter was taken to the High Court which by the impugned judgment held that the notification was made only in the year 1976 and since the landholder died prior to the date of notification there was no vesting of the land in the State and therefore on the death of the land-holder legal heirs would be entitled to individual ceiling units under the Haryana Act and the declaration of surplus land earlier made under the Punjab Act could not take away that right. Accordingly the High Court directed re-determination of the surplus land in accordance with the provisions of Haryana Act. It is in this context that the dispute came to the Supreme Court for consideration and while considering the validity of the order of the High Court the Supreme Court observed that by reason of allotment and delivery of possession

in favour of the allottees, a right had accrued to them which could not be taken away without impleading them as parties.

10. On general principles, one would feel inclined to accept the contention that if some act of the State authorities created right in favour of an individual he is entitled to opportunity of hearing and therefore in fairness to him, he should be made party and given opportunity of hearing in a subsequent proceeding. In the instant case, in the facts and circumstances, however I do not think it would be proper exercise of jurisdiction under Article 226 of the Constitution to interfere with the revisional order of the Board of Revenue on that ground. As seen above the land in question was not only notified but also distributed within 14 days of the order without even waiting for the expiry of the period of limitation for filing appeal and, later, revision. The above act of the authority was clearly in violation of the law laid down by this Court in Mahanth Daya Ram Das case and, indeed, contrary to the provisions of Section 15 itself.

11. All said and done, the consequential distribution has to be treated to be subject to the result of appeal and revision. As the acquisition order stood modified by superior authority i.e. Board of Revenue in exercise of statutory power, by reason of grant of four additional units necessitating fresh determination of surplus land, the Petitioner cannot be allowed to stay put on the land in question on the basis of settlement made in his favour. We are conscious of the fact that the Petitioner has remained in possession of the land for, a long time but on that ground right of the land-holder arising from the order passed by the statutory authority cannot be denied to him. Striking a balance between the right of the Petitioner and that of the land-holders, the conclusion would be irresistible that the Respondents have better right than the Petitioner. We have no manner of doubt that the order of the Collector which is the source of the Petitioner's claim having stood modified and acquisition being a nullity, he cannot maintain his claim on a technical ground that he was not impleaded in Case No. 23/93 and given opportunity of hearing.

12. In fairness to the Petitioner we must notice the contention that the claim of the Respondents has been allowed on the basis of opinion of the Medical Board and even though only three members of the Respondents family had appeared before the Board, four additional units have been allowed treating them as major. In this regard counsel for the Respondents pointed out that Ram Bhagat Singh, Respondent No. 4 herein, was major undisputedly being the elder brother of Respondents 5 to 7 namely Ram Binay Singh, Braj Bhushan Singh and Ashok Kumar Singh alias Ashok Kumar who had appeared before the Medical Board. The claim of said Ram Vinay Singh and two others having been upheld by the Board of Revenue on the basis of opinion of the Medical Board, Ram Bhagat Singh being elder to them, grant of additional unit to him cannot be said to be erroneous. We find substance in the above contention of the Respondents.

13. In the above premises, we do not find any merit in this writ petition, which is accordingly dismissed.