

SUPREME COURT OF INDIA

State of Bihar

Vs.

Sharda Prasad Rai

(S.M. Quadri and S.N. Phukan JJ.)

01.11.2000

ORDER

1. This appeal by the State of Bihar & Others is from the judgment and order of the High Court of Patna in CWJC No. 2814 of 1982 dated May 20, 1983.

2. The question raised in this appeal is a short question, namely, whether proceedings initiated by the appellants under Section 4(h) of the Bihar Land Reforms Act, 1950, but subsequently dropped, would bar initiation of proceedings under Section 4(g) of the said Act.

3. The respondents are the legal heirs of the original lessee of an extent of 387 bighas 16 kathas and 8 dhurs of land situated in Mauza Hajipur Bishrampur, Parganas Teliagarhi, Sub Division Rajmahal, Thana Sahibganj, District Dumka, Bihar State, under Kabuliyat executed in favour of one F.H. Kurtis on January 24, 1919. After coming into force of the Bihar Land Reforms Act, 1950 (for short the Act), the Collector initiated proceeding under Section 4(h) of the Act in Miscellaneous Case No. 14 of 1954-55 which was dropped on December 13, 1955. Again proceeding under the same provision was initiated in Case No. 1 of 1963-64 but that was also dropped on April 17, 1965. The present litigation commenced with issuance of notice under Section 4(g) of the Act. After affording opportunity of being heard to the respondents, the Deputy Collector, in charge Land Reforms and Development, Sahib Ganj, eventually dropped the proceedings by order dated August 17, 1970. The appellants challenged the validity of that order before the Deputy Commissioner, Santhal Parganas, Dumka, who held that the earlier initiation of proceedings under Section 4(h) of the Act did not debar the State from taking action under Section 4(g) of the Act and thus allowed the appeal of the appellants on 13.7.1982. The respondents assailed the validity of that order of the Deputy Commissioner before the High Court in Writ Petition No. 2814 of 1982 which was allowed and the order impugned in the writ petition was quashed. It is against the said order of the High Court that the State is in appeal before us, by special leave.

4. To appreciate the controversy, it will be useful to quote here Clauses (g) and (h) of Section 4 of the Act.

Section 4: Consequences of the vesting of an estate or tenure in the State: Notwithstanding anything contained in any other law for the time being in force or any contract and notwithstanding any noncompliance or irregular compliance of the provisions of Section 3, 3-A and 3-B except the provisions of Sub-section (1) of Section 3 and Sub-section (1) of Section 3-A on the publication of the notification under Sub-section (1) of Section 3 or Sub-section (1) or Sub-section (2) of Section 3-A, the following consequences shall ensure and shall be deemed always to have ensued, namely:

(a) to (f) x x x x x x x x

(g) Where by reason of the vesting of any estate or tenure or any part thereof in the State under the provision of this Act, the Collector is of the opinion that the State is entitled to the direct possession of any property he shall, by an order in writing served in the prescribed manner on the person in possession of such property, require him to deliver possession thereof to the State or show cause, if any, against the order within a time to be specified therein and if such person fails to deliver possession or show cause or if the Collector rejects any cause shown by such person after giving him a reasonable opportunity of being heard, the Collector shall for reasons to be recorded, take or cause to be taken such steps or use or cause to be used such force as, in his opinion may be necessary for securing compliance with the order or preventing a breach of the peace:

Provided that if the order under Clause (g) is passed by an officer below the rank of the Collector of a district, an appeal shall if preferred within sixty days of the order, be to the Collector of the district and the Collector shall dispose of the appeal in accordance with the prescribed procedure.

(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 provisions 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 annul such transfer, dispossess 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.

5. A perusal of Clause (h) would show that it empowers the Collector to make inquiry 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. If on making enquiries the Collector is satisfied that such transfer was made at any time after the 1st day of January, 1946 with the object of defeating any provisions of the Act or causing loss to the State or obtaining higher compensation thereunder, he is required to give reasonable notice and opportunity of being heard to the parties concerned and is enabled to annul such transfer, dispossess the person claiming under such transfer and take possession of such property on such terms as may appear to him equitable.

6. The import of Clause (g) is entirely different. It says that where by reason of the vesting of the estate or tenure or any part thereof in the State under the provision of the Act, the Collector is of the opinion that the State is entitled to the direct possession of any property, he is enjoined to serve a written order in the prescribed manner on the person in possession of such property requiring him to

deliver possession thereof to the State or to show cause, if any, against the order within the period specified therein. When such a person fails to deliver possession or show cause or when a cause has been shown, the Collector after giving such a person, a reasonable opportunity of being heard rejects the cause shown, for reasons to be recorded in writing, he can take or authorise taking of such steps including use of force as may be necessary for securing compliance with the order or preventing breach of peace. The proviso to Clause (g) is not relevant for our purpose.

7. Thus it is clear that these two Clauses contemplate two different situations and they operate in different fields and action under Clause (h) does not debar the State from taking action under the other Clause, namely, Clause (g) in this view of the matter and in view of the Act that the parties have not placed before the authorities their cases and the relevant material in support thereof, we consider it just and appropriate to remand the matter to the original authority, the Deputy Collector, in charge Land Reforms, Saheb Ganj, Santhal Parganas, (appellant No. 3). In the result, we set aside the order of the Deputy Collector, and the impugned order of the High Court and remand the case to the said original authority. The appeal is accordingly allowed but in the circumstances of the case we make no order as to costs.