**SUPREME COURT OF INDIA**

Dadan Ram

Vs.

State of Bihar

C.A.No.26 of 2001

(Tarun Chatterjee and P.Sathasivam JJ.)

23.11.2007

**JUDGMENT**

**P. SATHASIVAM, J.**

1) Whether the parcha holders, who are in possession of the land in question, have any right to be heard in a proceeding arising out of Section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) is the only question to be decided in this appeal.

2) This appeal is directed against the impugned final judgment and order dated 14.9.1999 passed by the Division Bench of the High Court of Judicature at Patna in L.P.A. No. 1545 of 1997 whereby the High Court dismissed the L.P.A. filed by the appellants herein against the judgment and order dated 24.11.197 passed by the learned single Judge of the High Court in C.W.J.C. No. 12036 of 1996 arising from a proceeding under Section 45-B of the Act.

3) The Ceiling (surplus) proceedings bearing Ceiling Case No. 149 of 1973-74 were initiated against Nand Kishore Tiwari, respondent No.8 herein and a notice to the said effect was issued to him under Section 6(1) of the Act in Form LC-1 as prescribed under Rule 5 under the said Act and respondent No.8 submitted a return under the said Act in respect of his entire land, total 19 acres 71 decimals. The aforesaid land was found to be owned and possessed by the family as defined in Section 2(ee) of the said Act i.e. land holder, respondent No.8, his wife Sumitra Devi and their two minor children as on appointed day i.e., 9.9.1970 and ultimately the authority concerned by holding 15 acres of class I lands was permitted to be retained by respondent No.8 under Section 5(1) and the

remaining 4.64 acres of land were declared as surplus. Final publication of draft statement under Section 11(1) of the said Act was accordingly made and subsequent to that a notification under Section 15(1) was also issued on 15.1.1993. Against the said notification, respondent No.8 filed an appeal under Section 30(1)(b) of the Act before the Commissioner, Patna Division, Patna bearing Ceiling Appeal No. 160 of 1994. The Commissioner dismissed the appeal on merits. Dissatisfied therewith, a Ceiling Revision was filed before the Member, Board of Revenue, Bihar, Patna which was also dismissed. Writ Petition filed for quashing the earlier orders was dismissed by the High Court. Subsequently another writ application which was filed in the High Court by respondent No.8 herein and the same was disposed of with a direction to raise the matter before the Collector of the District within two weeks from the date of the receipt of the order. However, no such application was filed by respondent No.8 before the District Collector, therefore, after the expiry of said such period, the High Courts order became infructuous. The wife of respondent No.8, namely, Sumitra Devi filed an application before the District Collector for re-opening the case under Section 95-B of the Ceiling Act and the same was dismissed. Challenging the order of the District Collector as well as the orders of the appellate Court which was passed in the appeal filed by respondent No.8 and the order passed in Revision application, an application under Section 32 of the Act was also filed before the Member, Board of Revenue, Bihar and the same was finally disposed of on 12.7.1995 with a direction that the Collector shall ascertain the allegation. After final publication under Section 15(1) of the Ceiling Act, the aforesaid excess land i.e. 4 acres 64 decimals was distributed to 8 down-trodden people of the village and separate parchas were issued in name of the aforesaid eight persons and the possession was also delivered to them. The District Collector transferred the case to the Court of Additional Collector who re-opened the case, conducted the impugned proceedings in question and held that the land holder has no excess land. Accordingly, he set aside the notification issued under Section 15(1) of the Ceiling Act. Respondent No.5 before disposal of the application under Section 45-B of the Ceiling Act, did not issue notice nor opportunity was given to the appellants with whom the aforesaid lands were in possession.

4) Being aggrieved, the appellants filed C.W.J.C. No. 12036 of 1996 before the High Court. Learned single Judge of the High Court dismissed the same. Dissatisfied therewith, L.P.A. was filed before the Division Bench of the High Court of Patna. The Division Bench of the High Court dismissed the same affirming the order passed the learned single Judge. Aggrieved by the said order, the appellants filed the present appeal by way of special leave petition.

5) We heard Mr. S.B. Sanyal, learned senior counsel for the appellants and Mr. P.S. Mishra, learned senior counsel for the contesting private respondent Nos. 8 and 9 and Mr. Gopal Singh, learned counsel for the State of Bihar.

6) After taking us through the entire proceedings including the orders passed by the authorities under the Act as well as the High Court, Mr. S.B. Sanyal, learned senior counsel, for the appellants mainly submitted that inasmuch as the appellants-parcha holders who were in lawful possession of the land in question and continuing the same even today are entitled to notice and opportunity of being heard in a proceeding arising out of Section 45 of the Act. He also contended that in view of abuse of process by the contesting private respondent Nos. 8 and 9 who are none else than husband and wife, all the orders are liable to be quashed. On the other hand, Mr. P.S.Mishra, learned senior counsel for respondent Nos. 8 and 9 submitted that in view of order of status quo which was passed in the presence of both parties even in the absence of the separate notice in a proceeding under Section 45-B of the Act in the facts and circumstances, the rules of natural justice were substantially complied with and hence there is no ground for interference by this Court under Article 146 of the

Constitution of India.

7) We have carefully perused the annexures and relevant materials and considered the rival contentions with reference to the pleadings.

8) If we accept the first contention of the learned senior counsel for the appellants, namely, notice or opportunity of being heard in a proceeding under Section 45-B of the Act, there is no need to consider the other contentions. It is seen from the materials placed, after proper notice, the land holder and respondent No.8, and his wife - Sumitra Devi and their two minor children on the appointed day, i.e., 09.09.1970 were permitted to retain 15 acres of Class-I lands and the remaining 4.64 acres of land were declared as surplus. Based on the same, a notification under Section 15(1) was issued on 15.01.1993. The appeal as well as the revision filed against the same was dismissed. The writ petition filed by the 8th respondent was also dismissed. When special leave petition was filed against the order of the High Court, the same was disposed of with a permission to the applicant to raise the matter before the Collector of the concerned District. It is brought to our notice that though no such petition was filed by the 8th respondent, subsequently his wife - Sumitra Devi - 9th respondent herein has filed an application before the District Collector, Bhojpur 4th respondent-herein for re- opening the case under Section 45-B of the Act. The said application was dismissed by the District Collector and subsequent to that an application under Section 32 of the said Act was filed before the Member, Board of Revenue, Bihar challenging the entire order of the District Collector. The same was finally disposed of on 12.07.1995 with a direction to the Collector to consider the grievance of Sumitra Devi. It is further seen that the District Collector, Bhojpur transferred the case to the Court of Addl. District Collector who re-opened the case and found that the land holder has no excess land and notification issued under Section 15(1) of the Act was to be set aside. Questioning the said proceedings, the appellants filed CWJC No. 12036 of 1996 before the High Court, Patna. Learned Single Judge, who heard the matter, dismissed the same by order dated 24.11.1997. Dissatisfied with the said order, an appeal was filed before the Division Bench in L.P.A. No. 1545 of 1997 which was also dismissed affirming the order dated 24.11.1997 passed by the learned Single Judge.

9) At this juncture, it is relevant to mention that based on the earlier proceedings holding that the 8th respondent herein was having excess land of 4.64 acres, the authority concerned, after following the procedure, and after proper verification assigned the excess lands in favour of the appellants. According to them, from that date onwards, they are in possession of the assigned lands and they are the parcha- holders.

10) Since initially at the instance of 8th respondent and thereafter his wife - Sumitra Devi 9th respondent-herein, the case was re-opened and found no excess land available, it is useful to refer the relevant provision, i.e., Section 45-B of the Act. The said provision was inserted by Bihar Act 22 of 1976. The Section reads as under:-

45-B. State Government to call for and examine records.- The State Government *[or the Collector of the district who may be authorized in this behalf] may, at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act.

* Deleted by Act 8 of 1997

11) It is not in dispute that prior to the aforesaid amendment, there was no such power enabling the Collector, Member, Board of Revenue or State Government to re-open the case for fresh disposal which had been concluded. By the aforesaid Section 45-B, power has been vested in the State Government or in the Collector of the District (since deleted by Act 8 of 1997) re-opening of cases which had been disposed of so that they may be heard afresh in accordance with the provisions of the Act. Though the amended provision contains very wide and extra-ordinary power, admittedly no guidelines have been provided as to when such power is to be exercised. In fact, no period of limitation has been fixed, the result whereof may be that a proceeding which had been initiated under the provisions of the Act and has been concluded by final orders passed by the original, appellate and the revisional authority can be re-opened after lapse of several years. The amended provision also makes it clear that while exercising powers under the said provision, no one can act as an appellate or revisional court. It is an extra-ordinary power which can be invoked only if earlier order is found to have been passed not in accordance with the Act. The proceedings under the amended section are quasi judicial, the right to get opportunity of hearing cannot be denied in such proceedings. Under this section initially both the State Government/Collector has the jurisdiction, but by the amendment Act 8 of 1997, State alone is empowered to re- open such matters for valid reasons. The proceedings are quasi judicial in nature. Considering the fact that the State Government and previously the District Collector were authorized to re-open the issue which was concluded, we are of the view that prior to re-opening, issue of notice and opportunity of hearing of the land holder or person in possession of the land are mandatory. In the instant case, from the materials it is clear that the appellants as parcha holders, though the issue was re-opened they were not issued notice or given an opportunity to put-forth their case. Though the High Court has concluded that in view of the order of status quo which was passed in the presence of both parties including the present appellants, the rules of natural justice were substantially complied with in view of the power conferred on the State Government to re-open a case that too even after final notification, the person/persons who are in possession of the land in question or parcha holders are entitled opportunity of notice and they must be heard before final decision being taken. In this regard, it is useful to refer to the decision of this Court in Baban Paswan and Another vs. Pratima Devi and Others, (2003) 10 SCC 239. The case relates to determination of the ceiling area in respect of the family of Prabal Pratap Singh and Dinesh Prasad Singh and it was then worked out that 43.26 acres was excess land. The Respondent 1 - Pratima Devi being the sister of the aforesaid two persons raised some dispute stating that she was not heard in the matter. In the meanwhile the surplus land was distributed to different persons and the appellants came into possession of some areas of that surplus land pursuant to the allotment made in their favour in 1985. Thereafter, Prabal Pratap Singh and Dinesh Prasad Singh filed a writ petition challenging the aforesaid determination of the excess land and also the distribution in favour of the appellants. Though the appellants were made parties in the said writ petition, the High Court ultimately dismissed their writ petition and the LPA filed by those two persons was withdrawn subsequently. Thereafter, the 1st respondent Pratima Devi filed CWJC No. 323 of 1999 before the High Court contending that she was not heard and she was vitally interested in the matter before determining the ceiling area applicable to the family of Pratima Devi, Prabal Pratap Singh and Dinesh Prasad Singh. In that writ petition, the appellants in this Court were not made parties though the land was in the lawful possession of the appellants. The writ petition was allowed by the High Court by ordering certain areas claimed by the 1st respondent to be excluded from the ceiling limit of the aforesaid two persons (Prabal Pratap Singh and Dinesh Prasad Singh). When the appellants came to know about the said verdict of the High Court in the writ petition they filed LPA by obtaining permission. But the LPA was dismissed by a Division Bench of the High Court holding that the appellants/parcha-holders cannot acquire any right merely because parcha has been issued in their favour and since the acquisition has been held to be invalid

they have no option but to walk out. Questioning the said order, the appellants have filed special leave petition before this Court. Considering the issue which is similar to our case, this Court held as under:

5. We are not inclined to take the view that the appellants are not entitled to be heard in the writ petition filed by the 1st respondent Pratima Devi merely because the determination of the ceiling area had taken place at a time when the appellants had no right in the land. The appellants have been put in possession of the land way back in 1985 by holding that it was a surplus area pertaining to the family. They being in the enjoyment of the land on the strength of the said allotment, they must have the right to substantiate that the allotment has been rightly made in their favour and the area was rightfully held to be surplus area. After holding so, this Court set aside the judgment passed by the learned Single Judge and the Division Bench of the High Court and remitted to the High Court for disposal after affording opportunity to the appellants. The decision therein is directly applicable to the case on hand particularly in the light of the language used in amended Section45-B of the Act.

12) In view of the same, we are unable to agree with the observation of the Division Bench since the appellants had the knowledge of the order of status quo passed by the District Collector on 24.08.2005, the rules of natural justice were substantially complied with. We have already held that prior to re-opening, notice to all the parties including person(s) in possession was mandatory. It is not in dispute that the case was re-opened and earlier decision was reversed holding that there was no excess land without issuing notice to the appellants. Section45-B empowers the State Government to re-open the case which was already been disposed of by the Collector under the Act. After re-opening the case, the State Government is to dispose of the matter afresh in accordance with law. It is, therefore, clear that before passing any order in a concluded issue, the authority is expected to satisfy the minimum requirement of principles of natural justice by issuance of notice and hearing. Further, the said power to re- open has to be exercised sparingly and for adequate reasons and the proceeding concluded earlier cannot be re-opened merely for verification whether the orders were correctly passed. The order of re-opening should be passed after hearing the parties concerned and where an order of re- opening the case had been passed without hearing the party against whom it was passed, the order suffers with legal infirmity and liable to be quashed. The reason behind in issuing a show cause notice is precisely very clear in view of the fact that a proceeding once concluded after a regular hearing should not be ordered to be re-opened suo motu by the authorities concerned in a capricious manner and reasonableness requires that parties to be affected by the same should be heard.

13) In this view of the matter, we are of the view that the orders impugned suffer from the infirmity of not giving reasonable opportunity to the appellants before reopening the proceedings. The order, therefore, is liable to be set aside. Under these circumstances, the order of the High Court both learned Single Judge and the Division Bench are set aside. However, the State Government is free to pass fresh order if they so desire under Section 45-B of the Act after affording opportunity to all the parties including the appellants herein. Civil appeal is allowed to this extent. No costs.