MANU/BH/0011/1987

Equivalent Citation: AIR1987Pat118, 1987(35)BLJR292, 1987PLJR154

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Writ Jurn. Case No. 4915 of 1984

Decided On: 03.01.1987

Appellants: **Praveen Shankar Singh and Ors.**
Vs.
Respondent: **State of Bihar and Ors.**

Hon'ble Judges/Coram:
S.S. Sandhawalia , C.J., B.P. Jha and L.M. Sharma , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Binod Krishna Jha, Subhas Chandra Jha, Pramod Kumar Singh and Jyotsana Thakur, Advs.

For Respondents/Defendant: J.N.P. Sinha, Govt. Adv., Anjani Kumar Sinha and Subodh Prasad, Jr. Counsel to Govt. Adv. and Ratan Kumar Singh and Jugal Kishore, Advs. (for No. 5)

JUDGMENT

S.S. Sandhawalia, C.J.

1. In this reference to the Full Bench it is now wholly unnecessary to recount the facts. Suffice it to notice that the controversy herein turns on the language used in Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 which is in the following terms : --

> "The State Government or the Collector of the district, who may be authorised 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 re-opened and disposed of afresh in accordance with the provisions of the Act."

It is well to recall that at the very threshold stage of admission, learned counsel for the petitioners in challenging the impugned order under Section 45B had contended that in the absence of any new material or new information on the record the case could not be reopened. Basic reliance for this contention was on the Division Bench judgment in Yamuna Rai v. State of Bihar MANU/BH/0058/1984. However, the motion Bench expressed a veiled doubt about the correctness of the view in Yamuna Rai's case. Noticing the significance of the issue and the frequency with which it arises in cases under the ceiling laws, they observed as under : --

> "We, accordingly, refer this case to a larger Bench for considering the correctness of the law laid down in the case of Yamuna Rai and others (supra)."

2. As before the admitting Bench so before us, the learned counsel for the petitioners

reiterated his reference to and reliance on Yamuna Rai v. State of Bihar. It was submitted that on closer examination the same did not, in any way, divert from the line of earlier precedent within the Court. Reference was made to Shiv Shankar Prasad Singh v. State of Bihar MANU/BH/0038/1982 :1982 BBCJ (HC) 362, Shri Thakur Ram Jankiji v. State of Bihar 1983 BLJR 33 and Harishchandra Singh v. State of Bihar MANU/BH/0098/1984 : 1984 PLJR 988.

3. Somewhat surprisingly, learned counsel for the respondent State did not pick up the gauntlet of the challenge to the correctness of the view in Yamuna Rai's case MANU/BH/0058/1984. Even when pointedly asked. He took up the stand that far from assailing its ratio, he relied thereupon. According to the learned counsel, the observations in the said case, read as a whole, were consistent with the earlier stream of cases.

4. In view of the above, it is somewhat plain that the present reference is now rendered infructuous. It is obviously unnecessary and, perhaps, inapt to opine about the correctness of a view regarding which learned counsel for the parties are themselves agreed and with regard to which no challenge has now been raised before us.

5. The case would now go back to an, appropriate Bench for a decision on merits.

B.P. Jha, J.

6. I agree to the order proposed and recorded by my Brother, Hon'ble Mr. Justice L. M. Sharma.

L.M. Sharma, J.

7. While admitting this writ application, a Division Bench of this Court seriously doubted the correctness of the decision in Yamuna Rai v. State of Bihar, 1984 Pat LJR 480: (AIR 1984 Patna 195) and referred it to Full Bench. In the order of reference, the Bench has observed as follows : --

> "One of the points raised on behalf of the petitioners while challenging the impugned orders (Annexures 2 and 3) passed 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'), is that in the absence of any new material or new information on the record, the case could not have been reopened, In support of this contention, he relied on a Bench decision of this Court in Yamuna Rai v. State of Bihar 1984 Pat LJR 480 : MANU/BH/0058/1984.
>
> We find ourselves unable to reconcile with the observations of the Division Bench in the above case. In our opinion, the power conferred upon the Collector under Section 45-B of the Act is wider as the language of this provision authorises him to call for and examine any record of any proceeding disposed of by the Collector under the Act, i and, then if he feels satisfied, he can direct that the case may be reopened."

8. The case was heard before us on 18-9-86 and 20-9-86 when several Division Bench decisions of this Court were placed before us, and the matter was debated at the Bar at some length. Since the Bench which referred the case for decision by a larger Bench requires our opinion as to the correctness of the decision in Yamuna

Rai's case and since we have heard the matter at length, I think that I should express my view on the question referred. For the reasons given below, in my opinion, Yamuna Rai's case was correctly decided and the stand taken by the learned Government Advocate before us was reasonable and correct. I do not think that as the State has taken a proper attitude before us, we should deny the Division Bench our opinion sought on the question.

9 . As has been stated by the Hon'ble Chief Justice, the question relates to the interpretation of Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The section on its face has vested the authorities with wide jurisdiction to reopen any closed proceeding and the only limitation mentioned is that the power may be exercised "if it thinks fit". Although the pronoun "it" is not appropriate for the Collector, it must be assumed that the clause "if it thinks fit" applies to both the State Government and the Collector; as it cannot be presumed that legislature intended to vest the State with power to reopen only after application of mind to the facts and circumstances of the case, and at the same time the Collector was authorised to act without any reason, that is, whimsically.

10. The question is as to the effect of the insertion of the expression "if it thinks fit" in the section. It means that the authority concerned is not to act without sufficient cause. The proceeding cannot therefore be reopened for merely making a fishing enquiry to test the correctness of the earlier order. The next question is as to the process by which the authority has to decide that a particular proceeding is fit to be reopened and the basis for taking such a decision. If fresh material relevant to the question is discovered, which if considered along with the existing materials on the record, is likely to lead to a different conclusion, the proceeding can certainly be reopened. What about a case where the authority decides to get the matter re-examined on the basis of materials already existing ? Before dealing with this crucial aspect, on which the Division Bench has sought the opinion of this Bench, I would like to discuss the ratio of Yamuna Rai's case.

11. In that case, the Collector had granted 4 units of land to the land-holders who were members of a Hindu joint family, and since the State Government was of the opinion that it was an erroneous order, it directed a re-examination of the case without issuing notice to the land-holders. Both the learned Judges constituting the Bench were of the view that the parties who were going to be affected, were entitled to notice before the matter could have been reopened. Mr. Justice, B. P. Jha further proceeded to consider the scope of the section and held, inter alia, that the authority concerned must be in possession of new materials before acting under Section 45-B. From the tenor of the order of reference (of the present writ application to a larger Bench), it appears that the petitioner had argued that before a proceeding could be reopened, it was essential that materials which were not on the records of the case earlier, should be available. I do not think, that is the correct interpretation of the judgment in Yamuna Rai's case MANU/BH/0058/1984. The following observations in paragraph 7 of the judgment may be seen :

> "Therefore, in order to reopen the case, the State Government or the District Collector must be in possession of new materials which were not available at the time of giving judgment. This material may be on the basis of the information received by the State Government or the District Collector or from the record as well. Suppose some information may be available to the Anchal Adhikari or the Collector, to which the Collector did not apply his mind while passing the order, that information to which mind was not

> applied by the earlier authority can be a source of information or material for reopening a case."

It is, therefore, plain that Mr. Justice B.P. Jha did not lay down the discovery of some fresh material, which was not on the records, as a necessary condition for exercise of power.

12. The procedure laid down in the Act for the purpose of determining the surplus land of a land-holder to be acquired is elaborate including a right of appeal and power of revision. In view of the nature of the resultant consequence, the proceeding is clearly quasi-judicial in nature. Vested rights in immovable properties are extinguished and new rights are created. When the land-holders who are deprived of their property and the beneficiary State differ on vital matters requiring a decision by the prescribed authorities, a lis comes into existence. After a thorough enquiry by the authority on the basis of the evidence produced before it, a decision is reached which is tested in appeal and under revisional powers. Normally, the final result achieved after undergoing such a detailed trial ought not to be allowed to be disturbed. The principles of "interest reipublicae ut sit finis litium", that is, it concerns the State that there be an end to law suits and of "nemo debet bis vexari pro una et eadem causa", that is, no man should be vexed twice over for the same cause, are clearly attracted. Although the said maxims were laid down a long time back, they have been respected throughout the ages. The rules of estoppel by judgment and the principle of res judicata (developed by the English Law on their basis) were solemnly made part of Civil Procedure Code in India, Sir Lawrence Jenkins in Sheoparsan Singh v. Ram Nandan Prasad Narayan Singh AIR 1916 PC 78, quoted Coke as saying that by ignoring the rule relating to the finality of orders passed in closed proceedings, great oppression might be done under colour and pretence of law, and then observed that this principle which was founded on ancient precedent is dictated by wisdom which is for all time. He also pointed out that the principle was not confined ' to Roman jurisprudence but was recognised in ancient Hindu law, as is clear from the text of Katyayana who describes the plea thus :

> "If a person though defeated at law, sues again, he should be answered 'you were defeated formerly'. This is called the plea of former judgment."

13. The original framers of the Act did not include this extraordinary provision (under Section 45-B) which was introduced later by an amendment. It is significant to note that while inserting Section 45-B in the statute, the legislature did not fix any period of limitation for exercise of the right. It has been repeatedly said that statutes of limitation are statutes of repose with a view to suppress frauds and to supply the deficiency of proofs arising from lapse of time. They quicken diligence by making it in some measure equivalent to right. They discourage litigation. John Voet has been quoted in Story's Conflict of Laws as saying that if controversies are not limited to a fixed period of time, they would become immortal while men are mortal. Plumber, M.R., in Cholmondelay v. Clinton, 2 Jac and W. 140 observed that the public "have a great interest in having a known limit fixed by law to litigation for the quiet of the community, and that there may be a certain fixed period, after which the possesser may know that his title and right cannot be called in question. It is better that the negligent owner, who has omitted to assert his right within a prescribed period, should lose his right, than that an opening should be given to interminable litigation exposing parties to be harassed by stale demands."

14. These principles are unexceptionable for every civilised society and in all ages.

The Section 45-B must be interpreted in this background.

15. It is, therefore, futile to suggest that an arbitrary power has been conferred on the State and the Collector to reopen closed proceedings whenever it or he is inclined to do so. It cannot be assumed that the legislature was acting irresponsibly so as to clothe the authorities with unlimited and uncontrolled powers in order to transgress the established jurisprudential principles.

16. Although it does not appear to be possible to exhaustively lay down all the circumstances under which power can be exercised, it can be safely said that it ought not to be invoked lightly. The consequences of such exercise may lead to serious civil consequences and the affected parties must, therefore, be given a chance to be heard before taking a decision to reopen the proceedings. Further, the length of time after which the closed matters are sought to be re-examined should be taken into account; longer the period, stronger should be the ground.

17. Now the question as to whether the authority can decide to reopen the proceeding on a re-consideration of the materials which had earlier been considered. In my view, it is not permissible to do so and this interpretation of the section would be consistent with the age old principles mentioned above and would be reasonable, just and consistent with fair play. It will save not only the land-holder but also the State from a perpetual threat of uncertainty and consequent harassment; for, it is a power which the land-holder may also invite to be exercised in his favour and not only once but repeatedly. If the section is construed in its widest amplitude implying unbriddled and unlimited power, the Collector when asked by an aggrieved land-holder to exercise the same, cannot, without applying his mind, refuse to entertain the prayer as that would amount to abdication of power. I, therefore, hold that if the materials on the records of a case are taken into consideration by the authorities concerned and a conclusion is reached which becomes final (on appeal and revision or in absence thereof), its finality has to be respected and the proceeding cannot be reopened for giving a second thought. If, however, any material or matter has been omitted from consideration which may be so substantial as to lead to a different conclusion, the power under the section may be exercised. As the observations of Mr. Justice, B.P. Jha in paragraph 7 of the judgment in Yamuna Rai v. State of Bihar MANU/BH/0058/1984 (supra) are consistent with this view, I hold that the case was correctly decided.

18. I do not consider it necessary to discuss the other cases placed before us during the course of hearing. If there be any observation in any decision of this Court decided by a Division Bench or a Single Judge to the contrary (no decision by a larger Bench was placed before us) the same may be deemed to have been overruled.

19. Now let the case go back to appropriate Bench for decision on merits, as suggested by the Hon'ble Chief Justice.