SUPREME COURT OF INDIA

Kamal Krishan Rastogi

Vs.

State of Bihar

C.A.Nos.5771-5772 of 2002

(Tarun Chatterjee and Aftab Alam JJ.)

03.09.2008

JUDGMENT

Aftab Alam, J.

1. These two analogous appeals arise from a land ceiling proceeding that was reopened under 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').

2. In the first round a proceeding was held against the land-holder Sarju Madhav Rastogi in Case No. 868 of 1973-74. In that proceeding he was shown entitled to only two ceiling units but having 205.83 acres of different classes of land in his possession. The land holder raised many objections against the draft statement. He disputed the classification of lands and claimed three more units for his three sons who, according to him, were already major on the appointed date, 9 September, 1970 and further claimed an additional unit for his two minor grand-sons. He stated that by gift deeds dated 28 September, 1962 he had given 21.98 acres and 21.43 acres respectively to his two married daughters: 2.56 acres were taken in acquisition by the State Government for construction of an irrigation canal and 9.69 acres was voluntarily surrendered by him. He contended that all these lands (adding to a total of 55.56 acres) were wrongly shown in the draft statement made in his name. The revenue authorities disallowed his objections and the matter finally came to the Patna High Court in two writ petitions, C.W.J.C.No.1393 of 1977 (filed by Sarju Madhav Rastogi and his sons) and C.W.J.C.No.1816 of 1977 (filed by the two daughters who claimed the lands gifted by their father and objected to their inclusion in the land ceiling proceeding against their father). The two writ petitions were allowed by judgment and order dated 7 November, 1977 and the matter was remitted to the Sub-Divisional Officer, Bhabua, for reconsideration of the matter and to re-examine the land-holder's objections in light of the observations made by the court. In the fresh round following the remand by the High Court practically all the objections raised by the land-holder were accepted and the proceeding was dropped by order dated 25 October, 1978 passed by the Additional Collector, L.R., Rohtas, Sasaram. The order held and found that the land-holder possessed 8 acres of class II and 132.01 = acres of class IV lands;

he was held entitled to five units that added up to 156 acres and thus there was no surplus land in his hands.

3. The matter rested thus when the Collector, Rohtas passed an order on 8 September, 1982 reopening the proceeding in exercise of the powers under Section 45-B of the Act. (Under Section 45-B, as it stood at that time, the Collector of the district was equally empowered to reopen a proceeding on going through the records of the case). It is, however, the admitted position that the order to reopen the proceeding was passed by the Collector without giving any notice or an opportunity of hearing to the land-holder, Sarju Madhav Rastogi.

4. After being reopened the proceeding was renumbered as Land Ceiling Case No. 64 of 1982. A fresh draft statement under Section 10(2) of the Act was issued to the land-holder in which he was shown to hold 200.51 acres of class I land and 0.11 acre of class IV land. In the draft statement he was allowed four units and two additional units for the minors and the rest of the land was declared surplus.

5. What happened from this stage is important for the purpose of the case and we accordingly state the facts exactly as they appear in the order of the High Court coming under appeal. The proceeding was transferred before the Additional Collector for disposal. On a notice issued to him the land-holder, Sarju Madhav Rastogi appeared before the additional Collector on 30 April, 1984 and filed a petition praying for time to file objections. Thereafter, he neither filed any objection nor ever appeared before the court till his death on 27 January, 1985. It is undeniable that after the death of the land-holder no steps were taken for substitution of his heirs in the proceeding nor any notice was sent to the heirs of the deceased Sarju Madhav Rastogi. On 6 February, 1986, the Additional Collector sent a registered notice in the name of Sarju Madhav Rastogi (who was by then dead) fixing the hearing of the case on 5 February, 1986. No one appeared in response to the notice and apparently no hearing was done on that date. Then on receipt of the Circle Officer's report on 25 August, 1987, the Additional Collector sent another registered notice fixing the hearing of the case on 2 November, 1987. This notice too was addressed to Sarju Madhav Rastogi. Finally, on 14 January, 1988 the Additional Collector passed orders holding that the land holder was entitled to 78 acres of class I land and the balance 130.56 acres of class I land was declared as surplus. The order found and held that no gift was executed within the period permitted under the Act and that in the earlier proceeding 43.41 acres of land was wrongly excluded on the plea of having been given in gift by the land-holder to his daughters.

6. The sons of Sarju Madhav Rastogi took the order of the Additional Collector in appeal and revision and being unsuccessful before the revenue authorities brought the matter to the High Court in C.W.J.C. No.7439 of 1989. Before the High Court it was inter alia contended that the Collector's order reopening the proceeding was incurably bad and illegal because it was passed without any notice to the land-holder. Consequently, all the subsequent orders passed by the revenue authorities were equally illegal and unsustainable. The High Court rejected the submission. One of the Judges on the Division Bench, hearing the case, took the view that having participated in the proceeding before the Additional Collector and then having taken the matter in appeal and revision it was no longer open to the writ petitioners to

question the validity of the Collector's order reopening the proceeding. In paragraph 13 of the judgment the learned judge observed and held as follows:

> "Mr. Rastogi, counsel for the petitioners submitted that no notice was given to the petitioners in connection with reopening of the land ceiling proceeding under Section 45-B of the Act and as such the same was illegal and without jurisdiction. Consequently all the orders passed thereafter are also illegal and not binding on the petitioners. I do not find any merit in this submission. After proceeding was reopened, the petitioners instead of challenging the same appeared and submitted to the jurisdiction of the court and participated in the proceedings and as such they are estopped from challenging the same at a later stage." (emphasis added)
>
> The other learned Judge constituting the bench agreed with the view taken by the first Judge but found the issue sufficiently important to give his own reasons for rejecting the submission of the writ petitioners. The second Judge accepted the legal position that the reopening order was quite illegal since it was passed without any notice to the land holder. In paragraph 17 of the judgment, the other Judge observed as follows:
>
> "The precise question is whether the order of reopening of the proceeding dated 8.9.82 being illegal, about which there can be little doubt as this was done without issuing notice to the landholder, the subsequent orders passed by the Additional Collector are also illegal and without jurisdiction." (emphasis added)
>
> Nevertheless, the learned Judge held, the illegality of the reopening order would not affect the subsequent orders passed by the revenue authorities. The learned Judge observed that even though an order might be without jurisdiction the court would decline to interfere in case the setting aside of that order should lead to reviving another bad and illegal order. In support of the principle he relied upon a decision of this Court in *Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar*[1]. We fail to see the application of the Supreme Court decision or the principles invoked by the learned Judge as it is not clear to us what other illegal order might have been revived as a result of setting aside the reopening order passed by the Collector. It surely cannot be the order by which the proceeding was earlier dropped because the law mandates that before that is held to be bad and reopening is ordered the land-holder must be given an opportunity to defend that order. In other words, the earlier order dropping the proceeding cannot be said to be bad prima facie and declared as such unilaterally. That being the position there is no question of an illegal order getting revived as a result of setting aside the order to reopen the proceeding that was admittedly passed in an illegal manner.

7. The learned judge then proceeded to examine the different natures and shades of jurisdiction and cited a number of decisions to elaborate the point. But at the end an erudite discussion he also, like the first Judge, fell back on the argument that it was no longer open to the writ petitioners to question the validity of the reopening order since they had fully

participated in the proceeding after it was reopened. In paragraph 22 of the judgment the learned judge observed as follows:

> "Section 45-B empowers the State Government or the Collector of the district authorized in that behalf at any time to call for and examine any record of any proceeding disposed of by Collector under the Act and, if it thinks fit, to direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act. As held by this Court, it is mandatory to issue notice and give an opportunity of hearing to the landholder before any order for reopening a concluded proceeding is passed. Thus, where notice is not given the order has to be treated as illegal and, within the extended meaning of the term, as per the aforequoted observation of the Supreme Court, also without jurisdiction. But that does not mean that on that ground alone the subsequent orders would also become illegal, particularly when the petitioner participated in the proceedings, thus, acquiescing in the jurisdiction of the Additional Collector which he undisputedly possessed."
>
> (emphasis added)

8. We are unable to agree with the view taken by the High Court. Whether or not the land holder's participation in the proceeding before the Additional Collector would cure the illegality of the reopening order passed by the Collector is a debatable issue but we see that on admitted facts that larger issue does not even arise in the case. It would be hardly fair and just to hold that the land-holder took any part in the proceeding after it was reopened by the Collector's order. As seen above, on notice being issued by the Additional Collector, Sarju Madhav Rastogi appeared before him on 30 April, 1984 and prayed for time for filing objections. He then never appeared and a few months later died on 27 January, 1985. He did not file any objection before the Additional Collector. Had he filed one, he might have taken the precise objection that the proceeding was without jurisdiction because the reopening order was itself illegal and without jurisdiction. Admittedly, after the death of Sarju Madhav Rastogi his heirs were neither substituted nor they were given any notice by the Additional Collector. They did not appear before the Additional Collector. What is significant here is to note that the order of the Additional Collector was made against a dead person and for that reason alone it was unsustainable. It was only after the order of the Additional Collector that the heirs of Sarju Madhav Rastogi came into picture when they tried to challenge the order on many grounds including the one that the order was passed in a proceeding that was held on the basis of the Collector's order that was illegal and without jurisdiction. It is, therefore, quite wrong to say that it was not open to the land holders to question the validity of the reopening order since they had participated in the proceeding after its reopening.

9. As noted above, the order of the Additional Collector was also unsustainable for the additional reason that it was passed against a dead person.

10. For all these reasons we are satisfied that the judgment and order passed by the High Court as well as the orders of the revenue authorities are unsustainable in law. The appeals are allowed and the orders of the High Court and the revenue authorities are set aside.

11. This order, however, shall not stand in the way of the State Government in calling and examining the records of the case and on being satisfied that the materials so warrant to pass appropriate orders under Section 45-B of the Act.

[1]*(1999) 8 SCC 16*