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Court : Patna

Decided On : Sep-16-1997

Judge : M.Y. Eqbal, J.

Appeal No. : C.W.J.C. No. 1169 of 1989 (R)

Appellant : Dhrub Narayan Singh and anr.

Respondent : The State of Bihar and ors.

Disposition : Applications Allowed

Prior history : M.Y. Eqbal, J. 1. In this writ application, the petitioners have prayed for quashing the order dated 23.3.1978 passed by the Dy. Commissioner, Palamau, in purported exercise of powers under Section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, and also the order dated 30.12.86 passed by the Addl. Collector, Palamau, in Land Ceiling Case No. 64/1973-74 and the subsequent orders dated 2.11.1987 and 21.6.1987 passed by the Dy. Commissioner, Palamau

Judgement :

M.Y. Eqbal, J.

1. In this writ application, the petitioners have prayed for quashing the order dated 23.3.1978 passed by the Dy. Commissioner, Palamau, in purported exercise of

powers under Section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, and also the order dated 30.12.86 passed by the Addl. Collector, Palamau, in Land Ceiling Case No. 64/1973-74 and the subsequent orders dated 2.11.1987 and 21.6.1987 passed by the Dy. Commissioner, Palamau, and the Member, Board of Revenue, Bihar, Patna.

2. The brief facts of the case as stated by the petitioners are as follows:

In the year 1973, a ceiling proceeding was initiated against the petitioners in Land Ceiling Case No. 64(5)/73-74 and notices were issued by the Land Reforms Dy. Collector, Palamau, in response whereof, the petitioners appeared and filed returns. The Deputy Collector, Incharge Land Reforms, by his order dated 22.3.75 declared that the petitioner No. 2 Pradeep Kumar @ Pradeep Kumar Singh, is major and accordingly two units were allowed to the petitioner Nos. 1 and 2. A copy of the order dated 22.3.75 is Annexure-1 to this writ application. The petitioner's further case is that after about 5 years, the respondent No. 3, the Deputy Commissioner, without notice to the petitioners, by an order dated 23.3.1978 under Section 45 (B) of the Act, reopened the Land Ceiling Case No. 64/5/73-74 and forwarded the case to the Addl. Collector, Land Ceiling, Palamau, for disposal. A copy of the order dated 23.3.78 passed under Section 45-B of the Act is annexure-2 to this writ application. It is stated that the respondent No. 4, the Addl. Collector, Palamau after hearing the parties, by his order dated 30.12.86 held that the petitioner No. 2 was minor on the appointed date and as such he is not entitled to any unit. The petitioners after that moved the Dy. Commissioner in appeal who by order 2.11.1987 dismissed the appeal and confirmed the order of the Addl. Collector. The petitioners then moved the Member, Board of Revenue, Patna, in revision which was numbered as Case No. 213/87 and the Learned Member, Board of Revenue, by order dated 21.6.1989 partly allowed the revision and directed the authorities to make certain modifications with regard to exemption claimed by petitioner No. 1. The stand of petitioner No. 1 is that the petitioners actually held 25.06 acres of Class IV Land as 41.40 1/2 of class VI land in Bishrampur Anchal and they also held 9.57 1/2 of class IV land in village Khorta in Garhwa Anchal. According to the petitioner, they are entitled to 96 acres of class VI land and as such the petitioners did not hold land beyond the ceiling.

3. Mr. S. Srivastava, earned Counsel appearing for the petitioners assailed the impugned orders passed by the different authorities as being illegal and contrary to the facts and evidence on record. Earned Counsel firstly submitted that from the original order passed by the Dy. Commissioner in purported exercise of powers under Section 45-B of the said Act is wholly illegal and without jurisdiction. The earned Counsel submitted that the Collectors has no jurisdiction or authority to re-open the proceedings without giving notice to the land holders and without hearing them. Earned Counsel submitted that from the impugned order of the Dy. Commissioner passed while reopening the proceeding, it will appear that there is complete non-application of mind inasmuch as it has not been disclosed what are the reasons and under what circumstances, he was satisfied that some irregularities were committed. Earned Counsel further submitted that after re-opening of the proceeding under Section 45-B of the Act, the Collector has no power or jurisdiction to transfer the case to another authority for disposal. The earned Counsel submitted that there cannot be a suo moto reopening of the proceeding in purported exercise of jurisdiction under Section 45-B of the Act. In this connection, the earned Counsel put reliance on the decisions reported in : AIR1987 Pat118 Praveen Sankar Singh v. State (FB) 1984 PLJR 988, Harish Chandra Singh v. State of Bihar 1991(1) PLJR 455 Kameshwar Prasad Thakur v. State of Bihar and 1985 BLJR 781, Takdhar Narain Singh and Ors. v. State of Bihar and Ors.

The Larned Counsel secondly submitted that after the matter was reopened by the Dy. Commissioner and it was sent to the Addl. Collector for hearing, the petitioners appeared and brought on record various documents in support of the fact that during the relevant period, the petitioner No. 2 was not a minor, rather he was a major. But the Learned Addl. Collector totally discarded the evidence adduced by the petitioners and has come to an erroneous finding that on the appointed day the petitioner No. 2 was minor, Earned Counsel then submitted that the Dy. Commissioner who was from the very beginning biased on the matter dismissed the appeal in limine without giving any reasons. The earned Counsel also assailed the order passed by the Member, Board of Revenue, on the ground inter alia, that while remitting the matter to the Addl. Collector, the revisional authority ought to have made open remad and not on limited point. Earned Counsel further

submitted that the reasoning given by the Member, Board of Revenue, in confirming the order of the Addl. Collector is based on no evidence. According to the Learned Counsel, therefore, the impugned order is illegal, erroneous in Law and liable to be quashed.

4. On the other hand, Mr. Merathia, Learned Government Pleader No. II, firstly submitted that the power conferred under Section 45-B of the Act is in the nature of suo moto revision and, therefore, exercise of powers by the State Government or the Dy. Commissioner is not restricted by any provision of the Act. It is submitted that power can be exercised irrespective of the fact whether the order passed in the ceiling proceeding was assailed by the State of Bihar in appeal or revision. Leaned counsel drew my attention to the order passed by the Incharge court of the Land Reforms Dy. Collector as contained in Annexure-1 and submitted that from the very perusal of the order, it would appear that the authority concerned, without examining the matter and without satisfying itself with regard to the claim of majority of Pradeep Kumar, passed order in a mechanical way declaring petitioner, No. 2 as major. According to the Earned Counsel the Dy. Collector, therefore, rightly reopened the proceeding under Section 45-B of the Act and there is no infirmity in the said order. Earned Counsel then submitted that after proceeding was re-opened by the impugned order of the Dy. Commissioner, the petitioner instead of challenging that order appeared before the Addl. Collector and participated in the proceeding justifying that the original order (Annexure-1) passed by the Land Reforms Dy. Collector was legal and valid. In such circumstances, earned Counsel submitted that once petitioners submitted to the jurisdiction of the court and participated in the proceedings without challenging the reopening of the proceedings, the petitioners are estopped from challenging the said order of the Dy. Commissioner at a later stage. On the question of merit of the claim of the petitioners, learned G.P. II submitted that although the petitioner produced certain certificates on the point of the majority of the petitioner No. 2 but the author of those documents or maker of the certificates have not been examined, nor any cogent evidence was produced before the authority to show that on the relevant date, the petitioner No. 2 was major. The earned Counsel lastly submitted that the finding arrived at by the Addl. Collector was confirmed by the Dy. Commissioner and also the Member, Board of Revenue, after reappraisal

of the evidence and, therefore, the concluded findings of fact cannot be decided by this Court in writ jurisdiction under Articles 226 and 227 of the Constitution of India.

5. Before appreciating the rival contentions of the learned Counsel appearing for the parties, it would be useful to look into the relevant provisions of Section 45-B of the Act which reads as under:

45-B State Government to call for and examine records.--The State Government or the Collector of the district, who may be authorised in this behalf 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 re-opened and disposed of afresh in accordance with the provisions of the Act.

From bare perusal of the aforesaid provision it is manifest that it is a special provision conferring wide powers on the State Government and the Collector. Under this section, the State Government or the Collector may call for and examine the record of any proceeding at any time disposed of under the Act and may direct that the case be re-opened and disposed of afresh in accordance with law. Exercise of power under the aforesaid provision is very wide but the power is hedged by certain limitations. It is manifest from the aforesaid provision that before passing an order for reopening of the proceeding the State Government or the Collector is bound to examine the record and apply its mind and record reasons for its satisfaction that it is a fit case where the proceeding should be reopened for hearing afresh. In the case of *Harish Chandra Singh v. The State of Bihar* (supra) a Division Bench of this Court was considering the scope of Section 45-B of the Act and held as under:

A perusal of the provisions quoted above would reveal that there is no blanket power upon the State Government to reopen any case. The power to reopen is hedged by two limitations. The section calls upon the State to examine any record. That is the first limitation. The section directs the State Government or the Collector to reopen a case, if it thinks fit. The expression, if it thinks fit, is rather poignant. That is the second limitation upon the State Government in the matter of reopening of closed pending cases. Reverting to the first limitation, the section does not leave it open to the authorities to reopen any case, but it enjoins a duty of

examining any record. Examination of the record necessarily implies application of mind a judicial mind. The mind has to be exercised in order to find out whether the case had been disposed of in accordance with the provisions of the Act. It is not in controversy and cannot be doubted that the final order in regard to declaration of surplus land must be in accordance with the provisions of the Act. The authorities were, therefore, enjoined to examine any record to find out if the ceiling case had been disposed of in accordance with the provisions of the Act or not. The infirmity may be either procedural or substantive in nature. After examination of the records, if the authority finds that the case had not been disposed of in accordance with the provisions of the Act, it was empowered to reopen closed cases. In my view, the requirement of examining any record takes away the sitting of arbitrariness. At the same time, it introduces an element of guide for the officer to act.

There are catona of decisions of this Court where the scope and ambit of Section 45-B of the Act has been considered and there is no need of any further repetation.

6. It is well settled that if the materials on record of a case are taken into consideration by the concerned authorities and conclusion is reached which becomes final, its finality has to be respected and the proceeding cannot be reopened for giving a second thought. If, however, any material or matter has been omitted from consideration that may be so substantial so as to lead to a different conclusion, the power under Section 45-B of the Act can be exercised. It is equally well settled that while reopening the case, the Revenue authority cannot revise an order and take a different view of the matter on the already existing materials. The District Collector can reopen the case only on the basis of a fresh materials, or if a new law, or new provision of law has come into force and otherwise not.

7. Coming back to the instant case it appears that in celling proceeding after the returns were filed by the petitioners, the concerned authority examined and verified the returns and found that the petitioners were not holding land in excess of ceiling limit. The proceeding was finally dropped on 21.3.1975. After about three

years the Dy. Commissioner, Palamau, reopened the proceeding on 23.3.1978 by passing the following order:

I have called for and examined the record of land ceiling case No. 24(B)/64(S) of 1973-74 State v. Shri Dhrub Narayan Singh S/o Late Ram Prasad Singh Village Hurha Koulla P.S. Bishrampur. District Palamu and I find that there has been some irregularity in disposal of the case.

Therefore, I.S. Dayal, Deputy Commissioner, Palamu, under the powers vested in me under Section 45-B of the Bihar Act 22 of 1976, hereby reopen the case and direct the anchal Adhikari to examine and furnish details of land and conduct enquiry regarding the age of the family members and the genealogy.

Sd/S. Dayal (In. Sd/-) Deputy Commissioner, Palamau.

Memo No. 1437/Rev. dated 23.3.78.

A copy with original record forwarded to the Additional Sub-divisional Officer, Daltanganj, for the required information and the verification report from the Circle Officer concerned and to finalise the land ceiling case at an early date.

2. Copy forwarded to the Additional Collector, Land Ceiling, Palamau, for information.

Sd/-S. Dayal

From the impugned order aforesaid it is evident that the following illegalities and irregularities have been committed by the Deputy Commissioner while passing the said order:

(i) Although the Deputy Commissioner has recorded in his order that the record has been examined but the order does not bear any sign of examination of records by him. The order also does not show what were the infirmities and irregularities found by the Deputy Commissioner in the proceeding before it was finally disposed of by the concerned authority. The Deputy Commissioner also has not recorded anything as to why he considered that it was a fit case for reopening and no reasons have been assigned or recorded in the said order which warrants

reopening of the proceedings.

(ii) Before the proceeding was reopened by the impugned order the Deputy Commissioner admittedly did not issue any notice nor called upon any show cause or explanation from the landholder as to why the ceiling proceeding should not be reopened for fresh decision.

(iii) After passing the impugned order reopening the proceeding the Deputy Commissioner immediately forwarded and transferred the case to the Addl. Collector for fresh hearing and disposal.

8. It is well settle that the State Government or Deputy Commissioner before reopening the proceeding is required to give notice to the landholder and to hear him and then to pass order for reopening the proceeding by recording reasons. The State Government or the Collector is further required to hear the matter itself after reopening the proceeding and not to transfer the case to any subordinate authority for disposal.

9. For the reasons aforesaid the impugned order dated 23.3.78 passed by the Collector by reopening the proceeding is erroneous in law and cannot be sustained. Consequently the order passed by the Addl. Collector after the case was forwarded to him for disposal is illegal and wholly without jurisdiction. The subsequent orders passed in appeal and revision are also bad in law.

10. For the reasons aforesaid this writ application is allowed and the impugned orders as contained in Annexures 2, 3, 4 and 5 of the writ application are quashed. There shall be no order as to costs.