

Smt. Maheshwari Devi and Others

Vs

State of Bihar and Others

Civil Appeal No. 1625 of 1966

(S. M. Sikri, V. Bhargava, C. A. Vaidialingam JJ)

11.03.1970

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the Patna High Court dismissing the petition under Article 226 and 227 of the Constitution filed by the appellants before us. The Revenue authorities had annulled a settlement made in favour of the appellant, in exercise of the powers conferred by clause (h) of Section 4 of the Bihar Land Reforms Act, 1950, hereinafter referred to as the Act. Three orders were sought to be quashed by this petition : (1) order dated May 24, 1961 passed by the Additional Collector, Bhagalpur, (2) order dated November 28, 1962, passed by the Commissioner, Bhagalpur Division; and (3) order dated November 3/6, 1961, passed by the Government of Bihar.

2. The learned Counsel for the appellants has raised three points before us : (1) The order of the Additional Collector, dated May 24, 1961, whereby he set aside the settlement made in favour of the appellants predecessors, having been passed without hearing the appellants, under Section 4(h) of the Act was without jurisdiction and void; (2) the appeal to the Collector against the order of the Additional Collector, dated May 24, 1961, was not barred by time inasmuch as the report of the Amin, which was made part of the order of the Deputy Collector and was also part of the order of the Additional Collector, was not supplied till June 2, 1962; and (3) the State Government's order confirming the annulment of the settlement was void because it was made before the appeal to the Collector was heard.

3. It appears to us that if the appellants succeed on the first point the appeal must be allowed and the case remanded to the Additional Collector to dispose of it according to law. The facts relevant for the determination of point No. 1 are as follows : The appellants allege that a total area of 57.90 acres, comprising several plots including a big tank and its embankments, lying in village Kasba Mandar in Bhagalpur District, was settled with the predecessor-in-interest of the appellants by the then proprietor of the village sometimes in the years 1923, and that since the date of settlement the settlee and her successors-in-interest have been in peaceful possession of the said property; after the abolition of the Zamindari under the provisions of the Act an attempt was made in 1955 to annual this settlement but the proceeding under the Act was set aside by the Government who directed that in view of the amendment made to clause (h) of Section 4 of the Act formal proceedings under the amended Act should be taken after hearing the parties. The Government sent back the record with a letter No. 5642, dated July 26, 1960, with a direction that in view of the amendment the finding of the Additional S.D.O. of May 17, 1958, had become void and, therefore, fresh proceeding be started under Section 4(h) of the Act, and after hearing the parties orders maybe passed. A copy of the

Government letter was sent to the S.D.O. Banka, with office memo No. 2824-R, dated August 6, 1960, with a request to take action accordingly and to send the report. It appears that Shri R. S. Roy, Deputy Collector Incharge Land Reforms, Banka, held the enquiry after giving the notice to the parties and hearing them.

4. A part of the order, dated February 18, 1961, passed by Deputy Collector, Land Reforms, Banka, may be extracted :

"O.P. filed three petitions today. One is to call for some order and letter of the Additional collector concerning this case. Since this proceeding will be forwarded to Additional Collector after completion the O.P. may request him to examine these papers ..."

On April 15/19, 1961, the following order was recorded :

"Report separately prepared. The record with the report may be sent to Additional Collector."

The report concluded with these words :

"I also, do not think any Government interest or public interest will be affected if these two plots are allowed to remain in possession of the opposite parties on fixation of far rent. Settlement of the rest of the area is fraudulent and has been done to deprive the State Government from taking over their property which are of public importance and for public utility. 'There, their settlement should be set aside'.

The Additional Collector wrote under the report as follows :

"I fully agree with the report of the D.C.L.R. Banka, dated 19-4-1961. The Hukumnamas and the rent receipts subsequently produced have been forged in order to lay false claim on these Gairmajrua Am and other public land. Except plots Nos. 1788 and 2145 that is, the first two plots in the list the settlements of the remaining 18 plots of Khata No. 187 and 5 plots under Khata No. 181 'are hereby annulled' under the power conferred on me under Section 4(h) of the Bihar Land Reforms Act. Under the proviso 2 of Section 4(h) of the Bihar Land Reforms Act the record shall be forwarded to Government for confirming the annulment". This order is dated May 24, 1961, and was admittedly passed by the Additional Collector without giving to the parties any opportunity of being heard by him.

5. The same arguments which have been urged before us were urged before the High Court but the High Court felt that as the Deputy Collector, Land Reforms, Banka, had the powers of Collector for the purposes of Section 4(h) of the Act, the reason order under Section 4(h) must be held to be the report of the Deputy Collector, dated April 19, 1961, and not the order of the Collector dated May 24, 1961. On this conclusion the High Court felt that it was not necessary for the Additional Collector to have given further opportunity to the appellants to be heard.

6. It seems to us quite clear from the reading of the orders set out above that the Deputy Collectors had not purported to pass a final order at all. What he purported to do was to send a recommendation to the Additional Collector and it was the Additional Collector who passed a final order. The fact that the Deputy Collector had the powers of the Collector for the purpose of Section 4(h) of the Act sums to us, irrelevant for the purpose of this case. Even from the interim order, dated February 18, 1961, it is clear that the Deputy Collector had proceeded on the basis that the

Additional Collector will go into the matter, and even the Government in its order, dated November 3/6, 1961 confirmed the order dated May 24, 1961.

7. In the result the appeal is allowed with costs here and in the High Court, the Judgment of the High Court set aside and the remanded to the Additional Collector to dispose of its according to law.

8. We may mention that it has been before us that Section 4(h) of the Act had nothing to do with the annulment of settlement on he grounds that they were obtained by fraud. We need not decide this question. It would be open to the parties to raise the point before the Additional Collector.

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