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Court : Jharkhand

Decided On : Feb-20-2003

Reported in : [2003(2)JCR469(Jhr)]

Judge : Tapen Sen, J.

Acts : Bihar Land Reforms Act, 1950 - Sections 4; [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 3007 of 1997 (R)

Appellant : Smt. Lakshmi Devi and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Sameer Saurav, J.C. to;Adv. General

Advocate for Pet/Ap. : Debi Prasad and; Amreshwar Sahay, Sr. Adv.

Disposition : Petition allowed

Judgement :

Tapen Sen, J.

1. The petitioners are aggrieved by the order dated 17.11.1983 passed by the Deputy Commissioner, Ranchi in Case No. 26 Rule 28 of 1993-94 by reason whereof he initiated proceeding under Section 4(h) of the Bihar Land Reforms Act,

1950 for annulment of the settlement made by the then Landlord in respect of lands situated on RS Plot Nos. 4, 5 and 6 appertaining to Khata No. 87 and situated in Village Bargawan, P.S. Nam-kom, District-Ranchi, and also passed an order for cancellation of Jamabandi running in the names of the petitioner Nos. 1 and 2 as also in the names of Smt. Urmila Devi (wife of Petitioner No. 3 and mother of Petitioner Nos. 4 to 7) as also of Smt. Simalo Devi (since deceased) and mother of Petitioner Nos. 3 and 8 to 10. The petitioners are also aggrieved by the order dated 16.03.1994 passed by the Commissioner, South Chhotanagpur Division, Ranchi affirming the said order dated 17.11.1993 (Annexure 43) passed in Revenue Appeal No. 451 of 1993 and 432 of 1993 (Annexures 44 and 44/A). The petitioners also challenge the order of the Government approving the proceedings under Section 4 (h).

2. The facts which are necessary to be recorded for purposes of adjudicating the matter are that the aforementioned Plot Nos. 4, 5 and 6 of Khata No. 87 under Khewat No. 2 situated at Village Bargawan, P.S. Ranchi (Now Namkom), Thana No. 216 were recorded in the Revisional Survey Record of Rights published in or about the year 1935 in the name of Janki Prasad Sahu and Hari Charan Sahu (both sons of Late Ram Lal Sahu) as 'Gair Majurua Malik'. According to the petitioners, the aforementioned two persons namely Janki Prasad Sahu and Hari Charan Sahu were in joint possession but however sometimes in the year 1939, Hari Charan Sahu filed a Partition Suit No. 34 of 1939 against Janki Prasad Sahu wherein they claimed for Decree of partition of various properties including these lands appertaining to Khata No. 87. A compromise decree was passed in terms whereof Plot No. 4 (5.63 Acres); Plot No. 5 (46 Acres) and Plot No. 6 (2.03 Acres) falls to the exclusive share of Hari Charan Sahu who came into separate possession thereof.

3. Subsequently, Hari Charan Sahu settled these lands with Smt. Bhagwati Devi, widow of Late Ganpat Rai Marwari vide registered deed of settlement dated 16.03.1948 in the following manner :--

(a) Out of Plot No. 4 2 Acres.

(b) Out of Plot No. 5 21.97 Acres.

(c) Out of Plot No. 6 1.03 Acres.

Alter the aforesaid settlement, the settlee came in possession of the land.

4. The aforesaid settlement was preceded by a registered Kabuliat executed by the said Bhagwati Devi in favour of the ex landlord, namely, Hari Charan Sahu with respect to the aforementioned land.

5. The settlee namely Bhagwati Devi remained in possession and subsequently, however on account of necessities, she sold 0.97 Acres out of Plot Nos. 5 and 1.03 Acres out of Plot No. 6 (total two acres) to one Thakur Jagdish Narain Singh in the year 1956 and put him in possession thereof. According to the petitioners in the return filed under Section 3-B of the Bihar Land Reforms Act, the details of settlement made with Bhagwati Devi have been mentioned.

6. Thakur Jagdish Narain Singh got his name mutated in the offices of the State of Bihar and paid rent in his own name. Bhagwati Devi, on the other hand, continued to be in possession of the remaining land out of Khata Nos. 4 and 5 of Khata No. 87 so long she was alive and after her death, sometime in the year 1957, her sons namely Dwarika Prasad Modi and Deoki Nandan Modi inherited the properties and came into joint possession thereof. In the year 1944 however the lands of Plot Nos. 4, 5 and 6 were requisitioned by the Deputy Commissioner under the Defence of India, Rules for purposes of use by the military and accordingly by Annexure 6, an order of requisition of said land was issued by the Deputy Commissioner. Crop compensation was paid to Hari Charan Sahu by the Land Acquisition Department vide Land Acquisition Case No. 34 of 1944-45 and after settlement in the year 1948, Smt. Bhagwati Devi, the settlee became entitled to receive crop compensation which was also made to her. In support of the aforesaid contention, the petitioner relies upon Annexures 7 and 7/a appended to the Writ Application.

7. The petitioners have further contended that Bhagwati Devi regularly paid rent to the ex-land lord before vesting and after vesting of the estates under the provisions of Bihar Land Reforms Act, 1950 her name was shown as tenant in the return filed by the ex-land lord under Section 3-B of the Act and her name was

also duly entered in Register 2 and she was recognized as tenant by the State. The extract of returns and some of the photocopies of the rent receipt are marked Annexures 8, 8/a and 8/b to the Writ Application.

8. After her death and after Dwarika Prasad Modi and Deoki Nandan Modi had come in possession on account of inheritance, they sold 5 Acres of land out of RS Plot Nos. 4 and 5 to the Petitioner No. 1 by virtue of a registered sale deed dated 30.07.1960 (Annexure 9) and put her in possession. Thereafter, the petitioner No. 1 applied for mutation and a regular proceeding was initiated vide Mutation Case No. 34 Rule 27 of 1962-63 but the prayer of the Petitioner No. 1 was rejected by Circle Officer, Khijri (Namkom) where after the matter was agitated in an appeal before the Deputy Commissioner, Ranchi vide Appeal No. 26 Rule 15 of 1963-64 which was ultimately transferred to the Sub Divisional Officer, Sadar, Ranchi for disposal. On 16.12.1965, the appeal was allowed and the name of the petitioner No. 1 was ordered to be mutated and accordingly her name was entered in Register 2 whereafter she has been paying rent. Thus according to the petitioners, the Petitioner No. 1 became duly recognized as a tenant as a result of conclusion of judicial proceedings. The petitioners have relied upon Annexures 10, 10/a, 11 and 11/a in support of the aforesaid contention. According to the petitioners, after purchase, the Petitioner No. 1 also received crop compensation from the Land Acquisition Department, Ranchi as would be apparent from Annexure 12 of the Writ Application.

9. The petitioners have stated that the land which had been requisitioned in the year 1944 and which also included the lands of the Petitioner No. 1 were subsequently de-requisitioned by the Deputy Commissioner vide order dated 18.12.1961 (Annexure 13) and after release, she continued to be in possession of the entire five Acres of land which she had purchased through registered deed on 30.07.1960 vide Annexure 9.

10. Subsequently 0.96 Acres of land out of Plot No. 4 was again acquired by the Government for National High Way No. 33 Land Acquisition Case No. 19 of 1964-65 and Land Acquisition Case No. 22 of 1965 and 1966. Compensation money was also paid to the Petitioner No. 1 by the Land Acquisition Department, Ranchi

and in support of these contentions, the petitioners have relied upon Annexures 14 and 14/c.

11. After acquisition, the National High Way was widened using the acquired portion of the land out of Plot No. 4 belonging to the petitioner and she continued to be in possession of the remaining 4.04 Acres. She paid rent up to years 1972-73 to the State of Bihar and thereafter tendered rent for subsequent years to the Halka Karam-chari but he refused to take the same without any reason as a result of which the Petitioner No. 1 by Annexure 15 approached the Circle Officer, Khijri (Namkom) through a petition wherein she prayed that the Halka Karamchari be directed to accept rent from her. Consequently, a Miscellaneous Case No. 6 Rule 8 of 1979-80 was initiated by the Circle Officer, Khijri, Namkom whereafter due enquiries were made and subsequently the Halka Karamchari submitted a report (Annexure 16) finding title and possession of the Petitioner No. 1 over the lands in question and accordingly recommended the grant of rent receipt in her name.

12. So far as Sudama Devi (Petitioner No. 2) is concerned, it has been stated that she purchased 9 Acres out of Plot No. 5 from Shri Dwarika Prasad Modi and Deoki Nandan Modi by a registered deed of sale dated 30.07.1960 (Annexure-17). Thereafter, she also applied for mutation vide Mutation Case No 35 Rule 27 of 1962-63. Her prayer was also rejected by the Circle Officer and in appeal vide No. 25 Rule 15 of 1963-64 which was ultimately transferred to the Sub Divisional Officer, Sadar, Ranchi. The same was allowed as a result where of the Circle Officer by his order dated 16.12.1965. mutated the name of the Petitioner No. 2. Her name was also entered in Register No. 2 and she made payment of rent to the State. The order of the Appellate Court was not challenged in any superior Court by the State of Bihar and therefore according to the petitioners the State is estopped from challenging her title in any manner what so ever. The Petitioner No. 2 relies upon Annexures 18 and 18/a in support of the aforesaid contention. She also regularly paid rent till the year 1972-73 vide Annexures 19 and 19/a and also received crop compensation from Land Acquisition Department, Ranchi. She has also stated that her land which has also been a subject matter of requisition were de-requisitioned by notification dated 09.03.1973 (Annexure 20) whereafter she continued to be in possession of the said 9 Acres of land. The Petitioner No. 2 has

further stated that out of the nine Acres which she had purchased on 30.07.1960, the Government finally acquired 1.25 Acres for military purposes and left the remaining 7.75 Acres in possession of the petitioner and paid compensation to her. In support of aforesaid contention, the Petitioner No. 2 relies upon Annexures 21 and 21/b.

13. The Petitioner No. 2 has also stated that she paid rent to the State of Bihar up to year 1972-73 whereafter she tendered rent to the Halka Karamchari but he did not accept the same as a result where of she also approached the Circle Officer with a petition vide Annexure 22. This was registered as Miscellaneous Case No. 7 Rule 8 of 1979-80. Enquiries were made and the Halka Karamchari found right and title in her favour and accordingly recommended the grant of rent receipt in her name. The Petitioner No. 2 relies upon Annexure 23.

14. Similarly, Urmila Devi, wife of Petitioner No. 3 and mother of Petitioner Nos. 4 to 7 also purchased 9 Acres out of Plot No. 5 on the same day i.e. 30.07.1960 by a registered deed of sale from Dwarika Prasad Modi and Deoki Nandan Modi. Urmila Devi also applied for mutation. It was also rejected summarily. Thereafter the matter was taken up in Appeal which was transferred to the Sub Divisional Officer, Sadar, Ranchi. The appeal was heard analogous with the other appeals and the matter was remanded to the Circle Officer, Namkom. Thereafter, Urmila Devi was directed to file a fresh petition for mutation and ultimately her name was also ordered to be mutated vide order dated 11.09.1962 passed in Mutation Case No. 9 Rule 27 of 1966-67 and her name was also entered into Register 2. She also paid rent till the year 1972-73 vide Annexures 26 to 26/b and after purchase she also received crop compensation from the Land Acquisition Department.

15. These petitioners have stated that out of 9 Acres of land purchased by Smt. Urmila Devi on 30.07.1960, 6.35 Acres were finally acquired leaving her with 2.65 Acres of land. These petitioners have relied upon Annexure 27 to 27/b.

16. According to these petitioners, Urmila Devi continued to remain in possession of 2.65 Acres and the same was also de- requisitioned vide Notification dated 09.03.1973 (Annexure 20) whereafter she paid rent to the State of Bihar up to 1972-73. Thereafter, she tendered rent for subsequent years to the Halka

Karamchari but he did not accept rent which made her to approach the Circle Officer, Khijri, Namkom and a Miscellaneous Case 7 Rule 8 of 1979-80 was initiated whereafter an inquiry was made in which title and possession of Urmila Devi was found and accordingly recommendation was made for grant of rent receipt in her name. These petitioners relied upon Annexure 29 in support of the aforesaid contention,

17. Urmila Devi died on 17.03.1997 and upon her death, the Petitioner Nos. 3 to 7 being legal heirs inherited the property and came in possession there of and are continuing therein.

18. In the year 1981, Lakshmi Devi (Petitioner No. 1) filed Title Suit No. 52 of 1981 against the State of Bihar and others for a declaration of title and for confirmation of possession and also for permanent injunction in respect of portions of land out of RS Plot No. 4. The suit was decreed vide Judgment dated 26.07.1989 and the right, title and interest of Laxmi Devi (Petitioner No, 1) was declared and the other defendants were restrained from making any construction over those lands. The petitioners rely upon Annexure 30 in support of the aforesaid contention.

19. The petitioners have further stated that on 16.03.1948 Hari Charan Sahu had also made Chhaparbandi settlement of 1.68 Acres of land out of Plot Nos. 4 and 14.32 Acres of land out of Plot No. 5 in favour of Durga Prasad Agrawal by a Registered Deed of Settlement dated 16.03.1948 (Annexure 31) and put him in possession thereof.

20. Durga Prasad Aggarwal continued in possession from the date of settlement and paid Chhaparbandi rent to the ex-land lord before vesting and after vesting, he was recognized as tenant by the State of Bihar and paid rent to the State. In support of the aforesaid contention, the petitioners have relied upon Annexures 32 and 32/a to the Writ Application. They have further stated that the name of Durga Prasad Aggarwal was shown in the Returns filed by the ex-land lord on the eve of vesting of the estates under the provisions of the Bihar Land Reforms Act, showing that the land in question had been settled in his favour by the said Registered Deed of Settlement dated 16.03.1948.

21. According to these petitioners Durga Prasad Aggarwal also executed a registered Kabuliat on 16.03.1948 (Annexure 33). This Durga Prasad Aggarwal later on and out of legal necessity sold 16 Acres out of Plot Nos. 4 and 5 to Smt. Simalo Devi (mother of Petitioner Nos. 3 and 8 to 10) and mother-in-law of Petitioner Nos. 1 and 2 and also grand mother of Petitioner Nos. 4 to 7 by a Registered Deed of Sale dated 14.12.1959 (Annexure 34). After the purchase, Simalo Devi also applied for mutation and in similar manner her name was mutated by order dated 19.08.1966 and her name was also entered in Register 2 and she also started making payment of rent to the State. Petitioners relied upon Annexure 35 in support of the aforesaid contention.

22. Just like others, Simalo Devi also paid rent (Annexures 36 to 36/c) till 1972-73. Thereafter the realization of rent was stopped. After, Purchase, Simalo Devi also received crop compensation and the petitioners have stated that out of the lands purchased by her (Simalo Devi) 2.90 Acres and 1.50 Acres were acquired for military purposes vide Land Acquisition Case No. 34/1944-45 and another case was initiated being Land Acquisition Case No. 34-1974/75 in which she received notice for receiving payment of compensation. The petitioners relied upon Annexures 38 and 38/c to the Writ Application, The remaining lands out of the lands requisitioned by the government including the lands which were de-requisitioned in the year 1961 were also de-requisitioned vide Notification dated 19.03.1973 (Annexure 39). These petitioners have stated that Simalo Devi remained in possession of these lands.

23. After 1972-73, the Halka Karam-chari did not accept rent as a result whereof Simalo Devi approached the Circle Officer, Khijri, Namkom and a Miscellaneous Case 5 Rule 8 of 1979-80 was started by the Circle Officer whereafter inquiries were made and finally possession and title were found (Annexure 41) and accordingly her case was recommended for grant of rent receipts.

24. After these had happened Circle Officer, Khijri, Namkom without considering the reports of the Halka Karamchari, of the Circle Officer and without looking into the records and without giving any opportunity to Simalo Devi arbitrarily anderroneously submitted an incorrect reportfor initiating a proceeding under

Section 4 (h) of Bihar Land Reforms Act, 1950. According to these petitioners, the Circle Officer falsely mentioned that settlement of land had been made by the ex-land lord with near relatives and that Namkom Bazar is also held on the lands in question and that a portion of the land is also being used as a play ground.

25. The petitioners have stated that the reports are apparently incorrect and on account of the fact that Durga Prasad Aggarwal and Bhagwati Devi belong to the Marwari Community and they were in no way related to the ex-land lord who was a Baniya by caste. These petitioners have stated that however Simalo Devi remained in possession till her death and thereafter the Petitioner Nos. 3 and 8 to 10 being her legal heirs inherited the properties and came in possession thereof and are continuing in possession. The petitioners have stated that a Mahavir Mandir existed on 0.03 Acres of land out of Plot No. 4 of the village belonging to Smt. Laxmi Devi (Petitioner No. 1) and that the said Mandir had been constructed with her express consent and that it was being used by her as well as by other persons and that the State had nothing to do with it. These petitioners have further stated that the settlements made by the ex-landlord in favour of Smt. Bhagwati Devi and Shri Durga Prasad Agarwal and subsequent transfer by settlees to Smt. Urmila Devi, Smt. Lakshmi Devi, Smt. Sudama Devi and Smt. Simalo Devi were all legal and valid transfers and they were never made with the intention to defeat the provision of the Bihar Land Reforms Act, 1950 or with a view to receive higher compensation. They have also stated that they are the absolute owners and even if there be some defects, the same stood perfected by remaining in possession openly and adversely to the knowledge of all concerned.

26. In respect of the aforementioned facts, the Circle Officer submitted a report to the Deputy Collector-in-Charge, Land Reforms, Sadar Ranchi for initiation of proceedings under Section 4 (h) against the Petitioner Nos. 1 and 2 as also against Urmila Devi and Smt. Simalo Devi. Accordingly, the L.R.D.C. Sadar, Ranchi initiated a proceeding under Section 4 (h) of the Bihar Land Reforms Act, 1950 which were numbered as Case No. 1 of 80-81 2 of 80-81 3 of 80-81 and 4 of 80-81. The L.R.D.C. Sadar, Ranchi called for a report from the Circle Officer, Khijri (Namkom) who supported the case of the petitioners and then the matter was heard analogous and by order dated 27.12.1990, the Deputy Collector (in-charge)

Land Reforms, Sadar, Ranchi, held that proceedings under Section 4 (h) of the Bihar Land Reforms Act, 1950 was not maintainable and that the proceedings should be dropped. He transmitted the records to the Sub Divisional Officer, Ranchi who endorsed the recommendations and sent the records to the Additional Collector, Ranchi. The Additional Collector also accepted the report and recommendations given by the Deputy Collector, Land Reforms, Sadar Ranchi and also of the S.D.O., Sadar, Ranchi. Subsequently the proceedings were dropped and in support of the aforementioned contentions, the petitioners have relied upon Annexure 42, 42/A, 42/B and 42/D to the Writ Application. The recommendation for dropping the proceedings under Section 4 (h) was made by the Land Reforms Deputy Collector on 27.12.1990 whereafter the Additional Collector also agreed with the said recommendations on 26.12.1991 and finally, the cases were ordered to be dropped and disposed off.

27. Against the dropping of the aforesaid proceedings, the State did not prefer any appeal and as such the order became final, conclusive and binding upon the parties including the State.

28. However, subsequently, it appears that the Deputy Commissioner, Ranchi again started the proceedings under Section 4 (h) against the Petitioner Nos. 1 and 2, the wife of Petitioner No. 3 and mother of Petitioner Nos. 4 to 7 and this case was numbered as 26 Rule 28 of 93-94. The matter was again heard analogously by the Deputy Commissioner and without considering the materials and provisions of law he erroneously held that the settlement of land by the ex-landlord had been made with a view to defeat the provisions of the Bihar Land Reforms Act, 1950 and he accordingly passed an order that the settlement made by the ex-landlord Haricharan Sahu on 16.03.1948 in respect of Plot No. 4 (Area 3.68 acres); Plot No. 5 (Area 36.29 acres) and Plot No. 6 (Area 1.03 acres) total 41 acres made in favour of Bhagwati Devi and Durga Prasad Agarwal were liable to be annulled under Section 4 (h) of the Bihar Land Reforms Act. He further held that the orders passed by the then Additional Collector without obtaining orders of the Government through the Deputy Commissioner and Divisional Commissioner was bad and accordingly set aside the same. He further held that since the aforementioned settlement of 41 acres was being annulled therefore, all

subsequent transfers by the original settlee or their sons also stood annulled. This order appears to have been passed on 17.11.1993 (Annexure 43) which is the order impugned in this Writ Application. The petitioners have stated that no notice was given to the heirs of Simalo Devi.

29. Being aggrieved, the petitioners filed separate appeals before the Commissioner which were numbered as Revenue Appeal No. 451 of 1993 and 452 of 1993 and by an analogous order, the Commissioner dismissed the same by order dated 16.03.1994 (Annexures 44 and 44/A). The petitioners have also stated that the records were sent to the Government and subsequently the Revenue Department passed order for annulment of various settlements and in support of the aforesaid statements, the petitioners have relied upon Annexure 45.

30. The aforementioned fact that the State Respondents did not file an appeal was made specifically by the Writ Petitioners at Paragraph 84. But, in reply thereto, the Respondents in their Counter Affidavit have given a vague answer which is contained at paragraph 28 which reads as follows :--

'28. That in reply to the statement made in paragraph 77 to 87 of the main writ petition it is stated that the transfers by Haricharan Sahu and subsequent transfer were all colourable made with a view to defeat the provision of Bihar Land Reforms Act. Neither the petitioner nor their transferers are and were absolute owner considering the nature of the land as recorded. Rest are all matters of record. The learned Deputy Commissioner has rightly started a case under Section 4 (h) of the Bihar Land Reforms Act and after giving reasonable opportunity and hearing the parties and also considering the material on records have rightly passed the order. The learned Commissioner has also considered the matter and passed necessary order.'

31. Similar statements to the effect that the Respondents did not file an appeal had been made at paragraph 92 and 93 and those paragraphs have also not been adequately answered. Paragraph 93 has merely been answered at paragraph 29 of the Counter Affidavit in the following manner :--

'29. That in reply to the statement made in paragraph 88 to 93 of the main writ petition it is stated that the statements relate to record. The order passed under Section 4 (h) is as per law. After hearing the parties concerned order passed is within the jurisdiction of the Deputy Commissioner, Ranchi. The learned Deputy Commissioner, Ranchi who has jurisdiction to initiate proceeding, has rightly started the proceeding and after giving all opportunities to the parties passed order as per law and it is binding on the petitioners.'

32. Thus, from a perusal of the Counter Affidavit, the principal point canvassed by the petitioners to the effect that after dropping of the proceedings, the matter became final and the State having not preferred an appeal had no jurisdiction to initiate a fresh proceeding has not been answered at all.

33. Mr. Debi Prasad, learned Senior Advocate has raised a very short point with regard to the maintainability of the proceedings initiated by the Deputy Commissioner. According to him, the proceedings were dropped and the State did not choose to file any appeal against the same and therefore a fresh proceeding against the petitioners was clearly barred. In support of the aforesaid contention, Mr. Debi Prasad has relied upon a Division Bench Judgment of the Patna High Court in the case of Bidyut Kumar Ganguly v. State of Bihar and Ors., reported in 1980 BBCJ 476. Paragraph 8 of the said judgment is worth re-producing and it reads as follows :--

'After hearing the learned counsel for the petitioner and the learned Government pleader, I think that the contention raised on behalf of the petitioner is well-founded and must be accepted. From the facts mentioned above and on a perusal of the various orders passed by the authorities from time to time, it is absolutely clear that all proceedings under Section 4 (h) of the Act had terminated in favour of the petitioner. These orders passed under Section 4 (h) are appealable under Section 8 of the Act, but no appeal was preferred by the State and, therefore, the order became final, which applies equally to a private individual and the State. Now, the State is not competent to re-open the matter when various authorities have decided the question more than once after fully applying their mind to the facts of the case and without any fresh material whatsoever. The aforesaid orders bind

also the State, and it cannot be said that they can reopen the matter whenever they like. Respondent No. 3, who is a public servant, may have acted in a bona fide manner in the interest of the State, but, at the same time, it is the duty of a public servant to see that persons are not unnecessarily harassed and dragged in the Court of law. The matter was being investigated by the authorities since 1965, and even after it had become final, again a fresh notice (Annexure 7) has been issued to the petitioner, wrongly stating therein that the proceeding under Section 4 (h) was still pending and had not been decided, which is an error apparent on the face of the record. Before issuing such notice, it was the duty of respondent No. 3 to acquaint himself with the previous orders passed by his superior officers from time to time which were all in favour of the petitioner, and I am constrained to hold that respondent No. 3 has not acted in a diligent manner. The authorities under the Act have been discharging quasi-judicial functions and, therefore, it is their utmost duty to see that citizens are not unnecessarily harassed and dragged into litigation. Instead of moving against the orders passed under Section 4 (h), the matter is raked up again and again, which, in my opinion, amounts to mala fide exercise of power and causing harassment not only to the petitioner but also to other and also waste of time and public money. The proceeding is sought to be reopened against a citizen who has always been co-operating in the proceedings and placing all materials before the authorities whenever asked for.'

34. Similar view has been taken by yet another Division Bench of the Patna High Court in the case of Narsingh Prasad Sah v. The State of Bihar and Ors., reported in 1981 BBCJ 324. At paragraph 5 the Division Bench has held that findings in an earlier ceiling case having gone against the State and the State having not preferred any appeal or revision, the Collector and the Government erred in re-opening the matter under Section 45 (b) of the Bihar Land Reforms Act.

35. From a perusal of the aforesaid Judgment therefore this Court has no option but to hold that the re-opening of the proceeding initiated against the petitioners was wholly jurisdiction. The other aspect, which needs to be taken note of is Section 4 (h) of the Bihar Land Reforms Act, 1950 which reads as follows :--

'[(h) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, [***] and if he is satisfied that such transfer was made [at any time after the first day of January, 1946, with the object of defeating any provision of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard [***] annual such transfer, disposes the person claiming it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:]

[Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure;]

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government.]'

36. From the perusal of the aforementioned statute, it is evident that enquiry is a condition precedent which, was made in this case, and finally the proceedings were dropped on 26.12.1991 (see paragraph 92 of the Writ Application).

37. From what has been stated above, it is therefore clear that the Deputy Commissioner, Ranchi had no jurisdiction to initiate fresh proceedings, under Section 4 (h) especially in view of the fact that the earlier proceedings under the same provisions were disposed off and decided in favour of the petitioners. According to the provisions of Section 4 (h) itself the State had the opinion to file an appeal but they chose not to do so. The only remedy for the State therefore, was to have filed an appeal but that option having not been availed of, the Deputy Commissioner could not have proceed to initiate a fresh proceeding. Clearly, therefore, the Deputy Commissioner has acted without jurisdiction.

38. The State is not competent to reopen the matter. Similar view has been taken by yet another Division Bench in the case of Sharda Prasad Rai and Others v. State of Bihar and Ors., reported in AIR 1984 Pat 65 where the Division Bench, apart from holding the same view, has also held that principle of res-judicata applies to revenue matters.

39. In that view of the matter therefore, this Court has no option but to hold that the re-opening of the proceedings was wholly without jurisdiction. Consequently the Writ Application is allowed and all proceedings in case No. 26 Rule 28 of 1993-94 which were initiated after the dropping of proceedings are held to be wholly without jurisdiction and consequently the impugned order of the Deputy Commissioner as also of the Commissioner and the subsequent confirmation by the State as contained at Annexures 43, 44 and 44/A are hereby quashed.

No order as to costs.

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