

Bhagwan Singh and ors. and Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-29-1996

Judge : S.K. Homochaudhuri, J.

Appeal No. : C.W.J.C. No. 10978 of 1995

Appellant : Bhagwan Singh and ors. and Jagdish Prasad Singh and ors

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Prior history : S.K. Homochaudhuri, J. 1. In these two petitions, similar facts and identical law points are involved and the petitions are disposed of on merit at the stage of admission by this common order. 2. In both petitions, the petitioners have filed an application under Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) before the Collector for redressal of their grievances against the orders passed in the pro

Judgement :

S.K. Homochaudhuri, J.

1. In these two petitions, similar facts and identical law points are involved and the petitions are disposed of on merit at the stage of admission by this common order.

2. In both petitions, the petitioners have filed an application under Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) before the Collector for redressal of their grievances against the orders passed in the proceedings under the Act. The application filed under Section 45B of the Act by the petitioners in C.W.J.C No. 11286 of 1995 has been registered as Misc. Ceiling Case No. 287 of 1992. The Collector, by the impugned order dated 1.11.1995, dropped the proceeding of the said case holding that of the power of the Collector having been deleted by Bihar Ordinance No. 20 of 1995, which came into effect with effect from 8.9.1995, the Collector ceased to have jurisdiction to entertain an application under Section 45B of the Act. Similarly, the application filed under Section 45B of the Act by the petitioners in C.W.J.C. No. 10978 of 1995 has been registered as Misc. Ceiling Case No. 142 of 1992, the Collector on identical ground that in view of the provision of Ordinance No. 20 of 1995, the Collector ceased to have Jurisdiction to entertain such application, dropped the proceeding by the impugned order dated 27.10.1995.

3. Section 45B of the Act, prior to coming into force of Bihar Ordinance into No. 20 of 1995, reads as follows:

The 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 any time, if it thinks fit, direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act.

4. By Ordinance No. 20 of 1995, the power of he Collector under Section 45B of the Act was deleted. By the same Ordinance, Section 37 of the Act was also deleted. But the deletions in respect of provisions of Section 45B as well as provision of Section 37 of the Act were made prospectively and not restospectively. The question arises whether in view of the deletion of the authority of the Collector to entertain an application under Section 45B of the Act by Ordinance No. 20 of 1995, the Collector ceased to have any jurisdiction to entertain an application under Section 45B of the Act, which was pending before

him prior to coming into force of Ordinance No. 20 of 1995.

5. Similar question arose for consideration in the case of Bijendra Prasad Yadav v. State of Bihar reported in 1996 (1) PLJR Page 256, as to whether in view of deletion of Section 37 of the Act by Section 8 of the Bihar Ordinance No. 20 of 1995, the right of the petitioner of that case under Section 37 of the Act, which was pending before the Collector, stood obliterated. Placing reliance on a decision of the Division Bench of this Court in the case of Sumangali Kumari v. State of Bihar reported in 1978 Bihar Law Judgment Pages 746, in Bijendra Prasad Yadav (supra), I hold that the right of the petitioner of that case under Section 37 of the Act, which was pending before the Collector prior to coming into force of Bihar Ordinance No. 20 of 1995, was not obliterated and, accordingly, I allowed the petition setting aside the order passed by the Collector dropping the proceeding and directed the Collector to dispose of the case in accordance with law.

6. Learned Counsel for the petitioners submitted that the power of the Collector under Section 45B of the Act having been deleted prospectively by Ordinance No. 20 of 1995, the petitioners' right to pursue his remedy before the Collector in the application under Section 45B of the Act, which was pending before the Collector prior to coming into force of Ordinance No. 20 of 1995, has not been obliterated. As such, the Collector acted arbitrarily and illegally in dropping the proceedings by this impugned orders.

7. Learned Additional Advocate General, on other hand, submitted that there is difference between Sections 37 and 45B of the Act. Under Section 45B of the Act, right of the applicant under Section 45B of the Act for seeking such relief has not been totally deleted, rather only one of the forums of seeking relief has been deleted. Notwithstanding deletion of power of the Collector to entertain an application under Section 45B of the Act by Ordinance No. 20 of 1995, an application under the said section still can be made before the Government, whereas, under Section 37 of the Act, the Collector was the sole authority to entertain such application and with the deletion of Section 37 of the Act, the right of the applicant to pursue his remedy has been obliterated.

8. I have considered the submissions made by the learned Counsel for the petitioners as well as by the learned additional Advocate-General. There is no provision in the Bihar Ordinance No. 20 of 1995 that after deletion of the power of the Collector to entertain application under Section 45B of the Act, the pending applications before the Collector would stand transferred before the Government for disposal. As such, in my opinion, the decision in the case of Sumangali Kumari (supra) squarely applied to the facts of the present case and I hold that the right of the petitioners to pursue remedy as provided under Section 45B of the Act prior to coming into force Bihar Ordinance No. 20 of 1995 had been obliterated. The Collector, therefore, has committed error of law apparent on the face of the records in holding that in view of deletion of power of the Collector to entertain an application under Section 45B of the Act, the Collector ceased to have jurisdiction to have jurisdiction to entertain such pending applications.

9. For the reasons stated above, both petitions are allowed and the impugned orders are set aside. Misc. Ceiling Case No. 287 of 1992 and Misc. Ceiling Case No. 142 of 1992 are restored to the file of the Collector for disposal thereof in accordance with law.

10. In C.W.J.C No. 10978 of 1995, the petitioners did not give any particular of the land in dispute. which they claim to be in their possession. As such, the interim order passed on 19.12.1995 was of no consequence and the same may be treated to have been recalled. However, it will remain open to the petitioners to approach the Collector for interim order by specifying the area of the land in dispute and the Collector will pass such order as he deems fit and proper.