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Court : Patna

Decided On : May-14-1999

Judge : N. Pandey, J.

Appeal No. : C.W.J.C. No. 4309 of 1990

Appellant : Sangita Devi and ors.

Respondent : The State of Bihar and ors.

Judgement :

N. Pandey, J.

1. This writ petition has been filed for quashing the order of the Member, Board of Revenue, contained in Annexure-3, as also '1' the order of the Collector, Rohtas, contained in Annexure-2, and that of the Additional Collector, passed under Section 11(i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, in short The Act', in Ceiling Case No. 559 of 1974-75, whereby 256.73 Acres of land were declared surplus.

2. Before averting to the questions involved in this case, it would be apt to have a brief survey of some of the facts. Initially in the draft statement total 525.54 Acres of land were shown in possession of the land-holder. Subsequently as per the report of the Anchal Adhikari, 172.28 Acres of land were excluded from the ceiling proceeding, as they belonged to the Forest Department. The Additional Collector

considering the objection of the land-holder under Section 10(2) of the Act, excluded 74.86 Acres of land from the ceiling proceeding as such lands were already acquired by different persons prior to 22.10.1959. Similarly, 20.86 Acres of land were also excluded from the proceeding as they were transferred through sale-deeds before 9.9.1970, the appointed day. Thereafter, the draft statement was placed for final publication under Section 11(i) of the Act, allotting 6 units to the land-holder.

3. As no consideration was made with regard to the grievance of the petitioners regarding classification of land and allotment of share to Ram Sawari Devi, the matter was brought to this Court, in a writ jurisdiction at the instance of the land-holder and ultimately the order of the Additional Collector was set aside with a direction that grievance of the landholders be considered afresh. In the meantime, in view of amendment of the Act vide Act 55 of 1982, the ceiling proceeding abated and brought to the stage of Section 10 of the Act.

4. The petitioners filed similar objection as was filed earlier, namely, (a) 74.86 Acres of land, although settled with several other persons much before 22.10.1959 and their names were also recorded in Register-II and they were regularly paying rent to the State of Bihar, therefore, such lands could not be included in the Ceiling Proceeding, (b) 20.86 Acres of land transferred through registered sale-deeds before 9.9.1970 cannot be included in the ceiling proceeding without holding an inquiry as required under Section 5(1)(iii) of the Act, (c) the classification of the lands were made in utter disregard to the provisions of Section 4 (a), (b) and (c) of the Act and (d) the land measuring 29.90 Acres although dedicated to the family deities for maintenance and Rag-Bhog, etc. were clubbed in the ceiling proceeding without allotting additional unit to the deities.

5. The Additional Collector by the order, contained in Annexure-1, while disposing of the objection allotted 5 full units to the petitioners and declared 256.73 Acres of Class IV lands surplus. When on appeal the Collector affirmed the order of the Additional Collector, the matter was brought before the Member, Board of Revenue under his revisional jurisdiction, which was disposed of by the order, contained in Annexure-3, affirming all the findings recorded by the Additional

Collector, except with regard to the claim of the land-holder for the lands covered by the deed of will. Accordingly, he directed the Collector for a fresh hearing on the point of will, executed by Ram Sawari Devi in favour of Smt. Suman Devi and Anita Devi.

6. Learned Counsel for the petitioners contended that from a bare reference to the impugned orders of the authorities, it would appear that no attempt was at all made to consider the grievance of the land-holder. He firstly submitted that a perusal of the verification report of the Anchal Adhikari, it would appear that none of the formalities as required under Section 4 of the Act were followed. Because in spite of the absence of irrigational facilities most of the lands of the petitioners have been classified as Class III. In this regard, he also referred to the provisions of Section 4(c) of the Act to show that only those lands, which are capable of providing water for only one season, can be treated as Class III land, It would be useful to quote Section 4(c), which reads as follows:

Section4 -Fixation of ceiling area of land. - On the appointed day, the following shall be the ceiling area of land for one family consisting of not more than five members for the purposes of this Act:

(a) xx xx xx

(b) xx xx xx

(c) twenty-five acres, equivalent to 10.1175 hectares of land, irrigated or capable of being irrigated by works which provide or are capable of providing water for only one season (hereinafter referred to as Class III land).

7. Undisputedly, lands which are not covered by any of the clauses (a) to (c) or Clauses (e) to (f) have to be shown as Class IV lands. Therefore, to declare a land in Class III category, it has to be proved that lands are capable of being irrigated by works, which provide or are capable of providing water for only one season. If such irrigational works are not in existence, there is no question of applying Clause (c) to such lands to declare Class III.

8. In this connection, I may point out that the word Works' means some construction for providing irrigation, which has been constructed and is being maintained by the Central Government or the State Government or a body corporate, constituted under any law.

9. In support of the views expressed above, I may usefully refer to a decision of this Court in the case of Mohammad Fakhruddin v. The State of Bihar and Ors. : AIR1976 Pat382 , where examined an identical submission, it was concluded thus:

6...In any case, the word 'works' mentioned in Clause (c) refers to the mode of irrigation mentioned in clauses (a) and (b), that is, flow irrigation works, tube-wells and lift irrigation, which are constructed and maintained by Central or the State Government or by a body corporate or private lift irrigation or tube-wells which are operated by electric or diesel power. In other words, if some private individual is irrigating, his land even twice a year, but by some other means of irrigation than those mentioned in Clauses (a) and (b), then the lands in question will not be covered by clause (c) and they cannot be referred to as Class III lands. The said lands, in my opinion, will be covered by clause (d) and can be referred to as Class IV lands.

Unfortunately in the case before me, in spite of the objection of the petitioners, none of the authorities made any attempt to find out whether the lands were properly classified as Class III or they are Class IV lands since, as alleged, there was no irrigational facility.

10. It would not be out of place to mention that while going through various cases of this nature like the present one, I had occasion to observe that classification of the lands are practically done in most casual and perfunctory manner. To my mind, one should never forget that while declaring the lands surplus, in a ceiling proceeding, the established rights of the land-holders from generation to generation are being taken away.

Therefore, keeping in mind such eventualities the legislature while taking steps for land reforms, prescribed various statutory modes to be adopted by the authorities. I am sure, if such modes and procedures are not adhered to in true spirit, certainly

injustices are inevitable.

11. Learned Counsel next submitted that, as would appear from Schedule I to the writ application, 74.86 acres of land of Khata Nos. 31, 33, 37, 15, 95, 112, 113, 130 belong to Shri Ram Suresh Mishra, Lallan Pandey, Sheoshanker Pandey, Kanhaiya Dubey, Malti Devi, Rajendra Pandey, Ram Paratap Dubey, Ganesh Dubey and Ram Anugrah Mishra and the landholders had no concern with such lands. But without having the verification of the relevant documents like Register II, survey Khatiyan, rent receipts etc. these lands were included in the ceiling case. Because in view of the settled law, lands transferred or settled in favour of other persons prior to 22.10.1959 were not required to be included in the ceiling proceedings. He contended even the Additional Collector while disposing of the case earlier on 19.7.1975 had accepted this position and excluded the land from the ceiling case. But this time without appreciating the documentary evidence of the parties and even without noticing the land-holder, who have got valid title over such lands, orders were passed to declare surplus.

12. In my view, there can not be any dispute, if the land-holder was able to satisfy the authorities that these lands were already acquired by deficient persons before 22.10.1959 and their names were recorded in the revenue records like survey Khatiyan, Jamabandi etc., such lands can not be shown in the possession of the land-holder. But this aspect has not at all been considered by the learned Collector or even the Member, Board of Revenue. It may not be necessary to repeat that by virtue of various decisions, it has already been held that the lands acquired by different persons from the land-holder prior to 22.10.1959, cannot be treated the land of the land-holder. Therefore, any attempt to declare such land surplus would be illegal. In this regard, reference can be made to a decision of this Court in the case of Arati Devi v. State of Bihar and Ors. 1980 B.B.C.J. 23, and yet another decision in the case of Chandrajot Kuer, etc. v. The State of Bihar and Ors. 1983 B.B.C.J. 197. Learned Counsel for the State, however, alleged that in spite of ample opportunity, the details of such transferees or settlees were not furnished. Therefore, the respondents had no option but to treat such lands in possession of the land-holders. In my view, there appears no substance in such a submission. Because, it has already been noticed that total 74.76 acres of lands were recorded

in the name of different persons who were either settlees or transferees from the land-holder. It has also been noticed that the revenue records like Register II and Khatiyan and mutation, etc. were also recorded in the name of such persons. Therefore, it would be wrong on the part of the respondents to allege that details of such transferees or settlees were not available.

13. The other grievance of the petitioners is with regard to 20.86 Acres of land, which were transferred by different sale-deeds in favour of other persons prior to 9.9.1970, but included in the ceiling case and ultimately declared surplus without holding any proper inquiry as required under Section 5(1)(iii) of the Act. It is contended although at the previous occasion the Additional Collector by his order dated 19.7.1975 had excluded these lands since they were transferred prior to 9.9.1970, but after abatement of the proceeding under Section 32-B, prayer of the petition in this regard was completely ignored. Learned Counsel for the State on the other hand contended that from the order of the Additional Collector itself, it would appear that total 20.86 Acres of land were transferred by the land-holder after 9.9.70 without obtaining permission of the Collector, therefore, such transfers were void ab initio.

14. There cannot be any dispute that the sale-deeds executed by the land-holders after 9.9.1970 without permission of the Collector can certainly be declared void. But according to the petitioners, the findings of the Additional Collector in this regard are completely baseless and without verifying the relevant documents and without any proper inquiry under Section 5(1)(iii) of the Act after due notice to the concerned parties. In my view, having regard to the disparities noticed above, it would be proper for the authorities to examine relevant documents whether such transfers were made after 9.9.1970. If it is found that lands were transferred after 9.9.1970, an opportunity to exercise option under Section 9 of the Act has to be given to the land-holder.

15. So far as the claim of the petitioners with regard to the family deities is concerned, since there is concurrent finding of the authorities that neither there was any deity on the spot nor any dedication in their favour, it would not be possible for me to interfere with such findings. Because in absence of any deity on

the spot, such claim has to be declared bogus. But having regard to other grievances of the petitioners as noticed above, in my view, this case certainly deserves a fresh consideration by the authorities.

16. In the result, this application succeeds to the extent indicated above with a direction to the Additional Collector (respondent No. 3) to consider the matter afresh keeping in mind the findings recorded above. I further direct that until disposal of the matter afresh, interim order of this Court dated 28.10.1991 shall continue. But in the facts and circumstances of this case, there shall be no order as to costs.

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