SANTOSH KUMAR SINGH AND ORS. A

*v.*

THE STATE OF BIHAR AND ORS.

(Civil Appeal No. 1263 of 2001)

FEBRUARY 1, 2008 B

**[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

*Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 – s.10(3), 32A – Preparation of Draft publication – Consideration of objections by authorities – However, final publication not made – Amendment introduced by 1982 Act – Repetition of draft statement prepared earlier – Objections to draft publication – Held: Can be taken within stipulated time and authorities required to consider them by virtue of sub-section (3) of s.10 – There is also provision for adducing evidence – Therefore, contention that person who wants to prefer objection is deprived of adequate opportunity is without substance – Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 1982.* C D

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**Proceedings were initiated under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 against the landholder family of 'B'. 'K' was daughter-in-law and 'BD' was grand daughter of 'B'. In the said Land Ceiling case, after draft publication and on consideration of the objection made by 'B', orders were passed by competent authority against which the aforesaid persons filed revision application. Revisional authority accepted some of the objections of 'B' and rejected others. However, as final publication was not made, after the amendment of the Act by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 1982, the matter was taken afresh from the stage of s.10 of the Act. At the stage of fresh proceedings, objections were raised regarding the** F G

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A classification of lands and exclusion of lands gifted to daughter-in-law, grand daughter and to daughters within the grace period. The competent authority accepted part of the objections and ordered for exclusion of the land gifts during grace period in favour of two daughters and B rejected the objection relating to the classification of land. On appeal, appellate authority accepted part of the objection. Certain lands which were earlier classified as Class-I land were held not properly to have been done. However, the other part of the classification was held to C be valid. The gift made in favour of the two daughters was confirmed but the claim relating to deletion of land gifted in favour of daughter-in-law and grand daughter was rejected. The revision thereagainst was dismissed. The writ petition was dismissed. In the writ appeal, the stand D taken was that the effect of the amended provisions i.e. ss.32A and 32B had not been kept in view; that there was no *de novo* enquiry and that having been not done, the judgment of the Single Judge was unsustainable. The Division Bench did not find any substance in the plea and with reference to s.10 of the Act, dismissed the writ appeal. E

In appeal to this court, appellant contended that the true effect of the amendment has not been kept in view. If the draft statement was repeated there was not need for inserting ss. 32A and 32B and that there was need for F enquiry and the procedures contemplated under ss.6, 8 and 9 were to be adopted.

Dismissing the appeal, the Court

HELD : A bare reading of s.32-A of Bihar Land G Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 shows that where an appeal, revision, review or reference other than those arising out of order passed under s.8 or sub-section (3) of s.16 is pending before any authority on the date of commencement of the Act, the same shall abate. The H

**proviso is of significance. It stipulates that the Collector shall proceed with the case afresh in accordance with provisions of s.10. Sub-section (1) of s.10 deals with preparation of draft statement. Sub-section (3) is of considerable importance. It provides that when there is any objection to the draft statement in respect of the matters specified in clause (a), (b), (c) and (d) of sub-section (1) received within 30 days of the publication of the draft statement or service thereof under sub-section (2), whichever is latter, when preferred by any person having claim or interest in the matters shall be considered by the Collector and after giving reasonable opportunity of adducing evidence, the Collector shall pass such orders as it deems fit. Even though there is repetition of the draft statement which was prepared earlier, the scope for making objection as provided under sub-section (3) of s.10 still exists. If the noticee has any objection to any part of the draft statement in respect of the specified matters, the same can be taken within the stipulated period and the authorities are required to consider them. There is also provision for adducing evidence. That being so, the stand that the person who wants to prefer the objection is deprived of adequate opportunity is without substance. [Paras 8–9] [289-C-H; 290-A, B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1263 of 2001.

From the final Judgment and Order dated 10.12.1999 of the High Court of Judicature at Patna in L.P.A. No. 572/1998.

P.S. Mishra, H. Thathagat, Upendra Mishra, R.C. Prakash, Sunita Rani Singh and Rajesh Prasad Singh for the Appellants.

Manish Kumar and Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a Division Bench of the Patna High Court

A dismissing the Letters Patent Appeal filed by the appellants.

2. The factual controversy lies in a very narrow compass.

Proceedings under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short B the 'Act') were initiated against the landholder family of Budh Prakash Singh. Smt. Kamla Devi was daughter in law and Smt. Bageshwari Devi was grand daughter of aforesaid Budh Prakash Singh. In the said Land Ceiling Case No. 23/73-74 after draft publication and on consideration of the objection C made by Budh Prakash Singh, orders were passed by the L.R.D.C., Aurangabad against which the aforesaid persons filed an application for revision before the revisional authority. By order dated 7.4.1977 the revisional authority in revision case No.1986/76 accepted some of the objections of Budh Prakash D Singh, but parts of the objections were rejected. However, as final publication was not made, after the amendment of the Act by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 1982 (hereinafter referred to as the 'Amendment Act'), the matter was taken afresh from the stage of Section 10 of the Act. At the stage of fresh proceedings E following objections were raised:

(a) The classification of lands was not properly made.

(b) The lands which belonged to the son Chittaranjan Prasad Singh (now deceased) should not have been F included.

(c) The lands gifted to Smt. Kamla Devi, daughter-in-law; lands gifted to Smt. Bageshwari Devi, grand daughter and lands gifted to two daughters, namely, Nirmala Kumari and Sashibala within the grace G period should be excluded."

3. L.R.D.C. by order dated 14.5.1984 accepted part of the objection and ordered for exclusion of the land gifted during grace period in favour of two daughters, namely, Nirmala Kumari

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and Sashibala. However, rest of the objections including the objection relating to classification of land was rejected. A Ceiling Appeal was preferred and the appellate authority by order dated 10.9.1985 accepted part of the objection. Certain lands which were earlier classified as Class-I land were held not properly to have been done. However, the other part of the classification was held to be valid. The gift made in favour of the two daughters was confirmed but the claim relating to deletion of land gifted in favour of daughter-in-law, Kamla Devi and grand daughter Bageshwari Devi was rejected. Thereafter revision case No.387/85 was preferred. The revisional authority by revisional order dated 28.4.1987, rejected the same. A writ petition was filed before the High Court and the primary stand was relating to classification made to declare certain lands as surplus. Similarly, non-exclusion of the gifts in favour of Kamla Devi and Bageshwari Devi were questioned. The State's stand was that the amended definition of "landholder" as amended in 1973 was applicable. It was pointed out that the land ceiling proceedings were not initiated against any "individual" but against the family. In view of the definition of the expression "family", Kamla Devi, Bagehswari Devi and Chittaranjan Prasad Singh come within the definition of "family" and their land stood included. So far as the classification is concerned, it was submitted that after due verification and with reference to irrigational facility available the classification was made.

4. Learned Single Judge of the High Court did not find any substance in the stand taken in the writ petition. It was noted that gift was made in favour of Bageshwari Devi when she was child of about 8 months and even after such alleged gift rent was paid to Budh Parkash Singh and the lands purportedly to be gifted to Kamla Devi and Bageshwari Devi were, in fact, in the possession of Budh Parkash Singh. The writ petition was dismissed. In the writ appeal, the stand taken was that the effect of the amended provisions i.e. Sections 32A and 32B had not been kept in view. It was submitted that there was no *de novo* enquiry and that having been not done, the judgment of the

A learned Single Judge was unsustainable. The Division Bench did not find any substance in the plea and with reference to Section 10 of the Act, writ appeal was dismissed.

5. In support of the appeal, learned counsel for the appellant submitted that the true effect of the amendment has not been B kept in view. If the draft statement was repeated there was no need for inserting Sections 32A and 32B. According to him, there was need for enquiry and the procedures contemplated under Sections 6, 8 and 9 were to be adopted.

C 6. Learned counsel for the respondents on the other hand supported the orders.

7. At this juncture, it would be appropriate to take note of Sections10, 11, 32A and 32B of the Act. They read as follows:

D "10. Preparation of draft statement,—(1) On the basis of the information given by or on behalf of the land holder under Section 6, 8, 9 or the information obtained by the Collector under Section. 7, checked in the prescribed manner, the Collector shall cause a draft statement to be prepared showing the following particulars

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(a) the area and description of-

(i) each class of land held by the land-holder and the land selected by him which he desires to be included within his ceiling area ;

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(ii) orchards held by him and the orchards in compact blocks he desires to retain ;

(iii) homestead land and the pucca structures including the land necessary for the use and enjoyment of such G structures, held by him on the date of commencement of this Act, and such land *pucca* structures including land necessary for the use and enjoyment of the *pucca* structures which he desires to retain ;

H (b) area and description of land of each of the categories

in clause (a) which is allowed by the Collector to be held and retained by the land holder under Section 5;

(c) the area and description of the land which is in excess of the limit permissible under Section 5 and which the land holder is not entitled to hold or retain under this Act (hereinafter to be called_ the 'surplus' lead);

2[(c-1) the area and description of land transferred by the land-holder in accordance with or in contravention of the provisions of clause (ii) of sub-section (1) of Section 5 ;

(c-2) the substance of the findings of the Collector under clause (iii) of sub-section (1) of Section 5;

(c-3) the substance of the recommendation and order regarding exemption under Section 29; and]

(d) any other particular which may be prescribed.

[(2) The draft statement shall be published in the Official Gazette of the district and at such places, and in such manner, as may be prescribed:

Provided that a copy of the draft statement shall be served on the landholders concerned or on their guardian or guardians, as the case may be, by registered post with acknowledgment due which shall be conclusive evidence of the service of such notice.]

[(3) Any objection to the draft statement in respect of the matters specified in clause (a), (b), (c) and (d) of subsection (1) received within 30 days of the publication of the draft statement or service thereof under sub-section (2), whichever is latter. preferred by any person having any claim or interest in said matters shall be considered by the Collector who shall, after giving the parties a "reasonable opportunity of being heard and adducing evidence, pass such order as he thinks fit.

Provided that the Collector may on an application made

A by the land-holder or a person having claim or interest in the land extend the period of filing objection by another fifteen days.]

11. Final publication of draft statement—((1) When the objection or claim if any, preferred under sub-section (3) of Section 10 has been disposed of, the Collector shall, whether there is any surplus land or not, make such alteration in the draft statement as may be necessary to give effect to any order passed on the objection or claim and shall cause the said statement with the alteration, if any, to be finally published in the official Gazette of the district and in such place and in such manner as may be prescribed and a copy thereof duly certified by the Collector in the prescribed manner, shall be sent to the land-holder by registered post with acknowledgment due.]

((2) Copies of such statement duly authenticated in the prescribed manner shall by the Collector within such period and to such authority or authorities, as may be proscribed.]

32-A. Abatement of appeal, revision, review or reference.- An appeal, revision, review or reference other than those arising out of order passed under Section 8 or sub-section (3) of Section 16 pending before any authority on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 shall abate

Provided that on such abatement, the Collector shall proceed with the case afresh in accordance with the provisions of Section 10:

Provided further that such appeal, revision, review or reference arising out of orders passed under Section 8 of sub-section (3) of Section 16 as has abated under Section 13 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Ordinance, 1981 (Bihar Ordinance No. 66 of 1981) shall stand automatically restored before the proper authority on the

commencement of this Act.

32-B Initiation of fresh proceeding.—All those proceedings other than appeal, revision, review or reference referred to in Section 32-A pending on the date of commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) *Act, 1*982 and in which final publication under sub-section (1) of Section 11 of the Act as it stood before the amendment by the aforesaid Act, had not been made, shall be disposed of afresh in accordance with the provisions of Section 10 of the Act".]

8. A bare reading of Section 32-A shows that where an appeal, revision, review or reference other than those arising out of order passed under Section 8 or sub-section (3) of Section 16 is pending before any authority on the date of commencement of the Act, the same shall abate. The proviso is of significance. It stipulates that the Collector shall proceed with the case afresh in accordance with provisions of Section 10. The interpretation given by the learned counsel for the appellants is that the use of the expression "afresh" means that whatever was done earlier has to be totally obliterated and there has to be a fresh look on all aspects including classification and status of the parties involved. Sub-section (1) of Section 10 deals with preparation of draft statement. Sub-section (3) is of considerable importance. It provides that when there is any objection to the draft statement in respect of the matters specified in clause (a), (b), (c) and (d) of sub-section (1) received within 30 days of the publication of the draft statement or service thereof under sub-section (2), which ever is latter, when preferred by any person having claim or interest in the matters shall be considered by the Collector and after giving reasonable opportunity of adducing evidence the Collector shall pass such orders as it deems fit. Even though there is repetition of the draft statement which was prepared earlier, the scope for making objection as provided under sub-section (3) of Section 10 still exists. If the noticee has any objection to any part of the draft

A statement in respect of the specified matters, the same can be taken within the stipulated period and the authorities are required to consider them. There is also provision for adducing evidence.

9. That being so, the stand that the person who wants to B prefer the objection is deprived of adequate opportunity is without substance.

10. In view of the above position, there is no merit in this appeal which is accordingly dismissed. There will be no order C as to costs.

D.G. Appeal dismissed.